

A Theory of Justice of John Rawls as Basis for European Fiscal Union

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Abstract: Fiscal policies coordination, macro-stability purposes and provision of European public goods are undoubtedly economic goals of paramount importance when considering the implementation of Fiscal Union at European level. However, there is also a complementary component of moral nature embedded in the constitution of any fiscal system, that is reallocation of resources. The core idea of the paper is that A Theory of Justice of John Rawls can provide a new and compelling basis accounting for the institution of European Fiscal Union in the redistributive perspective since the European Union holds a) a scheme of mutually advantageous cooperation and b) a thick network of institutions which constitute a basic structure. The main outcome of this analysis is a European difference principle. This conclusion is then followed by a corollary: if the European institutions are to be shaped to reflect an arrangement of Rawlsian nature, they should also include Fiscal Union at European level.

JEL classification: D30, D63, E62, F02, F55.

Keywords: European Social Integration, Fiscal Union, John Rawls, Redistribution, Social Justice.

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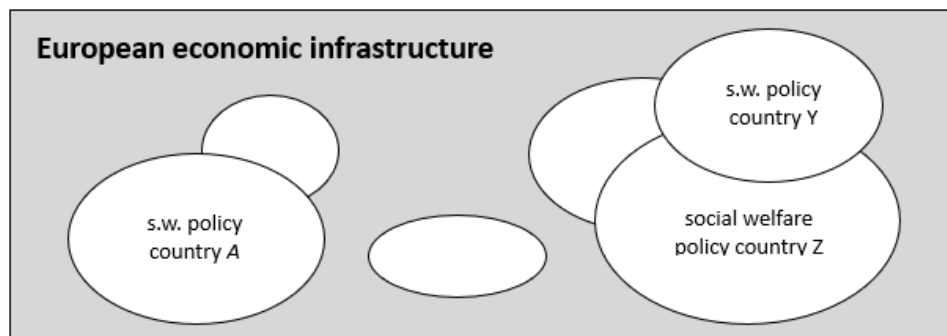
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1 Introduction

The European Union is a compound of nation-states characterized by a peculiar institutional asymmetry: as pointed out with different emphasis by Ferrera (2009), Martinsen (2013) and Scharpf (2002) while the European Union has a common economic infrastructure and governance, social welfare policies remain an exclusive prerogative of the single member states¹.

This means that each European country has to design its own optimal social policy, with potential negative externalities on the other members (Andreozzi and Tamborini, 2019), to respond to the same common economic frame outlined at European level (Figure 1).

Figure 1. Current Relationship between the Economic and Social Spheres within the EU



Author's visualization. The European member states operate within the same economic frame (indicated by the rectangular box), the so-called Single Market. In order to have a symmetrical institutional infrastructure, I assume that the whole rectangular should be "filled" with social policies at European level - complementary to the national ones - covering the areas of education, labour, health care and so on and so forth. However, without a European parallel intervention, the optimal social welfare policies adopted by the single member countries (represented by the white sets) to safeguard their own citizens cannot cover entirely the new economic space, thus leaving a zone of "social emptiness" (grey area). Furthermore, without a certain degree of coordination through European social policies, the social policy interventions of the single member states might negatively interfere one with another (this might be the case where during a pandemic one country decides to vaccinate all its citizens and the other none).

¹ This is not equivalent to state that the European Union is lacking any type of shared social view (Buchanan, 1996; Dluhosch, 1997; Kölling, 2015; Streit and Mussler, 1995; Vaubel, 1996), but that its initiatives of social nature are very modest and often driven by reasons of pure economic compensation rather than being based on some explicit purposes of social justice (Maduro, 2000).

For instance, this might happen in the areas of education, labour or health care: in the current Covid-19 pandemic era it is easy to imagine the costs which might be paid by some countries due to a missing coordinated policy action at large scale (Lago-Peñas et al., 2020).

Such an institutional asymmetry contributes to generate a fragmented European social structure, where significant inequalities and heterogeneous re-distributive effects emerge between and within the European countries (Avram et al., 2014; Beckfield, 2006; Immervoll et al., 2006; Fredriksen, 2012). This disharmonic pattern becomes even more evident during the moments of crisis: the absence of a unified social welfare action at European level prevents a prompt and efficient response to the social needs of the European citizens (Cantillon et al., 2017; Crespy and Menz, 2015; Ferrera, 2014; Martinsen and Vollaard, 2014). The current strong European response to the pandemic crisis certainly represents an unprecedented exception. Nevertheless, the risk is that this remains an occasional achievement. Thus, given the general unbalanced design it is possible to outline three alternatives for the future development of the European institutional framework.

The first option is the retention of the status quo. The European Union can keep being an institutional chimera characterized by many uncoordinated national welfare systems coexisting within a common economic frame. However, this alternative implies to continue to suffer the inequality flaws mentioned above, which raise from the existing gap between the economic integration and the social integration, or said otherwise, from the absence of solid principles of social justice at European level.

The second option relies on a never old-fashioned paradigm, that is to re-align the economic and the social dimensions moving back to the original state of affairs. According to this kind of view the European countries should withdraw from the Union, taking back those economic decision-making powers they have gradually ceased to the common institutions: in the light of the recent Brexit case this alternative is not an abstract case study for professional thinkers anymore.

The third and the last hypothesis, suggested among the others by Maduro (2000), Sangiovanni (2013) and Vandenbroucke (2013), looks at the opposite direction and embraces the idea to rebalance the two dimensions pursuing a path of social integration through the expansion of the welfare intervention area of the common institutions. According to this perspective the European Union should be endowed with clear principles of social justice, with some concrete social welfare decision-making powers and with specific dedicated resources.

In this paper I show how the constitutive elements which currently characterize the European Union fundamentally admit this third option. The conclusion that the European Union should reduce its institutional

asymmetry, and therefore the connected inequalities, moving towards a stronger social integration is reached through the adoption of John Rawls's social contract theory². In order to apply Rawls's *A Theory of Justice* (1999) and to draw the related conclusions, at European level the coexistence of two specific features has to be ascertained: *a*) a mutually advantageous cooperation among the interested parties and *b*) a thick set of formal institutions which defines a common basic structure.

Proved that the two elements exist, the direct output derived from the application of Rawls's model to the European Union is a European redistributive principle – the so-called difference principle –, which requires to redistribute the common resources in order to maximize the expectations of the most disadvantaged European(s). This main result is then followed by a corollary: if the European institutions are to be shaped in order to reflect an institutional arrangement of Rawlsian nature, they should also include Fiscal Union, meant as a pool of resources dedicated to pursuing social justice at European level.

The locution *Fiscal Union* has many shades, so depending on the context it can suggest multiple aims (Musgrave and Musgrave, 1989), it can be implemented in different degrees and it can be characterized by different specific elements (Cottarelli and Guerguil, 2015; Fuest and Peichl, 2012). For instance, Fiscal Union might be realized with the aim to provide some specific transnational public goods. Fiscal Union is also associated to the concept of shared and binding tax rules between states. Another possible interpretation concerns a shared pool of resources aimed at facing together some common risks. All these representations might be relevant when they are associated to the European context.

However, throughout the next pages the *Fiscal Union* concept has to be interpreted only in the perspective of a system which can pool together the resources necessary to pursue an institutional arrangement of Rawlsian nature at European level. Therefore, in the analysis, neither economic factors (specific tax policies, exact amount of the common budget, etc.) nor political equilibria (legitimization, decision-making powers, etc.) will be directly taken into consideration.

The next Sections are structured as it follows. Section 2 introduces Rawls' social contract theory. Section 3 looks at the previous literature on applying John Rawls's theory to the European context. Section 4 lingers on the two conditions to apply Rawls's domestic theory to the European framework. Section 5 is descriptive and focuses the attention on the Euro-

² Alternative perspectives might be adopted to derive principles of European social justice (Dunaiski, 2013; Manners, 2008; Rawls and Van Parijs, 2003; Sangiovanni, 2013; Scharpf, 2002; Van Parijs, 2012; Viehoff, 2017 and 2018).

pean economic cooperation and on the current European institutional arrangement. Section 6 provides the main outcome of applying Rawls's frame to the European Union, that is the European difference principle. Section 7 lingers on a corollary of the main achievement, that is European Fiscal Union. The Conclusions summarize the main ideas and provide some insights for the future research.

2 John Rawls between Domestic and International Distributive Justice

In order to identify the main principles for a fair institutional arrangement in *A Theory of Justice* John Rawls (1999) proposes a contractualist procedure³. In particular, according to Rawls, the institutions of a modern society should be shaped to reflect as much as possible the set of norms impartially agreed behind a veil of ignorance – agnoseological tool which excludes the access to any particular information to the parties involved in the agreement (Rawls, 1999; pp. 118-23). However, the agreement phase “is not [...] thought of as an actual historical state of affairs” but it is rather “understood as a purely hypothetical situation” (Rawls, 1999; p. 11), that is the veil of ignorance procedure is nothing but an individual mental experiment which assumes a comparative content (Rawls, 1999; pp. 11-6). Rawls develops then two distinct contractualist theories, one focused on national institutions (Rawls, 1999) and the other one with an international horizon (Rawls, 1993; 2001).

At the basis of the national social contract theory Rawls places the following observation:

“although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as by an identity of interests. There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts”; however, “there is a conflict of interests since persons are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share” (Rawls, 1999; p. 4).

In order to deal with these conflicting interests Rawls (1999; p. 13) outlines two specific principles derived through the contractualist procedure

³ A procedure where the legitimacy and the foundation of political and moral institutions is set through an agreement (Boucher and Kelly, 2003; Darwall, 2003; Skyrms, 1996).

based on the veil of ignorance: the first principle establishes the implementation of a scheme of individual liberties as broad as possible and compatible with the liberties of everybody else; the second principle, relabeled by Rawls himself as *difference principle*, requires redistributing resources⁴ in order to maximize the expectations of the most disadvantaged individual(s).

Rawls's international theory, named *The Law of Peoples*, is based on a second level agreement (Rawls, 2001; p. 10 and p. 41), where the involved subjects are not single individuals but (representatives of) peoples. In this case Rawls abandons the idea of societies interacting between them as co-operatives for mutual advantage and "decomposes" the international setting in three distinct moments (Rawls, 2001, p. 70; Paden, 1997, p. 222).

The first and the second part (Rawls 2001, pp. 11-88) deal with the so called "ideal theory", where liberal and decent (or hierarchical)⁵ societies, behind the veil of ignorance, agree on a set of eight norms regulating the international relationships between them (Rawls 2001, p. 37). The last of these principle states that "peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime"⁶. The third moment (Rawls, 2001, pp. 89-120), split by Rawls into two sub-types of "non ideal theory" (Rawls, 2001, p. 90), deals with outlaw states and burdened societies, which are excluded from the international social contract, because given their unfavourable conditions or their unreasonable views they would neither agree nor comply with reasonable principles of international justice (Beitz, 2000, p. 676)⁷.

⁴ Resources in terms of social primary goods, that is "things which it is supposed a rational man wants whatever else he wants" (Rawls, 1999, p. 79).

⁵ Decent societies, though they are not liberal, they are characterized by the two following features: they do not have aggressive aims towards other peoples and they respect human rights (Rawls, 2001, pp. 64-7).

⁶ The duty of assistance was not included in the first version of *The Law of Peoples* (Rawls, 1993, p. 43).

⁷ This partition implies that the parties entering the international agreement are required to know whether they are liberal, hierarchical, burdened societies or outlaw states (Rawls, 2001, p. 71, note 10), that is they are supposed to be aware about their own conception of the good. However, in *A Theory of Justice* Rawls (1999, p. 118; 2001, p. 34) explicitly assumes that the veil of ignorance prevents the parties involved in the agreement from knowing their particular conception of the good. This concern generated some reactions concerning the real "thickness" of the international veil compared to the domestic one. (Paden, 1997, p. 219; Buchanan, 2000, pp. 704-7, Caney, 2002, pp. 99-114; Kuper, 2000, pp. 648-50; Pogge 1994, pp. 206-7; Pogge 2001 p. 247).

This byzantine structure given by Rawls to his international theory shows two things: the domestic principles of justice do not suit the international context; the international principles themselves are not universally valid, since they are not shared by all kinds of peoples (Nagel, 2005, p. 127), in the sense that some of them do not hold the minimal political or economic conditions to reach a fair and durable agreement. This discrimination is even more evident when we focus on the distributive issue. For example, remarking the duty of assistance Rawls makes clear how the domestic difference principle, "even though it is a universal principle that is to apply severally, or within every society, [it] is not global in reach" (Freeman, 2006, p. 29), that is it is not transnational. Or again, it is not clear why liberal and decent societies, the only ones who take part in the second order agreement, through the duty of assistance should assume a one-way altruistic commitment towards burdened societies (Pettit, 2006, p. 54).

More in general, according to Rawls, distributive justice holds within societies but not between societies (Barcelos, et al., 2008, p. 3; Nagel, 2005, p. 114; Pogge, 1994, p. 195; Wenar, 2006, p. 99). Thus, Rawls establishes a marked:

"distinction between the strong solidarity which must govern a generous redistribution between the members of the national community they claim to represent and the much weaker solidarity which must govern a more parsimonious and conditional assistance from the richer national communities to the poorer ones" (Van Parijs, 2012a, p. 643).

Therefore, "it may make a great deal of difference on Rawls's theory where the boundary of [a] society is drawn" (Scanlon, 1973, p. 1066), because for instance "it does not really matter whether one is born in Kansas or in Iowa" while "it matters a great deal whether one is born a Mexican or a U. S. citizen" (Pogge, 1994, p. 198).

These strict restrictions to the international redistributive dimension given by Rawls, who conceives only a weak duty of solidarity between national societies, have been hardly criticized by the secondary literature (Beitz, 1999, p. 138; Loriaux, 2012, pp. 20-1; Nagel, 2005, pp. 119; 124; Pogge, 1988, p. 238; Pogge, 2001, Pogge, 2006), mainly because Rawls' international theory seems to ignore the paramount pillar of *A Theory of Justice*: to provide a fair institutional arrangement "that prevents the use of the accidents of natural endowment and the contingencies of social circumstance as counters in a quest for political and economic advantage" (Rawls, 1999, p. 14; Sandel, 2009, pp. 150-166).

Rawls also tries to provide a justification for not considering an analogous of the difference principle valid at international level, but for conceiving only a weaker duty of solidarity:

“I believe that the causes of the wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical, and moral traditions [...], as well as in the industriousness and cooperative talents of its” (Rawls, 2001, p. 108).

Therefore, according to Rawls, the differences between societies in terms of available resources as well as of political and economic development should not be attributed to pure arbitrary contingencies, but rather to specific and conscious choices made by the involved societies themselves (Rawls, 2001, pp. 117-8). In other words, it seems that according to Rawls “the causes of international inequality [are to be considered] purely domestic” (Pogge, 2001, p. 252) so that if a society is poor, also from an institutional point of view, it is because that society decided to be poor (Rawls, 2001, pp.117-8). This means that a redistributive principle between societies as strong as the difference principle is not necessary because redistributive issues do not emerge beyond the domestic realities singularly taken.

In conclusion, according to Rawls, distributive justice is polyhedral, because the international context is characterized by different elements and raises distinct issues, and therefore it requires different principles and institutions compared to the domestic case (Kim, 2015, pp. 474-8; Pettit, 2006, p. 52; Wenar, 2006, pp. 102-4). Rawls himself explicitly states that “how peoples treat each other and how they treat their own members are, it is important to recognize, two different things” (Rawls, 2001, p. 83), highlighting how two distinct issues of redistributive justice might correspond two alternative approaches and then two distinct solutions, that is two sets of non-overlapping principles (Nagel, 2005, pp. 122-4 and p. 127).

Therefore, even though some authors accused Rawls of creating a “structural disanalogy” between his domestic and his international theories (Pogge, 2001, p. 249; Pogge, 2003, pp. 1745-6), Rawls is pretty clear on the matter and the differences that emerge in the outcomes should not be interpreted as between-theories inconsistencies, but more simply as different approaches and conclusions to different issues or circumstances.

3 John Rawls’s Social Contract Theories and the European Union

Given the purposes of this paper, it is now important to understand which of the two approaches – the domestic or the international one – and therefore which set of Rawlsian principles is more suitable to approach the European institutional framework. This is not a straightforward task for two main reasons: first of all, Rawls does not include the European Union

as a formal object of any of his theories; second, such as structured, the European Union is neither a nation or a state, nor mankind as a whole (Van Parijs, 2012). Therefore "none of the values defended [in Rawls's] works [might provide] alone a definitive axiological model that might elucidate the character of the European Union" (Barcelos et al., 2008, p. 6).

Furthermore, it is necessary to take into account how Rawls's rare explicit references to the European Union manifest some Eurosceptic traits: "one question the Europeans should ask themselves, if I may hazard a suggestion, is how far-reaching they want their union to be"; or "the large open market including all of Europe is aim of the large banks and the capitalist business class whose main goal is simply larger profit" (Rawls and Van Parijs, 2003, p. 9). Given the indeterminate theoretical frame mentioned above and relying on these few sentences, most of the previous attempts provided an unfavourable interpretation of the European project in the light of Rawls's thought.

Kamminga (2014) rejects the possibility to interpret the European Union from any Rawlsian perspective. In particular, in Kamminga's opinion, the European Union does not have the structure of a Rawlsian domestic society because the Union lacks a clear single political unity and because its relations occur between states rather than between single individuals. At the same time, the European Union does not meet the requirements of the Rawlsian international theory because the former, accepting as members only fully liberal societies and not quasi-liberal ones, is too selective.

According to Barcelos and Queiroz (2008) the European Union is an unidentified political object, characterized by a mix of national and international elements, therefore we cannot approach this hybrid entity with the pure Rawlsian theories as they are. They claim that "given this hybrid nature of the Union, the description of its values by analogy with the domestic society [...] is, therefore, unacceptable [...] This same hybridism, in the same way, excludes the possibility of conforming the EU to the [...] model defended in *The Law of Peoples*" (Barcelos and Queiroz, 2008, p. 9).

Using a numerical example Morgan (2008) shows the implicit contradictions that emerge from a European (between states) redistributive scheme replacing the national (within states) redistributive policies: with a unique over-arching distributive mechanism which substitutes the national ones there is the concrete risk that a "society, or group of such societies, [ends up being] worse off under a [common transnational principle or scheme] than in perfect isolation" (Pogge, 1988, p. 249).

To the best of my knowledge, there is only one contribution (Wolthuis, 2017) which provides a positive exegesis of the European project in Rawlsian perspective. Wolthuis (2017) considers transnational economic unions – including therefore the particular case of the European Union – as proper subjects for an approach of Rawlsian type. Through a specific veil

of ignorance procedure, he derives a set of four specific principles of justice valid for economically integrated societies. (Wolthuis, 2017, p. 465)⁸. However, as far as the European Union is directly concerned, in my opinion his attempt is only partially successful for at least two reasons.

First of all, Wolthuis (2017, p. 465) reaches modest conclusions because he basically ends up with a minimal configuration that substantially justifies the status quo with principles that are “familiar, fortunately”. Therefore, it is true that stretching and adapting Rawls’s theories Wolthuis manages to include the European Union case within a general Rawlsian frame. Nevertheless, and this is extremely relevant for this paper, as far as the redistributive matter is concerned, Wolthuis does not seem to go much further than Rawls’s international duty of assistance, because the difference principle keeps remaining exclusively statist. Indeed, Wolthuis’s principle of fair equality of economic opportunity for economic unions does not seem to require the transnational institutions to actively redistribute resources across borders, but rather to guarantee that the union market works fairly.

Second, portraying the subjects belonging to an economic union as Janus-faced, in my opinion Wolthuis does not take into sufficient consideration the risk of deriving a “whole family of [principles] each corresponding to one dimension of our identities” (Van Parijs, 2012a, p. 643; Nagel, 2005, pp. 141-2). It is true that Wolthuis wisely acknowledges the problem of the hierarchy between different sets of principles. However, Wolthuis does not exhaustively explain how his four intermediate principles interact with those at domestic and at international level. For instance, he presents the first two principles for economic unions (equal distributions of basic rights and fair equality of economic opportunity) as “corrections or amendments” of the Rawlsian domestic principles of justice (Wolthuis, 2017, p. 466). Two supranational principles that at first glance should not conflict with the other Rawlsian principles. Nonetheless, he neither explains whether this means that the former completely substitute the latter nor he says much about how a possible parallel application of the two sets of principles solves contradictions of the type highlighted above by other authors (Morgan, 2008; Pogge, 1988).

Summarizing, what emerges from this brief review is that the theoretical emptiness left by John Rawls – who does not conceive any specific frame for intermediate entities like the European Union –, much more than his few negative references concerning the European integration, paved the

⁸ Wolthuis (2017, p. 465) lists four principles for economic unions: a principle of equal distribution of basic rights; a principle of fair equality of economic opportunity; a principle of conferral; a principle of equal representation of member societies.

way to the climacteric views on the European Union in the perspective of his social contract theories. At the same time, the only proactive attempt (Wolthuis, 2017) looks like to be still too conservative, in particular about a clear European redistributive scheme and its possible interactions with principles of distributive justice at other levels.

4 The Two Conditions to Apply Rawls's Domestic Theory to the European Framework

In order to reach some more ambitious conclusions concerning redistribution of resources at European level, I suggest applying Rawls's domestic justice to the European Union in a straightforward way. Thus, differently from Kamminga (2014), Barcelos and Queiroz (2008), Morgan (2008) and Wolthuis (2017) – who basically proposes hybrid principles for hybrid institutions based on a hybrid Rawlsian procedure – I claim the possibility to linearly extend Rawls's domestic approach to the European Union. In particular, differently from Wolthuis (2017), I try to preserve the structure of Rawls's theory as much as possible. Indeed, I claim that we are allowed to extend the range of applicability of the Rawlsian domestic theoretical frame to the European Union to the extent that the European framework holds two elements⁹, considered by Rawls himself sufficient and necessary to trigger a redistributive issue of domestic type:

- a) a scheme of mutually advantageous cooperation among the involved parties which generates benefits and conflicts (Rawls, 1999, p. 4);
- b) a set of institutions which constitute a basic structure (Rawls 1977; 1999) – that is "the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arises through social cooperation" (Rawls, 1977, p. 159; Rawls, 1987, p. 3 for an alternative formulation).

In other words, in contrast to the previous literature on the topic, in this paper I argue that with the contemporary presence of these elements it is admissible to apply Rawls's domestic categories and to draw the related

⁹ I assume that together with the two mentioned elements – cooperation and institutions – all the other Rawlsian "circumstances of justice", that is "the normal conditions under which human cooperation is both possible and necessary", are completely fulfilled (Rawls, 1999, pp. 109-11).

conclusions at any level, included the European Union¹⁰. This without introducing any modification or extension of the Rawlsian theories. Having in mind the two mentioned conditions it is also easier to understand better why Rawls refuses to conceive a strong redistributive scheme valid at international level. Within Rawls's international theory the two mentioned elements are completely missing or more simply ignored.

Indeed, for Rawls there is not a context of cooperation between peoples qualitatively similar to the one between individuals belonging to a domestic system (Barry, 1982; Beitz, 1999, pp. 132-43; Freeman, 2006, p. 39): in the examples provided by Rawls (2001, pp.117-8) it is not mentioned any sort of social or economic interaction between the two societies taken as reference. Instead, the two societies are presented as economically isolated and independent one from each other, that is they are basically designed as autarkies (Martin, 2015, p. 748).

¹⁰ Nevertheless, in my opinion, the Rawlsian international theory should not be dismissed, because it can anyway provide some (even if limited) insights about the current European Union institutional framework. Indeed for Rawls a just Europe (world) is basically represented by a Europe (world) of intrinsically just states (Barcelos et al., 2008, pp. 4-5; Nagel, 2005, p. 115; Pogge, 1988, p. 235). Thus, that the European Union is, according to Rawls, a just international arrangement becomes true in the light of Article 49 of the Treaty of Lisbon which identifies the minimum qualifications that a candidate country must satisfy to enter the Union. These minimum requirements are also recalled in Article 2, in Article 6 of the same Treaty and more generally within the criteria of Copenhagen. They go from stability of institutions to democracy, from respect of human rights to equality. All these mentioned elements coincide with the features which contribute to make a society just in Rawls's perspective (1999; 2001). Thus we can claim that according to Rawls's international justice the European Union is a just international arrangement. However, it is also appropriate to recognize how the European Union, given the current level of interdependence between its member states, is much more than a simple set of independent and endogenously just societies. Therefore, Rawls's international justice provides a pragmatic but limited perspective to look at the European Union. Adopting Rawls's domestic social contract can provide a more complete and complementary interpretation of the European Union institutional arrangement, in particular contemplating a redistributive scheme between its member states. Then, in another place, it might be also interesting to discuss how the renege of one country to comply with the minimum requirements affects the European just arrangement or its domestic interpretation. I am thankful to an anonymous reviewer for raising this point.

Moreover, according to Rawls, there is not an international basic structure as qualitatively solid as the national ones (Buchanan, 2000, pp. 700-1; Freeman, 2006, p. 39; Pogge, 2003, p. 1741; Reidy, 2007, p. 209). Therefore:

“the idea of social cooperation [...] is central to Rawls’s account of social justice. It underlies his distinction between ‘domestic justice’ and the Law of Peoples. Moreover, the idea of social cooperation informs Rawls’s account of the difference principle. What makes social cooperation possible for Rawls are the basic institutions that constitute ‘the basic structure’” (Freeman, 2006, p. 38).

In synthesis, according to Rawls, the derivation of a redistributive principle at international level is neither required nor formally conceivable because there are not the minimal structural conditions which trigger redistributive concerns.

Lastly, I deliberately avoid entering the debate on which further elements in the literature are considered essential to justify redistributive principles and institutions, like for example a certain degree of coercion (Nagel, 2005; Blake, 2001). Two are the reasons for this precautionary choice. First of all, the topic is quite recent and the debate on coercion is very animated and still open (Blake, 2016; Sangiovanni, 2016; Valentini, 2011): trying to retrace it would uselessly complicate the theoretical framework necessary for the analysis of the European Union in a Rawlsian perspective. Second, and even more important, Rawls never makes explicit that the role of the principles of justice is to protect individuals from coercive institutions. Indeed, within *A Theory of Justice* Rawls (1999) uses the words “coercion” and “coercive” only 20 times. So, coercion does not seem to be a fundamental element of the Rawlsian theory¹¹.

5 The European Union: Economic Cooperation and Basic Structure

In this Section I aim at demonstrating that the two elements mentioned above – cooperation and network of institutions – exist at European level, so it is possible to linearly extend Rawls’s domestic approach to the European Union, conceiving a European social contract. However, before showing that the European Union holds these two requirements, I want to highlight how it is beyond the intentions of the present analysis to enter the debate on what the European Union is exactly –a federation, a confedera-

¹¹ Nevertheless it is clear that according to Rawls institutional coercion should be minimized (Rawls, 1999, p. 211).

tion, an intergovernmental institution (Blankart, 2007)–, on how the powers within the Union are or should be balanced (Vaubel, 1996; Vaubel, 1997), or on how its institutions are or should be legitimized (Coultrap, 1999). The existence of certain structural elements is independent from how we prefer labelling the European Union. In other words, in this Section I adopt a descriptive approach¹².

As far as the first feature is concerned, it is quite immediate to acknowledge a scheme of economic cooperation between the European individuals. Beitz (1999, p. 154) suggests that the “international economic interdependence constitutes a scheme of social cooperation” as much as Rawls (1999, p. 4) means for a simple national (closed) system. In the specific case of the European Union Beitz’s insight is even more pertinent and compelling: the economic integration process, which formally begun with the Treaty of Rome (1957, Title I and Title III)¹³ and that gave birth to the European Economic Community (Single Market), with its free circulation of goods, people, services and capitals, constitutes a distinguishable pattern of cooperation as meant by Rawls.

Furthermore, it should be also undiscussable how this European economic interdependence is favourable to all the involved parties, also because the positive outcomes derived from a market enlargement are broadly recognized since Adam Smith's *Wealth of Nations* (Smith 1994), who grasped the advantages of the size of a market on division of labour, and then on productivity. The field literature is not unanimous about the exact quantitative benefits derived from the European economic integration (Badinger and Breuss, 2011; Baldwin et al., 1997, Campos et al., 2014; König and Ohr, 2012). However, notwithstanding different methodologies and a *quantitative disagreement*, many empirical studies – together with a copious theoretical literature on economic integration (Rosamond 2000; Balassa, 2011) – highlight how the European countries positively benefit from the common market (Badinger and Breuss, 2011, p. 308).

Thus, over the period 1950-2000 the “European integration has significantly contributed to the post-war growth performance of the current EU member states” such that “GDP per capita of the EU would be approximately one-fifth lower today if no integration had taken place” (Badinger, 2005, pp. 73-4). At the same way Crespo Cuaresma et al. (2008, p. 652) conclude that the “EU membership has had a positive [...] effect on

¹² According to Blake (2012, pp. 122-6), empirical elements of this type are liable of disagreement.

¹³ Of course it is not necessary a formal treaty for the existence of mutually advantageous economic and social relationships. Nevertheless a formal treaty strengthens the analysis (Buchanan, 1996, p. 141).

long-term economic growth” of the EU-15 member states. Again, “there seems to be strong evidence on positive pay-offs from EU membership, despite considerable heterogeneity across countries” and in a prudent counterfactual evaluation “incomes would have been around 12 per cent lower today if European Integration had not happened” (Campos et al., 2014, pp. 21; 25). Therefore, from these few empirical instances and from the legislative frame explained above, the overlap between the Rawlsian concept of a venture for the mutual advantage and the European Economic Community appears unquestionable.

It might be legitimate to wonder whether the cooperative for the mutual advantage assumption holds in the case of a stagnant (or even decreasing) European GDP or in case the growth rates diverge significantly between the member states. Both issues can be addressed looking at Rawls. First, it does not really matter whether the European Union keeps growing or not. From a Rawlsian point of view, the only thing that matters is that the European states together are better off than compared to a stand-alone position. As long as this is true, a cooperative for the mutual advantage exists.

In the same way, and this is the second concern, differences in wealth or growth rates between member states should not destabilize the perception of the venture for the mutual advantage. Indeed, according to Rawls, “social and economic inequalities, for example inequalities of wealth and [growth], are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society” (Rawls, 1999, p. 13). In other words, the gaps between the richest and the poorest, or in this case between the fastest and the slowest member state do not count.

As for the second element considered essential in order to apply Rawls’s domestic theory, it is possible to identify within the European Union a set of supranational institutions and agencies which constitute a solid European basic structure. The Treaty of Lisbon (Article 13) formally lists seven common institutions whose task is to manage the Union and to integrate the conflicting interests (Peterson and Shackleton, 2012): European Parliament, European Council, Council (of Ministers), European Commission, Court of Justice of the European Union, European Central Bank and Court of Auditors¹⁴. Moreover, these authorities are not mere second-side institutions which only aim at fostering the national ones (Blake, 2013, pp. 108-32), but they act with their own goals.

¹⁴ For the purposes of the analysis it is not considered essential either to provide a detailed description of the European institutional framework nor, as stated in advance, enter a debate regarding the equilibria between them or their legitimization.

These seven institutions are then surrounded by hundreds of agencies and organizations (Mathieu, 2016) which, performing sometimes at the limits of their formal powers (Chamon, 2016), operate in accordance with the guidelines of the former. These agencies operate within different spheres, ranging from ensuring an area of freedom, security and justice (Frontex, the European Border and Coast Guard Agency) to supervising financial systems (European Banking Authority), from providing defence (European Defence Agency) to supporting EU business and innovation in the digital, energy, innovation and transport sectors, from directly fostering citizens' well-being (European Centre for Disease Prevention and Control) to helping the countries to exploit the potential of their human capital (European Training Foundation).

Basically, the main European institutions, together with all the agencies which surround them, constitute a thick institutional network, or in Rawlsian terms, a European basic structure. However, this conclusion requires two further remarks.

First of all, for Rawls, in the definition of a basic structure the quantity of institutions is not relevant; what matters is their quality: together they are supposed to be capable of affecting people's prospects of life through the distribution of the benefits derived from economic cooperation. Considered from this perspective the European institutional network can effectively and concretely "distribute fundamental rights and duties and determine the division of advantages from social cooperation" (Rawls, 1999, p. 6). They can deeply affect Europeans' plans of life: a ban on pesticides voted by the European Parliament effectively redistributes duties and rights between European citizens; a sentence of the Court of Justice of the European Union can directly and radically affect the prospect of life of any (group of) European citizen(s) in case the national laws conflict with the European ones; again, the European Central Bank, setting the interest rate, through the financial and credit institutes, can effectively redistribute the benefits of the European economic cooperation.

Second, a basic structure is not a binary zero-one outcome, which either does not exist at all or which exists through its full configuration. Instead, a basic structure is an arrangement which spans on a continuous spectrum but which, according to Rawls, should constantly tend to one, so much so that "adjustments in the basic structure are always necessary" even in an institutionally complete society (Rawls, 1977, p. 164). In other words, the current European institutional framework represents a configuration which should be considered "just throughout, but not the best just arrangement" (Rawls, 1999, p. 68). Thus, the idea of moving towards a more complete European basic structure, which can affect the prospects of life of European citizens by redistributing the benefits of the cooperation in an

even more incisive degree than the current institutional arrangement, is the exact attitude of this paper.

To recapitulate, given the contemporary existence of a scheme of mutually advantageous economic cooperation and of a basic structure at European level it is possible to apply Rawls's *A Theory of Justice* and to conceive a European social contract theory.

6 The Outcome of the European Social Contract of Domestic Nature

In this Section I make explicit the principles of Rawlsian nature which are supposed to shape the European institutional arrangement. Following a reasoning by analogy, I claim that European individuals behind the veil of ignorance would agree on the standard principles of domestic type (Rawls, 1999, pp. 52-65; 65-73; 130-39; 153-60), with the further feature that now these act across the European member states, regardless of the national borders, because the range of application of the principles is essentially tailored on the dimension of the basic structure (extension of cooperation) considered behind the veil (Martin, 2006, pp. 227-34; Martin, 2015, p. 749).

In other words, the European social contract is qualitatively equivalent to the one for a domestic society, therefore the same structural conditions imply the same outcome, that is the same set of principles. There are no further elements that the involved parties can take into consideration behind the European veil of ignorance. Only the spatial variable becomes somehow relevant: since the Europeans are deprived of any particular information concerning the European country where they (might) live – natural resources, size of population, boundaries, economic development and activity, etc. (Rawls, 1999, pp. 32-3) – the principles now operate across the whole European territory.

As far as the redistributive issue is concerned, I claim that behind the veil of ignorance the European citizens would agree to redistribute the benefits of the European economic cooperation to the greatest benefit of the least advantaged European(s), regardless the country or the nationality: this is equivalent to enunciate a European difference principle which operates across and beyond the boundaries of the single European member states. In this way the difference principle replaces its “statist” assumptions (Kuper, 2000, pp. 653-4) and it becomes transnational¹⁵, even though derived from the application of *A Theory of Justice*.

¹⁵ The existence of a redistributive principle between individuals belonging to different states may trigger the issue of redefining the Rawlsian bundle of social primary goods

In this context it is important to highlight that the European difference principle acts at individual level, so it does not require to redistribute towards the worst-off member state. Ad absurdum, if redistribution took place between member states instead of between European citizens, according to the difference principle we should move resources from Greece or Poland (higher GDP) towards Luxembourg or Sweden (lower GDP), even though Luxembourgian and Norwegians have a higher GDP per capita compared to Polish and Greek citizens. More in general it is possible to recognize how “the interests of persons and peoples do not necessarily coincide”, and country-centered settings might lead to “potentially sub-optimal results for persons” (Kuper, 2000, pp. 246-7; Morgan, 2008), since “the interests of individual persons are taken into account only indirectly” (Beitz, 2000, pp. 673-4; Nagel, 2005, p. 134). This might be a further reason why John Rawls, in his international social contract theory, does not conceive a strong redistributive principle: in *The Law of Peoples* the involved parties are peoples (Rawls, 2001, p. 23, note 17; p. 35)¹⁶.

In synthesis, with the European Union we move from the basic international situation conceived by John Rawls, where national entities operate independently as autarkies and care only about the distribution of their inner resources – an agreement for redistribution at international level is therefore unnecessary –, to a framework where countries have a certain degree of cooperation and share a set of common institutions. This circumstance requires an agreement on how to distribute the benefits generated by the European cooperation, because without a shared redistributive scheme market forces and bargaining powers prevail, and “the distribution resulting from voluntary market transactions [...] is not, in general, fair [...] even though nobody acts unfairly” Rawls (1977, p. 160). However, this unregulated situation is avoided through the European social contract, which provides clear principles of social justice for the European Union and contributes to expand the social intervention area of the European institutions.

As far as the European difference principle is concerned, I consider essential one final remark: the European distributive scheme neither substitutes nor takes over the national welfare systems, because does not act on all the available resources, both national and communitarian. Instead, the

(Paden, 1997, pp. 226-7; Rawls, 1999, pp. 78-81). However this concern lies outside of the present analysis.

¹⁶ To explore other theoretical reasonings for considering collective entities like states inadequate for the European social contract and for taking individuals as “unit of measurement” see Beitz (1999, p. 132), Buchanan (2000, p. 698), Pogge (1988, p. 235; 1994, p. 197; 2006, p. 206) and Rawls and Van Parijs (2003, p. 10).

European redistributive policy is complementary and integrates the national ones, filling in this way the institutional gap and the zone of social emptiness identified in the Introduction. Indeed, the European social contract prescribes to redistribute only the surplus generated by the social and economic cooperation which takes place at European level; conversely, the benefits generated by the cooperation which takes place exclusively within the single countries, with no European interdependence, remain immune from the European redistributive policy.

In other words, according to the European social contract it would be illegitimate to redistribute across Europe resources generated by the social and economic cooperation which takes place exclusively within the boundaries of the single member states. Paradoxically, applying a unique European redistributive policy on the total surplus (national and European together) might erode the welfare of some individuals who are better-off in isolation: this is the contradictory situation sketched by Morgan (2008, p. 9). However, this is not the situation I design in this paper, because the redistribution of resources prescribed by the European difference principle concerns only on the surplus generated by means of the European (between-states) cooperation, leaving untouched the benefits produced by the within-states cooperation¹⁷.

In this way the European social welfare policy embodied in the difference principle is neither exclusive nor conflicting with the national ones, but rather compatible and complementary: with a social contract of Rawlsian type the European redistributive scheme supplements the ones of its member states¹⁸ (Claassen, 2019), contributing to rebalance the institutional asymmetry between the economic and the social dimension at European level highlighted at the beginning.

7 The European Social Contract as a Basis for European Fiscal Union

In this Section I try to outline how the European surplus should be quantified and how the resources generated by means of the European cooperation should be pooled together to be redistributed across the European countries.

¹⁷ I am aware that from a practical point of view it might be very controversial to circumscribe the two or more levels of cooperation.

¹⁸ According to this view the following consideration becomes false: "[t]he difference principle can apply only once to structure economic and property institutions, either globally or domestically. It cannot apply to both." (Freeman, 2006, p. 63).

The quantitative estimate of the European surplus is an issue of empirical investigation. An idea to calculate its amount is the counterfactual difference between the current level of the European economic activity and the aggregated but hypothetical economic level of the European countries acting as pure autarkies, that is with no transnational cooperation with other member states, basically like Rawls designed the international context (Badinger, 2005; Campos et al., 2014; Crespo Cuaresma et al., 2008).

As for the realization of the European social welfare policy embodied in the European social contract, I suggest how this might be obtained implementing Fiscal Union at European level, that is a specific system aimed at pooling together into a common budget the resources generated by the European economic cooperation. In other words, in order to comply with the prescriptions of the European difference principle a common European budget, of the same amount of the European surplus, becomes necessary. Furthermore, in the specific perspective of this paper, Fiscal Union also becomes a way to complete the European basic structure (see the Section 4).

This paper cannot enter the debate regarding the practical implementation of European Fiscal Union, that is I do not have space to discuss here its technical or political feasibility. Nevertheless, I want to provide some general insights. There are two possible ways of interpreting European Fiscal Union as the result of a European social contract. On the one hand it is possible to think about a system which constantly collects and transfers the European surplus in order to maximize the expectations of the European worst-off – for instance, a European unemployment reinsurance scheme (Andor et al., 2014). On the other hand, it is also imaginable as a sort of common mechanism of insurance which acts against systemic risks (Bénassy-Quéré et al., 2016; Thirion, 2017) – de facto a European Stability Mechanism, or, in the light of the recent institutional developments due to the pandemic, something approximate to a Recovery Plan for sharing the national contingencies. In the latter perspective the European surplus is supposed to be collected in order to protect the weakest European parties in case of specific unfavourable conditions occur, or the budget might get into action when a set of European subjects goes below a certain agreed minimum threshold: for Rawls (1999, p. 244) this is equivalent to an institution belonging to the “stabilization branch”.

About the way to implement concretely Fiscal Union at European level, that is to channel the cooperation benefits into a common budget, Rawls (1999, pp. 242-51) provides some hints when developing *A Theory of Justice*, and in particular the distributive branch. He states how one element of the “distribution branch is a scheme of taxation to raise the revenues”, and which “make[s] the transfer payments necessary to satisfy the difference principle” (Rawls, 1999, p. 246). Thus, a system of taxation at European

level might be considered a concurrent element for the implementation of European Fiscal Union in a Rawlsian perspective.

Rawls then goes even further suggesting some specific taxes which might be adopted to generate the resources required for the redistribution scheme prescribed by the difference principle: inheritance and gift taxes; proportional expenditure tax, that is tax on consumption; a proportional tax on annual consumption; an income tax is considered as well. It is even possible to speculate about a tax on those activities which operate across the national borders (but within the Union), and so on and so forth. Clearly these ideas do not mean to be concrete proposals. They deserve a further deepening, since it is also necessary to consider that an improper tax scheme might generate frictions which can nullify the benefits of the common market. However, I consider this kind of elucubrations beyond the research question of this paper.

8 Final Remarks and Conclusions

The analysis concerning the European Union in the perspective A Theory of Justice of John Rawls can be summarized as it follows: the current constitutive elements which characterize the European Union framework – cooperation and basic structure – imply a precise redistributive scheme embodied in the European difference principle, which is supposed, acting only on the European surplus, to maximize the expectations of the least advantaged individual(s) across the whole European territory. A corollary of this European social contract concerns European Fiscal Union, which represents a possible way to implement the redistributive policy of Rawlsian nature, as well as to complete the European basic structure. According to this view the European social contract and Fiscal Union at European level can contribute to shrink the institutional gap between the European economic framework and the European social integration, reducing the structural inequalities which currently affect the Union.

In reaching these conclusions we have to consider the difficulties to interpret Rawls's thought regarding the European Union, since he hardly ever lingers on the topic. Indeed, John Rawls does not directly put forward a specific theoretical frame to interpret the European Union. The contribution of this paper is to formulate the European social contract theory based on *A Theory of Justice*, and the application of the Rawlsian theory to the European context is reasonable for at least two reasons.

On the one hand the European Union experienced by Rawls was very different from the today's Union. Although Rawls shows some Eurosceptic traits when imagining a European project based on mere economic motives, the current European attributes allow us to go beyond the mere

functional structure of economic nature. Thus, it is no longer possible to have a European market, many European supranational institutions, a European common currency but not a European system of welfare redistribution: such an institutional asymmetry unavoidably creates unjustified inequalities, mainly because of a “redistributive bias on national policy choices” (Scharpf, 1998, p. 6).

On the other hand, we should also consider that Rawls himself, in a few lines of his texts, leaves open the possibility for a difference principle at European level within a federal frame. He clearly states how there is “room for various forms of cooperative associations and federations among peoples” (Rawls, 2001, p. 36), sharing later the following hypothesis:

“what does the [international social contract theory] say about the following situation? Suppose that two or more of the liberal democratic societies of Europe, say Belgium and the Netherlands, or these two together with France and Germany, decide they want to join and form a single society, or a single federal union [...] A voter [behind the veil of ignorance] might vote for the difference principle (the most egalitarian liberal conception)” between the two states (Rawls, 2001, p. 43, note 53).

From a philosophical perspective, this idea is equivalent to realize a cosmopolitan initiative for a circumscribed set of states: “cosmopolitan justice could be realized in a federal system, in which the members of individual nation-states had special responsibilities toward one another that they did not have for everyone in the world” (Nagel, 2005, p. 120; Pogge, 2001, p. 248). The cosmopolitan view (Blake, 2012, p. 127) raises from Beitz’s theory of global justice (1999, pp. 127-76), whose “intuitive idea is that it is wrong to limit the application of contractarian principles of social justice [only within] the nation-state” (Beitz, 1999, p. 128). Beitz’s main achievement built on the Rawlsian domestic justice is a global difference principle where “the difference between citizens and foreigners is not morally significant” (Arnopoulos, 1981, p. 193).

However, Beitz’s view is overly enthusiastic, because at global level there is not a set of institutions as qualitatively equivalent as a domestic basic structure – even if some authors think differently (Buchanan 2000, pp. 705-6). In other words, any theory has to take into consideration “if there is [or not the] possibility of doing justice with the [international] institutions we have” (Blake, 2016, p. 318-9). Thus, Beitz (1999, p. 128) and other cosmopolitan authors are incautious insofar they do not endorse the existence of global conditions (institutions) for the application of redistributive principles at a global level (Blake, 2012, pp. 127-8; Pettit, 2006, p. 107). Instead, as I show in the paper, within the European Union there are the structural conditions for an analogue of the difference principle valid be-

tween the European member states, and there is space for implementing European Fiscal Union. The strong and quick reaction of the European institutions to the Covid-19 pandemic seems to have accelerated the process towards this goal of social integration.

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