Towards a Just Europe? EU Justice beyond (Low Threshold) Sufficiency

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Abstract: What are the requirements of distributive justice in the EU? In his book Joao Labareda defends a sufficientarian view of EU justice grounded in the values of economic reciprocity and democracy. On Labareda's account, among the requirements of EU justice there is the protection of a threshold of welfare goods (education, healthcare, etc.) adequate to participate in a democracy. In this essay I discuss the role that sufficientarian thresholds can have in a theory of EU justice, arguing that EU justice is more redistributively demanding than Labareda may think. The alternative view I propose is premised on Schemmel's claim that the Member States have a duty of justice to support each other in promoting egalitarian welfare states. I also challenge Labareda's appeal to welfare conditionality, since it seems incompatible with Labareda's way of interpreting democratic values. And I criticize how Labareda conceives the pre-distributive/re-distributive distinction as a reason to contain re-distribution in the EU.

Keywords: EU justice, Reciprocity, Sufficientarianism, Pre-distribution.

1. Introduction

Questions of EU justice have increasingly attracted the attention of philosophers. Different sources of unfairness in the way in which EU institutions shape the fate of millions of Europeans have been detected, and many proposals have been put forward

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to make the EU more just and more legitimate (Bellamy, 2019; Kochenov et al., 2015; Sangiovanni, 2013; De Witte, 2015; Van Parijs, 2019). A debate about which principles of justice should be applied to the distribution of advantages in the EU is emerging. How should the benefits and burdens of EU cooperation be distributed? Which claims of justice are triggered by the free movement of persons, goods, services, and capital that characterise the EU internal market (the four freedoms of the EU)? What should be the role of the EU vis à vis that of its member states (MSs), in realising justice?[1] In his recent book João Labareda (2021) sketches the contours of a full-blown theory of EU justice. The aim of this paper is to critically engage with Labareda's ideas and to offer a clearer picture of what the requirements of EU justice are.

Labareda acknowledges that EU justice has a re-distributive component, though he also advances some reasons for containing re-distribution in the EU. For instance, Labareda shares a Rawlsian emphasis on cooperation, democracy, and reciprocity; yet, he does not think that an EU-wide difference principle is needed to attain justice in the EU[2]. Instead, he interprets supranational duties of distributive justice in *sufficientarian* terms. Labareda develops a sufficientarian view that requires the protection of a threshold of welfare goods (education, health care, etc.) adequate to allow participation in a democratic society. Is EU justice sufficientarian? Which type of sufficientarianism is better suited to capture the demands of EU justice? Alternatively, should egalitarian or prioritarian principles be adopted? Drawing on the recent literature on EU justice, I argue that EU justice is more redistributively demanding than Labareda may think. In my view, EU justice allows for a degree of material inequality between the MSs (Follesdal, 2023) and the MSs have a duty of justice to support each other in sustaining their individual welfare states (see Schemmel, 2022). As we shall see, my view does not object to the adoption of thresholds that define safety nets or basic welfare standards – such thresholds can play a useful role in a theory of EU justice – though they cannot be the ultimate benchmark of redistribution: EU justice is more re-distributively demanding.

I shall structure the paper as follows: Labareda's theory revolves around two values, democracy and reciprocity. In the first part of the paper (§§2-3) I reconstruct Labareda's views on how these values should be applied to the EU (§2), and I challenge some reasons Labareda offers to contain redistribution in the EU (§3). In particular: Labareda thinks that pre-distributive measures – e.g. setting common standards of labour rights across the Union – should be favoured over redistribution. I argue that there are no conceptual reasons to underplay the role of wealth transfers in achieving EU justice (§3). Furthermore, I object to Labareda's appeal to welfare conditionality: given Labareda's commitment to democratic values, welfare entitlements should be universal rather than conditional upon willingness to work (§3). I shall then critically discuss Labareda's sufficientarianism. In §4 I examine at what level the threshold of basic goods that characterise Labareda's theory should be put. In §5 I develop an objection to Labareda's sufficientarianism: I argue that, since in the internal case (justice within each MS) reciprocity has redistributive implications that are more demanding than those sanctioned by Labareda's sufficientarian approach, at the EU level reciprocity justifies redistributing wealth and opportunities beyond

the sufficientarian threshold identified by Labareda. In §6 I address a feasibility objection that may be thought of besetting demanding redistributive approaches of EU justice, and I discuss reasons for finding common ground between Labareda's sufficientarianism and the view I defend in the paper. §7 concludes.

2. The duties of democracy and reciprocity in the EU

Traditionally, the distinctive domain of justice was thought to be that of the nation state (e.g. Rawls, 1999). However, given the extent of interactions within the EU internal market, the establishment of EU citizenship, and the development of democratic European institutions, it has become impossible to bypass the question of whether justice applies *also* to the EU. Is the EU a proper *site* of justice – a proper object to which principles of justice should apply? If so, how should that affect our understanding of justice between the MSs and between EU citizens? Are the principles of justice that apply at the EU level as demanding as those that apply within the MSs (Sangiovanni, 2013; Van Parijs, 2019)? In this section I wish to summarise Labareda's approach to these questions: my reconstruction will draw the main contours of Labareda's theory, to leave enough space for the critical discussion that unfolds in the next sections. Labareda defends a theory of EU justice that revolves around the values of reciprocity and democracy. Labareda's understanding of the democratic duty can be reconstructed as follows:

> *The democratic duty*: the citizens of sufficiently coercive and democratic systems should be entitled to a threshold of basic goods, since access to such goods enables democratic participation and protects them from exercises of arbitrary power. (Labareda, 2021, chap. 1)

The basic goods include: "(i) the means of subsistence, (ii) healthcare, (iii) education, and (iv) resources for due process in court" (Labareda, 2021, p. 36). While for Labareda the means of subsistence should be conditional upon willingness to work (and need), the other goods (healthcare, education, etc.) are guaranteed unconditionally (Labareda, 2021, p. 38). Furthermore, these goods are justified instrumentally: (1) they foster democratic participation, and (2) protect people from exercises of arbitrary power. Indeed, (1) without sufficient access to these goods, rights to political participation risk to be only formal (Labareda, 2021, p. 35)[3]. And (2), "[i]f one lacks such means, one becomes vulnerable to arbitrary acts by public authorities, as well as other powerful private agents" (Labareda, 2021, p. 35)[4]. Consider, then, Labareda's account of reciprocity:

> *Economic reciprocity*: when thick economic relationships subsist between co-operators, reciprocity requires a fair distribution of the fruits of cooperation, as well as putting in place fair terms of cooperation. (Labareda, 2021, chap. 1)[5]

The basic goods – defended mainly on democratic grounds – are also defended on grounds of reciprocity: as a way of protecting EU citizens when they migrate to other MSs, and of empowering them by guaranteeing the pre-conditions for taking advantage

of the opportunity to move (Labareda, 2021, pp. 106-107). Labareda argues that the general principles of reciprocity and democratic justice apply to the EU on grounds that the EU is sufficiently coercive and democratic (the democratic duty), and that sufficiently thick economic relationships obtain between economic agents in the EU (reciprocity) (Labareda, 2021, chap. 2 and 3). In this respect, Labareda argues that the EU legal institutions (EU law, the CJEU) are sufficiently coercive to trigger duties of justice[6]. And that the EU is a democracy with a multi-level stratification of citizenship (local, national, supranational) (Labareda, 2021, pp. 69-71)[7]. Labareda also claims that the EU should intervene to make sure the democratic duty is fulfilled only in case a MS itself is unable to fulfil it (subsidiarity): only if such a MS is unable to provide its citizens with the above-mentioned basic goods (Labareda, 2021, pp. 75-77)[8]. Once the pre-distributive measures envisioned by Labareda will be in place (see below), poorer MSs will be better positioned to ameliorate their economic situations, progressively relying less on the help from the EU, making in due time redistribution in the EU "merely residual" (Labareda, 2021, p. 96)[9]. Reciprocity applies to the EU in virtue of the EU's economic structure – the internal market with its free movement provisions, the monetary rules of the Eurozone etc. – which creates the need to establish fair terms of cooperation[10]. A series of policy proposals are advanced (e.g. the EU Fund for Global Competitiveness, the EU Labour Code, an EU corporate tax rate (Labareda, 2021, p. 86)): Labareda puts great emphasis on pre-distributive measures, which are aimed at restructuring institutions within which economic interactions occur (e.g. the EU Labour Code); though he also acknowledges that EU justice has a redistributive component (e.g. fulfilling the basic goods entitlement would imply wealth transfers between the MSs)[11]. Having introduced the main features of Labareda's theory, I now want to discuss some of the reasons that Labareda puts forward for containing re-distribution. I shall start with challenging Labareda's understanding of the implications of the pre-distributive/re-distributive distinction, and his commitment to welfare conditionality (§3).

3. Pre-distribution vs. redistribution, and welfare conditionality

Labareda acknowledges that EU justice has a re-distributive component, though he also puts forward some reasons for containing re-distribution. Some of such reasons are conceptual and are advanced through Labareda's discussion of pre-distribution vs. re-distribution. I argue that Labareda's way of drawing this distinction is problematic and that there is no reason to underplay the role of re-distribution in the EU. I shall then challenge Labareda's appeal to welfare conditionality.

The pre-distributive/redistributive distinction

Pre-distribution aims at "levelling the playing field" by "assuring that all individuals face framework conditions that are considered to be fair": this involves, for example, drafting labour regulations (e.g. a minimum wage law) (Labareda, 2021, p. 32). On the other hand, "(t)he main concern of redistribution is to replace non-conforming distributions

with the ideal pattern. Thus, redistribution requires continuous rearrangements of the market outcomes", typically through wealth transfers by means of taxation (Labareda, 2021, p. 32)[12]. Labareda claims that "(t)heoretically, there should be a presumption in favour of pre-distribution" (Labareda, 2021, p. 32). For Labareda, though redistribution has a role to play in a theory of EU justice, pre-distributive measures should generally be favoured (Labareda, 2021, p. 90). I wish to cast a general doubt on the presumption in favour of pre-distribution. As O'Neill has argued, the pre-distribution/re-distribution distinction doesn't really demarcate different sets of policies, since standardly-interpreted redistributive policies can be equally praised for their pre-distributive effects (O'Neill, 2020, pp. 81-82). Take the case of an unconditional basic income (UBI), a paradigmatic example of re-distribution: an unconditional cash entitlement that is owed to everyone independently of need, willingness to work, etc. As O'Neill shows, there are not just redistributive reasons in favour of UBI: through UBI one does not just achieve a perhaps morally superior distribution of wealth in society, UBI has also pre-distributive effects. For example, it would give more bargaining power to workers, who would be allowed to refuse hazardous job options. If so, UBI would shape in a fairer way the background conditions against which workers exercise their agency in the market[13]. So, we should be aware that re-distributive measures have pre-distributive effects, and can indeed be powerful tools to achieve pre-distribution. To apply this reasoning to the present discussion, one may ask: would UBI be better equipped to achieve pre-distribution in the EU, vis à vis more traditional welfare policies such as those implied by the threshold of basic goods suggested by Labareda? I shall not directly address this question: I simply flag it here to signal that, if one wishes to attain certain pre-distributive ends, then a discussion of the means is required. And standardly re-distributive policies can serve as means to achieve pre-distributive ends.

A further argument Labareda advances connects the pre-distribution/re-distribution distinction to *injustice*[14]. Labareda claims that "one can say that, while pre-distribution focuses on the *prevention* of unjust states of affairs, redistribution focuses on the *minimization* of injustice" (Labareda, 2021, p. 32, emphases in original). I find this puzzling. I take it that by 'minimization of injustice' Labareda means that re-distribution intervenes by aligning market outcomes with a distributive pattern, thereby having a corrective or compensatory function[15]. However, it is not the case that only pre-distribution prevents injustices from occurring, since re-distribution too can be required to attain justice: alignment with the pattern may well be a requirement of justice, rather than a way of correcting or compensating for injustices. Consider *Justice and Co-Operation*:

> *Justice and Co-Operation*: Under fair background conditions, two individuals *A* and *B* cooperate on the production of some valuable good (say, a golden ring) that they then sell to *C*.

How should the fruits of *A*'s and *B*'s cooperation (say, the money received from *C*) be divided between *A* and *B*? A theory of reciprocity will indicate the principle(s) according to which advantages should be distributed (e.g. equally, or proportional to effort, etc). Crucially, a just distribution would have the function of *preventing*

injustices from occurring. So, it is not the case that only pre-distribution is required to attain justice: justice can also require (re)distributive wealth transfers. Thus, when we think of redistributive measures in the EU, we shouldn't think of them as correcting or compensating for an injustice that could not be addressed through pre-distributive measures (i.e. as just minimising injustice), but they can in themselves be required to prevent injustice from occurring. For example, if in the EU exists the kind of cooperation that triggers distributive duties of reciprocity, justice may require that the fruits of EU co-operation be distributed fairly among the MS (or among citizens) – a point that I discuss at length below. So, we should conclude that there is no conceptual presumption in favour of pre-distribution[16].

Rights Conditionality and Democracy

I now wish to discuss an unresolved tension in Labareda's justification of the basic goods related to the foregoing discussion of pre-distribution vs. redistribution. Labareda claims that:

> *Conditionality of the Means of Subsistence*: "the provision of means of subsistence – unlike access to healthcare, education, and resources for due process – should be conditional upon willingness to work and need". (Labareda, 2021, p. 38)[17]

Conditionality may result in securing the means of subsistence through assuring that workers' remunerations are fair (through pre-distributive labour regulations), or, possibly, through unemployment benefits for unemployed workers. However, (1) one may wonder why conditionality applies for the means of subsistence but not for the other goods: i.e. whether there is a justifiable line of demarcation between the means of subsistence and, say, health care. And (2) one may object to conditionality on grounds of failing to embody the democratic values to which Labareda appeals. Concerning (2), assuming *the same democratic reasons* to which Labareda appeals I argue that re-distributive measures should be called for to secure the means of subsistence of those citizens who are not economically active and do not show willingness to work. Indeed, democratic participation and protection against exercises of arbitrary power most plausibly ground welfare *universality and unconditionality* (rather than welfare conditionality). On this alternative view, democratic values are realised when *every* citizen, irrespective of their willingness to work, is protected from arbitrary power and has sufficient means for democratic participation. Indeed, one may object to welfare conditionality that it is unjustly exclusionary: can a democratic system tolerate that some of its citizens – the most vulnerable and marginalised – do not have sufficient means for democratic engagement? Should their voices not be heard? Even more forcefully, can a democratic system tolerate that some of its citizens are exposed to exercises of arbitrary power that Labareda finds so objectionable?[18] I object to Labareda that, if democratic citizenship has a social component, the best way to conceptualise it is in universalist terms. If this is correct, Labareda should consider universalist re-distributive policies like an EU-wide UBI as morally superior alternatives[19]. In this section I have dispelled some of the reasons Labareda gives for limiting redistribution in the EU. Some

are conceptual: I have argued that there should be no presumption in favour of pre-distribution. Others are normative: I have argued that the democratic value to which Labareda appeals justify welfare universality, rather than welfare conditionality.

4. Setting the Democratic Threshold

In the remainder of the paper I discuss and criticise Labareda's sufficientarian approach to EU justice. I shall argue that there are reasons to accommodate a threshold of welfare goods in a theory of EU justice, though such a threshold does not set the ultimate standard of re-distribution in the EU: EU justice has also a more demanding re-distributive component. Many authors and philosophical traditions influence Labareda's thinking (e.g. republicanism, liberal egalitarianism). Consider a Rawlsian-inspired approach to EU justice[20]: the EU would be recognised as developing democratic institutions and as presenting a system of cooperation in which dense economic interactions characterise the internal market, thereby triggering demands for distributive fairness. Labareda endorses these premises (e.g. the emphasis on fair terms of cooperation, and reciprocity)[21]; yet, he does not think that an EU-wide difference principle is required to attain EU justice[22]. In virtue of his defence of a threshold of basic goods, his distributive stance is markedly *sufficientarian*[23]. Should justice in the EU be sufficientarian, as Labareda interprets it?

On Labareda's account, the basic goods are welfare entitlements (healthcare, education) whose provision is justified on democratic grounds: i.e. instrumentally, as pre-conditions of democratic participation and protections against arbitrary power (§2). Assuming that there is a threshold at which these democratic ends will be served – I shall call this 'the democratic threshold' – where exactly should such a threshold be put? Which level of education is good enough, which level of healthcare coverage is decent?[24] Labareda's answer is that we should acknowledge that in Europe there exists a plurality of different welfare states – some more generous than others – and that each MS will have a leeway in working out its own interpretation (Labareda, 2021, pp. 146-148)[25]. This practice-dependent and contextual approach is promising: indeed, for some basic goods the threshold is put at a reasonable level. For instance, in defining the means of subsistence Labareda appeals to "the ability to afford living costs" in a certain area (Labareda 2021, p. 37). Nonetheless, it is fair to presume that on Labareda's account the threshold is situated at a somewhat low level, since it is supposed to constitute the framework of a "safety net" upon which the different European welfare traditions will be able to converge (Labareda 2021, pp. 146-147). In his general discussion of the democratic duty, Labaraeda claims that in setting thresholds we should attend to indexes drawn by international agencies (like the WHO, UNICEF):

> Thus the World Health Organization (WHO), UNICEF, and the European Court of Human Rights have listed, respectively, *essential health services to ensure universal coverage, basic skills that should be developed in every school,* and the substantive and procedural requisites of a fair trial. (Labareda, 2021, p. 37, emphases mine)

Should these indexes inform how to set the threshold of the European safety net? Which health services count as essential? Should the EU contribute to fund the treatment of mental illnesses like depression, when MS cannot afford to do so? Should the EU intervene only in cases in which national educational systems aren't able to guarantee that their citizens acquire basic skills? Would this include also funding tertiary education and degrees that offer a particular level of specialisation? The answer to these questions will be partially set at a local level, and we may speculate that it will result from negotiations between the MSs. Nonetheless, already at the theoretical level it is important to dispel some of this indeterminacy, since this allows to better grasp roughly at which level the democratic threshold should be put. We should assume that the democratic threshold is set at a lower level than that of welfare goods provided by Nordic welfare states (Labareda 2021, p. 146). On this assumption, in my view, it is important to reflect on the following: (1) it can be helpful to appeal to a threshold of this type in a theory of EU justice. Indeed, a low threshold like the democratic threshold can be used to set priorities in the provisions of the relevant welfare goods. For example, one may argue that the MSs that are unable to provide essential health services – or whose educational systems are in need of restructuring – have a particularly strong claim to receive funding from the EU (see also §6)[26]. Nonetheless, (2) the democratic threshold should not be taken to be the ultimate standard for setting the level of re-distribution among European MSs. In the next section I argue for (2) by appealing to the distributive implication of reciprocity.

5. EU Justice beyond the Democratic Threshold

Whilst for Labareda redistribution in the EU is mainly grounded in the value of democracy, the approach I will defend is grounded in reciprocity: I shall argue that reciprocity has a welfare state component, and that this provides reasons for redistributing resources and opportunities in the EU even when each MS meets the democratic threshold. The starting point of my argument is a discussion of the requirements of reciprocity within each MS (internal justice). I shall then extend the reasoning to the issue of justice between MSs. As far as internal justice is concerned, Labareda's contextual argument is that, in the name of respect for MS's different existing interpretations of internal justice, in the EU we should allow for a plurality of welfare states configurations, some being more generous than others, and possibly some not going beyond the democratic threshold (Labareda, 2021, chap. 5)[27]. In my view, Labareda's approach is unconvincing: MSs' internal justice should not be thought as being beyond moral assessment, and in the internal case reciprocity grounds demanding re-distributive obligations. One aspect of such obligations is a welfare-state component: a duty that each MS has to sustain its own welfare system by providing welfare goods (healthcare, education, etc.) beyond the democratic threshold. Since in the internal case reciprocity grounds duties that go beyond the democratic threshold, there is good reason to believe that also at the EU level – at the level of justice *between* MSs – EU justice justifies redistribution beyond the democratic threshold. Or so I

shall argue in this section. I develop this argument building on Sangiovanni's account of reciprocity and on Schemmel's claim that the MSs should support each other in maintaining their national welfare systems (Schemmel, 2022).

According to Sangiovanni, at the state level reciprocity justifies distributive equality (Sangiovanni, 2007). Sangiovanni's understanding of reciprocity is broader than Labareda's: while for Labareda economic reciprocity holds between market agents in economic relationships, for Sangiovanni reciprocity holds "among those who support and maintain the state's capacity to provide the basic collective goods necessary to protect us from physical attack and to maintain and reproduce a stable system of property rights and entitlements" (Sangiovanni, 2007, pp. 19-20). This includes any kind of contribution (e.g. "taxation", "participation in various forms of political activity", and even "simple compliance") (Sangiovanni, 2007, p. 20) necessary for sustaining the state's capacity to provide the relevant collective goods (e.g. the legal system, the system of property rights, the police) (see: Sangiovanni, 2007, pp. 28-29). Yet, economic contribution is certainly one type of contribution. And some of Sangiovanni's arguments can be tailored to economic reciprocity. For example, against someone who claims that reciprocity should imply "that citizens and residents receive, at most, a return proportional to their individual contribution as defined by the marginal product of their labor, but not any kind of egalitarian justice" (Sangiovanni, 2007, p. 23), Sangiovanni objects that this wouldn't recognize that one can put one's own superior talents to use – and even develop them – only if others do their fair share in sustaining the production of the relevant collective goods (through participation, paying taxes, etc.) (Sangiovanni, 2007, pp. 25-26; see also Intropi, 2024). Analogously, this applies also to economic reciprocity: the state could not sustain the production of the relevant collective goods without taxing people's contributions to the social product. Thus, following Sangiovanni, there are convincing reasons to hold that within the MSs justice has a strong redistributive component (that Sangiovanni understands in egalitarian terms)[28]. And, as I interpret it – and as Sangiovanni and others have argued – fulfilling this redistributive obligation involves also developing generous welfare programmes that, I take it, should provide the relevant welfare goods (educational opportunities, health care) beyond the level set by the democratic threshold (see Sangiovanni, 2007, pp. 32-34; Schemmel, 2022).

On the assumption that internal justice has a welfare component that goes beyond the democratic threshold, how does this shape EU justice? Even if in the EU economic co-operation is somewhat less structured that within the MSs – a point I examine more thoroughly below – in my view, the fact that in the internal case reciprocity has the above-mentioned welfare-state component justifies not taking the democratic threshold as ultimate standard for redistribution at the EU level. First, one plausible reason why the MSs may be motivated to open up their economies is that through the economic growth brought about by European integration they will have better chances of sustaining their national welfare states and of defending themselves from global competition[29]. So, even if a MS has already reached the democratic threshold, it will keep an interest in sharing in the EU social product to maintain ambitious welfare programmes. I shall argue that this is indeed what EU justice requires (i.e.

sharing in the EU social product to sustain ambitious welfare goals). To clarify this thought I draw on Schemmel's recent argument that through the EU the MSs discharge their duty to support each other in the achievement of internal justice (which in turn encompasses the welfare component examined above)[30]. Schemmel argues that:

> the duty requires that the EU make sure that the sizeable benefits of supranational economic integration which it creates for its MS do not only enhance their problem-solving capacity, but are deployed in a way that is in fact apt to increase their internal justice. Section 2 has argued that this should be done by helping them to stabilise, extend, or transition to, universal egalitarian welfare policies. (Schemmel, 2022, p. 538)

So, the EU should facilitate the achievement of (internal) justice through the promotion of universalist welfare regimes that provide a wide range of high quality welfare goods[31]. In what follows I defend Schemmel's approach contrasting it with some possible critiques that Labareda may raise against it. Labareda argues that EU integration does not (yet) present the features of a full-blown basic structure, and hence that demanding redistributive obligations within the EU (e.g. those implied by Schemmel's duty) are unwarranted: for example, the legal system, the constitution, and laws regulating the family "remain mainly, or substantially, designed at the national level" (Labareda, 2021, p. 88). In response, I wish to highlight the following points, which balance different types of considerations. On the one hand, (1) I agree that economic relationships in the EU are less structured than within the MSs: Sangiovanni's analysis, emphasising that the EU lacks certain core state capacities – e.g. there is no European army, and the EU lacks the ability to directly tax its citizens – are compelling (Sangiovanni, 2013, p. 229). Nonetheless, (2) one may argue that this is a reason for changing, or completing, the structure, rather than for lamenting its absence (see: Kollar, 2022, p. 505)[32]. Yet, (3) restructuring the EU so profoundly evidently runs into a feasibility problem: it seems very unlikely that the EU will undergo such a re-shaping process in the near future. On the other hand, (4) some of the reasons that Labareda advances for thinking that the EU at present doesn't have a full-blown basic structure do not hold. For example, the fact that laws regulating same sex marriage remain in the hands of the MSs is not directly relevant. And, in any case, (5) I argue that already the fact that the EU economic structure has certain specific features justifies sanctioning redistribution beyond the democratic threshold (see: Schemmel, 2022, §3.4). I illustrate this point with an example that discusses the free movement of workers' provisions. Consider that the case of jobs that require years of training and specialization.

> *Brain Drain*: High-skilled workers can train in country *A* and then seek a job in country *B*, which – let's suppose – is richer and offers more advantageous work conditions. This can potentially raise a brain drain problem for country *A* – where *B* reaps the benefits of the education provided in *A*, and *A* loses parts of its specialized workforce[33].

Given that *Brain Drain* is a plausible scenario – one that Labareda himself is keen to emphasise (Labareda, 2021, pp. 104-108) – there seems to be no principled reason why justice-based obligations should take the democratic threshold as ultimate benchmark: given the contribution to *B*'s economy of the workforce trained in *A*,

shouldn't *A* be entitled to share in *B*'s social product to ameliorate its educational system, even if such a system is already adequate from the point of view of Labareda's democratic threshold?[34] Why should *A* be entitled to transfers from *B* only if *A*'s welfare state doesn't reach that threshold? It seems that, at the bar of EU justice, *A* should claim something from *B* even if *A*'s welfare system is already adequate in the relevant sense. This is just to exemplify a more general point, emphasized also by Schemmel: the internal market, with its free circulation of the factors of production – the four freedoms of the EU (free movement of persons, goods, services, and capital) – creates economic opportunities and a web of interactions that generate advantages (opening up new markets for richer MSs and the benefits of economies of scale) and disadvantages (brain drain, downward pressure on wages, possible redundancies in labour sectors more exposed to international competition)[35]. Given these diverse effects, there seems to be no reason why the principles regulating a transfer Union should exclusively be tied to the democratic threshold: there are reasons of justice to re-distribute resources and opportunities in the EU even when such a threshold is met by a MS. And one way of spelling out these obligations is in terms of a duty of mutual support in the development of generous welfare states (see: Schemmel, 2022, §3.4)[36].

6. EU Justice and Feasibility

Following Schemmel, I have argued that each MS has a duty to contribute to the development of the welfare states of other MSs with which they share an EU-wide economic structure. And the Union should facilitate the fulfilment of this duty. In this section I further discuss the possible role of sufficientarian thresholds like the democratic threshold within such a view of EU justice. And I address a feasibility concern. I wish to suggest that, although my approach to EU justice has a more demanding redistributive component than the view proposed by Labareda, it is not fully egalitarian. A certain level of material inequalities between the MSs may be allowed (Follesdal, 2023). The reasons that supports this conclusion are twofold: (1) this reflects the idea that economic interactions at the EU level are less structured than those within the MSs (Sangiovanni, 2013). And (2) it goes towards meeting a feasibility concern that motivates Labareda's less redistributive approach.

Feasibility represents an obstacle for redistributive views of EU justice because the levels of trust and solidarity in the EU – between MSs and between citizens of different MSs – are limited.[37] While Labareda thinks this to be a decisive reason in favour of his democratic sufficientarian view, I take a different stance. In my view, we should balance two types of considerations: first, there are reasons of justice to push for more re-distribution in the EU than Labareda may think. Second, we should properly account for feasibility constraints, like the solidarity issue just mentioned. Meeting the obligations implied by the democratic threshold is not enough to satisfy the requirements of EU justice: this gives us reasons to push the boundaries of EU solidarity beyond the threshold envisaged by Labareda. At the same time, there are limits to how far such boundaries may be pushed. My view is that we should test the

boundaries of feasibility, leaving it open how demanding the MSs's duty of mutual support is (see Van Parijs's opportunistic utopianism, in Van Parijs, 2024, §7). In theory, the level of re-distribution between the MSs *is set* by a number of considerations (e.g. the extent of cross-borders economic interactions, the weight of MSs' political autonomy) – and such considerations may verge towards equality. But, in practice, it will be the task of the EU and of the MSs to set the level of redistribution (Schemmel, 2022, pp. 536). So, the redistributive duty can be seen as a regulative ideal, to which the MSs should approximate and that should motivate the EU citizenry to canvass for a more redistributive EU. I clarify this approach in what follows.

Feasibility

Feasibility is one of the main drives underpinning Labareda's adoption of a sufficientarian threshold. One of the conditions that inform Labareda's understanding of feasibility is that a given policy "must be minimally consistent with the degree of social solidarity amongst the individuals which are to be bound by it" (Labareda, 2021, p. 135)[38]. Does this rule out views of EU justice that are more distributively demanding? Is the duty of MSs to support each other in the achievement of egalitarian justice incompatible with feasibility? Labareda himself acknowledges that levels of solidarity may radically and rapidly change at crucial moments of history: e.g. the New Deal and Germany's reunification (Labareda, 2021, pp. 154-155)[39]. This sheds some positive light on the possibility of a kind of social Europe that promotes egalitarian welfare states.

In addition, note that what was in the past unthinkable or welcomed with scepticism – i.e. the EU taking up a more active role in fostering national welfare programmes – in recent years has become a reality. As commentators have noted, in the wake of the adoption of the European Pillar of Social Rights, under the Juncker and Von der Leyen Commissions the EU has issued a series of directives and put in place funding schemes to the point that it is possible to speak of a "revival of Social Europe" (Bokhorst and Schreurs, 2023; see also: Vandenbroucke, 2017; Van Parijs, 2024). The pinnacle of this trend is of course the Next Generation EU Fund, "with the €723 billion Recovery and Resilience Facility as its key instrument" (Bokhorst and Schreurs, 2023, p. 11) (but also, for example, the Social Climate Fund, and SURE). The long-term significance of this change in EU social policy is subject to interpretation: should these be interpreted as transient measures activated only in time of crisis, or do they reflect a more structural change? The EU is far from fulfilling the re-distributive obligations I have identified in this paper, but it would be a mistake to underplay the social trend in EU governance that we have been witnessing in recent years (see Van Parijs, 2024). And the approach I advocate is one that offers reasons to build on this momentum, while at the same time acknowledging that the path towards a more redistributive EU is tortuous and full of challenges (see Van Parijs, 2024).

Let me conclude by noticing that there is common ground between the view of EU justice I advocate and Labareda's sufficientarianism. First, as I have argued in §4, the approach to EU justice I have defended is compatible with acknowledging the relevance of Labareda's threshold in *setting priorities*: one could claim that some weighted priority

should be assigned to eradicating poverty or achieving certain levels of education in the EU, before funding more ambitious welfare programmes. Second, if one has reason to hold that the level of solidarity between the MSs is at present insufficient, there can be *pragmatic* reasons to endorse a low sufficientarian standard (Viehoff, 2017). In particular, one can claim that a sufficientarian view like Labareda's is perhaps the best that can be realistically hoped for in present-day Europe[40]. Third, achieving Labareda's sufficientarian justice in the EU would be *a first important step* towards a more just EU. That is, Labareda's view can be interpreted as an intermediate step in a transitional theory of EU justice. Some of the social policies activated in recent years can be interpreted in this way – e.g. SURE (the temporary Support to mitigate Unemployment Risks in an Emergency): as foundational pillars of a social union in the making.

So, Labareda's sufficientarianism and the view I have defended share some common ground. But I have also argued that here are principled reasons to gear EU justice towards more demanding redistributive goals. Recognising these points has action-guiding implications: it gives us reason to push for a more re-distributive EU, and to adopt what Van Parijs has called the "opportunistic utopian" stance, which implies full awareness of existing obstacles without endorsing defeatism. We should constantly test the limits of feasibility, pushing them further, and being ready to seize opportunities for promoting a more decidedly welfarist Europe (see Van Parijs, 2024, pp. 19-20). In other words, there can be good reasons to support the institutional reforms and policies that Labareda suggests – for example, the establishment of "a European agency for social justice" (Labareda, 2021, p. 144). And yet, there are also principled reasons to go beyond the democratic threshold: such reasons are not extinguished and retain their force.

7. Conclusion

The paper combines a critique of Labareda's moderate re-distributivism with a positive proposal of EU justice. Conceptually, there is no reason to underplay re-distribution in favour of pre-distribution: for example, because both can equally contribute to the achievement of EU justice. Furthermore, Labareda should address whether an appeal to democratic values implies a justification of a universal (rather than conditional) protection of the means of subsistence. More positively, I have argued in favour of a vision of EU justice centred around the idea that the MSs have a duty to contribute to each other's development and maintenance of generous welfare states. And I have contrasted this view with Labareda's adoption of a democratic threshold, showing that the two views find some common grounds on account of a concern for feasibility.

Notes

[1] There is also the question of the relationship between EU justice and global justice, which I set aside here (Harb and Vandamme, 2023).

[2] Either in the form of direct wealth transfers to EU citizens or re-distribution between MSs.

[3] In a society that doesn't guarantee a material safety net, those who fall below the sufficiency threshold would be effectively discouraged from taking part in the democratic life of the community, since they would have to devote their efforts to make ends meet (see Labareda, 2021, p. 35).

[4] This is self-explanatory if one lacks access to legal resources; but it is also true, for example, at the workplace. Consider a society in which access to basic healthcare is not guaranteed: needing to pay for an expensive life-saving operation (for oneself or a close relative) could imply being forced to keep a job in which one is subject to the arbitrary power of a bullying boss.

[5] Reciprocity requires that cooperation be advantageous for all participants on grounds of dignity and equality (Labareda, 2021, pp. 41-45). For example, the terms of cooperation should be fair, and labour regulations should be in place to protect workers' interests (Labareda, 2021, p. 45). An important role in implementing reciprocity is also assigned to monetary policies (Labareda, 2021, p. 47). One may object that Labareda's theory implies leaving disabled individuals who are unfit for cooperation destitute. However, following Stuart White, Labareda could reply that on *fair* reciprocity one's contributive duties should be proportional to one's ability to contribute, and so that such disabled individuals would be entitled to a share of the social product on grounds that their contributive duties are non-existent (White, 2003, p. 115; Intropi, 2024).

[6] For instance, in virtue of EU law's primacy and effectiveness. And of the MS's inability to refuse to apply EU law. On Labareda's account, the EU doesn't fit a Weberian model of monopoly of force but should be conceived as a "specialized system of coercion" (Labareda, 2021, pp. 61-67).

[7] On the definition of the EU as a democracy: Nicolaïdis, 2012.

[8] This implies that the main redistributive functions are exercised by the MSs and the EU should not become a federal state with a centralised and extensive welfare state of its own. This is compatible with a "pluralist" model, where MSs maintain their different (and more or less generous) welfare states, while the EU would act only as a safety net provider (Labareda, 2021, p. 75). In terms of policy implications, Labareda envisages the possibility of funding the EU safety net with either an EU income tax ("a direct tax to be paid by all EU citizens") or through a mechanism of "inter-state transfers proportional to national GDPs" (Labareda, 2021, p. 77).

[9] Note then that up to when less developed MSs will be able to satisfy the sufficientarian conditions by themselves, re-distributive measures between MSs would be required: hence, on Labareda's theory re-distribution is not minimal (though Labareda puts forward reasons to contain it). I am grateful to Labareda for clarifications on this point.

[10] Labareda argues that due to EU internal dynamics and to the effects of global economic competition, the current economic structure of the EU prevents less-well performing EU countries from flourishing (Labareda, 2021, pp. 91-99). Labareda also notes that the MSs cannot resort to economic instruments that were available to them before accession (e.g. devaluating national currencies, imposing tariffs) (Labareda, 2021, p. 95).

[11] Note that certain components of the democratic duty – especially, guaranteeing the means of subsistence – are best understood as principles of *transnational justice*, expressing duties of justice between *EU citizens* (rather than between MSs). On the other hand, it is fair to interpret reciprocity in Labareda's account mainly as a principle of *member-state justice*: that is, as a principle of justice between MSsThis parallels Sangiovanni's distinction between "member state solidarity", and "transnational solidarity" (Sangiovanni, 2013, p. 217).

[12] In a footnote Labareda draws the distinction between pre-distribution and re-distribution in terms of "two fundamentally different strategies to achieve distributive justice: (i) changing the rules of the game and (ii) changing the outcomes of the that game" (Labareda, 2021, chap 1, fn. 18). However, I don't think that the two are fundamentally different. This definition may be thought to single out legislative action from wealth transfers. The two – law changing and wealth transfers – are of course

different tools (and they are not omni-comprehensive): but, if there is more to the distinction – i.e. if one aims to justify the distinction by claiming that the two tools may serve different ends, then there is no fundamental distinction between law changing and wealth transfers. Paradigmatic pre-distributive policies (a minimum wage law) change market outcomes (e.g. they imply better salaries for workers), and paradigmatic redistributive policies (e.g. UBI) can also have the effect of changing the background conditions under which people make certain choices (see my discussion of UBI below).

[13] UBI also gives people more freedom to exercise their agency outside the market (O'Neill, 2020, pp. 81-82)

[14] Indeed, methodologically, Labareda adopts a non-ideal perspective (Labareda, 2021, p. 31).

[15] These two functions can be inferred from Labareda's reasoning at p. 32.

[16] A further argument to which Labareda appeals is that pre-distribution in the EU would be more feasible than re-distribution (e.g. Labareda, 2021, p. 96). I do not have the space to fully discuss this point, but I wish to mention that it seems to me an open question whether pre-distribution is more feasible: for example, Treaty changes – which can be understood as pre-distributive, and which Labareda thinks are needed to attain EU justice (Labareda, 2021, pp. 151-152) – seem to me far from likely in the near future (despite Labareda's claim to the contrary).

[17] And so Labareda rejects UBI: (Labareda, 2021, p. 38).

[18] Sometimes Labareda seems to assume a universalist reading on citizenship: see Labareda (2021, p. 163).

[19] Or, he could stick to securing the means of subsistence through labour regulations (and, possibly, unemployment benefits), whilst also acknowledging that redistributive measures should be put in place to secure the means of subsistence of non-economically active citizens. This point can be concretely illustrated with the discussion of what is owed to EU migrants who are not economically active, which is one of the most sensitive questions faced by the CJEU. Should these migrants be refused social assistance from the host MS on grounds of not making a contribution to the host society? For a discussion, see: Dawson and De Witte 2022, chap. 7. For additional arguments in favour of welfare universality in the EU context, see: Viehoff, 2017, pp. 168-169.

[20] Though it is ultimately unclear whether Rawls himself would be keen to recognise that distributive principles apply to supranational organisations like the EU (see: Van Parijs, 2019).

[21] See also Labareda's appeal to the method of reflective equilibrium (Labareda, 2021, pp. 16-18), and Labareda's discussion of whether it is possible to speak of a European basic structure (Labareda, 2021, pp. 88-89).

[22] Either in the form of direct redistribution to EU citizens, or between MSs.

[23] One way of interpreting his theory is in terms of a version of relational egalitarianism with distributive sufficientarian implications.

[24] This is a standard worry raised at sufficientarian views (e.g. Casal, 2007).

[25] Furthermore, in his general discussion of the democratic duty, Labareda argues that in setting thresholds we should attend to indexes drawn by international agencies (like the WHO, UNICEF) (Labareda, 2021, pp. 36-38). Indeed, the lists provided by these agencies are very informative: see the websites indicated by Labareda in fn. 32 of chap. 1.

[26] Note that the (sufficientarian) democratic threshold can be combined with a high threshold (whilst holding that inequalities above the high threshold do not matter for justice) in a unified framework: on multiple thresholds sufficientarian views, see Huseby, 2020. Or, there may be reason to combine the democratic threshold with an egalitarian or prioritarian principle.

[27] Schemmel, whose view on EU justice I endorse below, indeed argues against such approaches. See: Schemmel, 2022, p. 532. Labareda argues that this meets a feasibility concern that makes such an approach action-guiding, allowing to tackle the important issue of poverty and deprivation in the Union (Labareda, 2021, chap. 5). I discuss this point in §6.

[28] For instance, in a Rawlsian fashion as requiring a distribution of advantages that departs from equality only if doing so contributes to maximise the position of the worst-off.

[29] This is compatible with some of what Sangiovanni says to justify his reading of the purpose of the EU (Sangiovanni, 2013, pp. 223-232).

[30] Schemmel defends this view on grounds of revising Sangiovanni's reciprocity-based internationalism.

[31] Following Schemmel, this doesn't mean that the EU should *impose* egalitarian welfare reforms: in the case of legitimate states, "(…) the duty must take the form of a duty to offer help, on favourable terms for the state concerned – *help that such a state remains fully entitled, and effectively free, to turn down*" (Schemmel, 2022, p. 535). (Schemmel's point is developed in the context of discussing the duty between states in general, but it also applies more specifically to the EU). This goes towards meeting the worry that a more ambitious view than sufficientarianism runs into the problem of not taking into consideration the diversity of welfare traditions in the EU: on my account, the MSs will not be forced to become Scandinavian (i.e. with universalist welfare egalitarian systems), though the EU would support such a transition (see: Labareda, 2021, p. 146). I'm grateful to Labareda for pressing me on this point.

[32] Kollar argues that the EU needs to reform its basic structure in order to have fair rules of background justice in place in the context of persons' free movement and labour migration.

[33] For a discussion of issues that emerge in the context of persons' free movement and labour migration in the EU, see: Kollar, 2022.

[34] This argument is further reinforced by Kollar's finding that, in the context of EU labour migration, "the unequal development of contributive capacities that are due to the social structure" is a problem of justice. Indeed, Kollar claims that "(t) he requirements of fair terms, then, do not only apply to the system of production, exchange and distribution of goods. The education and training of our skills and capacities should also take place on fair terms that could be justified to all. This requirement applies to all the relevant institutions within a welfare system involved or assumed in the development of contributive capacities" (Kollar, 2022, p. 511).

[35] These points are well illustrated by Labareda himself (Labareda, 2021, chap. 3).

[36] See also Kollar (2022) for an egalitarian argument in the context of justice in labour migration.

[37] See Bellamy (2019, pp. 118-122) for an analysis of why the EU cannot be properly considered to have a unified demos.

[38] Labareda develops a full-blown account of feasibility that encompasses a number of conditions (Labareda, 2021, chap. 4).

[39] Even Labareda's own sufficientarian proposal faces a feasibility objection, which is mitigated by the fact that such a proposal relies more heavily on pre-distribution (than redistribution) (Labareda, 2021, pp. 153-155).

[40] I adopt Viehoff's terminology: Viehoff argues that a number of views of EU justice have pragmatic reasons to endorse a basic minimum (Viehoff, 2017).

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