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Rawls and the European Union

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Abstract

Renowned political philosopher John Rawls once expressed skepticism about the moral status of the European Union (EU). Yet generally EU scholars have either ignored Rawls or rather uncritically established positive links between his theory of domestic and international justice and the EU. This article argues that the EU cannot be morally justified from a Rawlsian perspective. Thus, Rawls's Euro-skepticism is not just a personal opinion, but is embedded in his political philosophy. The argument basically entails that the EU cannot plausibly be understood in terms of a Rawlsian (i) domestic society or (ii) society of peoples. It is also argued that Rawls's seemingly favorable yet rare mentioning of the 'European Community' means no theoretical support for the EU. Moreover, counter-arguments that the EU can be seen as in line with Rawls's notion of a realistic utopia are shown to be false. In consequence, serious adherents of Rawls's political philosophy cannot be committed EU defenders.

Keywords: European integration, European Union, John Rawls, Law of Peoples, political liberalism, theory of justice

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Introduction

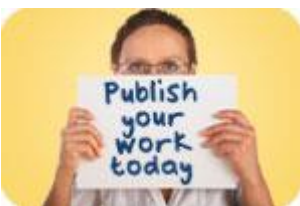
The late John Rawls, arguably the most important political philosopher of the last half a century, has paid little if any scholarly attention to European integration or the European Union (EU). Rather, he has revealed himself as a Euro-sceptic. As he wrote in 1998 to fellow philosopher Philippe Van Parijs in a discussion about his then-upcoming book *The Law of Peoples*:

'One question the Europeans should ask themselves, if I may hazard a suggestion, is how far-reaching they want their union to be. It seems to me that much would be lost if the European union became a federal union like the United States...Isn't there a conflict between a large free and open market comprising all of Europe and the individual nation-states, each with its separate political and social institutions, historical memories, and forms and traditions of social policy. Surely these are great value to the citizens of these countries and give meaning to their life. 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. The idea of economic growth, onwards and upwards, with no specific end in sight, fits this class perfectly. If they speak about distribution, it is [al]most always in terms of trickle down. The long-term result of this - which we already have in the United States - is a civil society awash in a meaningless consumerism of some kind...I am not happy about globalization as the banks and business class are pushing it. I accept Mill's idea of the stationary state as described by him in Bk. IV, Ch. 6 of *his Principles of Political Economy* (1848)' (Rawls, in Rawls and Van Parijs 2003; emphasis in original).

Taken from a posthumously published series of letters, this passage suggests that Rawls's hostility toward the EU is largely based on his commitment to social democracy (Morgan 2008, 2010: 115). Yet the passage gives rise to the question of whether the EU - a political-economic cooperation and integration association of (at present 28) European states - could be justified on Rawlsian philosophical grounds. To examine this question, even fifteen years after the publication of *The Law of Peoples*, matters for at least five reasons.

First: that Rawls, the leading political philosopher and theorist of justice, has ignored European integration

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in his academic work is quite surprising, because the EU - an 'extraordinary experiment [with revolutionary] transformations' (Dobson 2006: 522) - is the world's largest economic zone with a great impact on many people's lives. Second, the recent literature on 'normative power Europe', 'ethical power Europe', and 'cosmopolitan Europe' (cf. Aggestam 2008; Baban 2013; Beck and Grande 2007; Delanty 2005; Eriksen 2006; Habermas 2003; Manners 2002, 2008; Parker and Rosamond 2013; Pichler 2009; Scheipers and Sicurelli 2007; Schlenker 2013; Sjursen 2006) has broadly ignored Rawlsian theorizing, which is remarkable but possibly unduly comfortable, too. Third, at times Rawls's thought is applied to examine the moral adequacy of various EU issue areas or analyses thereof (De Boer 2013; De Hert 2004; Føllesdal 2006; Petersmann 2011), whereby the EU itself is simply treated as if it were morally self-justifying (cf. Morgan 2007). Fourth, those rare political-philosophical attempts that discuss Rawls explicitly when trying to justify the EU tend (when not debating Rawls superficially or confusingly, as in Búrca et al. 2013) to adapt his thought in various ways in order to make it 'fit' better to our 'real world'. Their assumption seems to be that the EU should somehow be morally accommodated for being 'the reality', obviously 'good', or necessary as a protection of (distributive) justice against the competitive world market or of intra-European linguistic and cultural diversity (cf. Crum 2013; Dobson 2006; Føllesdal 2006; Morgan 2008: 5-12; Neyer 2012a, 2012b; Van Parijs, in Rawls and Van Parijs 2003). Such approaches may be Rawlsian-inspired, but fail to show why Rawls's philosophy would entail a basic moral argument for the EU rather than some other political body, notably the nation-state, and overlook the possibility that a deep commitment to the EU implies a total rejection of Rawls's thought - and vice versa. And fifth, Rawls (1993: 55 n.34, 1999b: 70), the Euro-sceptic, has - twice - mentioned the 'European Community' as an example of a regional organization in a way some interpreters regard as supportive of the EU (cf. Føllesdal 2006: 299, cf. 307; Taylor 2011: 286).

In this article, I argue that there is no Rawlsian moral case for the project of European integration, or unification; the EU cannot be justified on grounds that represent Rawls's philosophical project in a non-adapted, authentic way.[1] Rawls's anti-EU statement, then, is embedded in his political philosophy, notably his theory of domestic and international justice (Rawls 1993, 1999a, 1999b, 2001, 2005). While I do not aim to offer an independent assessment of Rawls's position, my argument implies that, like Rawls himself, adherents of his political philosophy cannot be committed EU defenders. My thesis of the incompatibility of Rawls's political philosophy and EU endorsement relies on a four-step defense that arguably covers the key Rawlsian substantive criteria for political justifiability (cf. Rawls 1999a, 1999b, 2001, 2005) and that addresses counter-arguments. First, the EU cannot qualify as a domestic society, or liberal democratic people, in Rawls's sense, to be governed by a (preferably) egalitarian conception of justice. Second, the EU cannot satisfy the requirements set by Rawls's international Society of Peoples. Third, Rawls's seemingly favorable yet rare mentioning of the 'European Community' cannot reasonably be taken as theoretical support for the EU. And fourth, counter-arguments about the EU as a concretization of Rawls's idea of a realistic utopia fail.

No Rawlsian domestic society

My first argument is that the EU cannot be plausibly understood as a Rawlsian domestic society, one within which a liberal, preferably egalitarian, view of justice applies. Thus, as the EU cannot be considered as a roughly self-sufficient, cooperative society, or a liberal democratic 'people', Rawls's theory would resist Europe-wide distribution principles.

As Rawls (1999a: 4) has defined it, a 'society' is a 'more or less self-sufficient' (not autarkic) 'cooperative venture for mutual advantage' that, as such, should be ruled by an egalitarian view of justice. The primary subject of justice is the 'basic structure of society', that is, 'the way in which the major social institutions [which include the political constitution and the principal economic and social arrangements] distribute fundamental rights and duties and determine the division of advantages from social cooperation' (Rawls 1999a: 6). Participation in the basic structure is non-voluntary, as one enters it at birth and one's initial chances in life are affected thereby (Rawls 1999a: 7, 2001: 4, 10). Note that, for Rawls, a basic structure *presupposes* a society; it is the basic structure of a well-ordered (democratic) society that is the subject of domestic justice (Rawls 2001: 10-11, 2005: 11-43). Thus, when no social cooperation exists, looking for a basic structure makes no sense.

It is sometimes believed that the EU qualifies as a Rawlsian domestic society. Against the thesis of Charles Beitz and others that economic interdependence has turned the entire globe into a Rawlsian society (Beitz 1999: 127-176; Dobson 2006: 521-522; Pogge 1989), Chris Brown (2002: 173) has argued that the 'cooperation' between the world's rich and the world's poor is not mutually advantageous but that 'parts of the advanced industrial world could be seen in this way - the European Union for example'. However, the very view of the EU as a Rawlsian domestic society fails for normative as well as empirical reasons.

Empirically, one might think that a claim such as Brown's is more plausible than seeing either national societies or the whole world as a Rawlsian society. Surely national societies, particularly within the EU, are

not self-sufficient; and 'globalization' has little, if anything, of a cooperative scheme for mutual advantage (cf. Kamminga 2006: 26; Rawls 2005: 301). Yet the EU does not resemble a Rawlsian domestic society empirically, as the cooperation aimed at mutual advantage that does exist occurs between states rather than individuals (cf. Búrca et al. 2013: 21). Accordingly, the EU has no single basic structure. Thus, to present the EU as a Rawlsian society is to overlook the constitutional differences between member states and their politically diverse ways of handling social justice nationally according to their different liberal traditions. The EU has a single market, but it has no single political constitution (a state and government). The European institutions cannot be basic institutions, as they are secondary for being produced by treaties and agreements among European states and as such supervenient upon the various basic national institutions (cf. Freeman 2006: 246-248). Although the EU features a decision-making system partly independent of the member states' governments, an extensive set of laws that result from community legislation, and an autonomous jurisdictional institution, all this has typically been counterbalanced by the member states' control (mostly by qualified majority voting) of communal decision-making (Barcelos and Queiroz 2008: 8). In short, as members of different states, individuals within the EU face constitutional and moral-political differences too serious to speak of a society they all share (Barcelos and Queiroz 2008: 4, 6-7, 9).

The normative problems for understanding the EU as a Rawlsian domestic society are even more serious. Ultimately, Rawls's idea(l) of a society as 'closed' is normative: only persons who cooperate appropriately may be taken as members (Brown 2002: 216, 178; Rawls 1999a: 7, 8, 229, 2005: 15-20). Ideally viewing national societies this way, Rawls restricts membership of the original position to compatriots, so that the scope of the chosen distribution principle is limited to domestic national society. Therefore, one cannot plausibly argue for an extension of Rawls's view of domestic society to, say, the EU by invoking the factual existence of transnational economic practices and institutions, when these may undermine Rawlsian societies and (the justice of) their basic structures. Even if individuals today do non-voluntarily participate in European interconnectedness, it would still be mistaken to think of the EU as a social cooperative scheme, since the constitutive normative context, a particular liberal democratic tradition, is lacking (cf. Kamminga 2006: 26-27; Rawls 2005: 11-22; against, e.g., Maffettone 2009).[2] Thus, Rawls's basic structure or its institutions may not be lifted from the domestic liberal context and treated as 'independent' (against Maffettone 2009: 244) in order to make application to, say, the EU possible. I now explain this further.

Rawls (1999b, 2005) has come to emphasize that a society (as a cooperative venture for mutual advantage) is to be understood by its constitutive liberal democratic context and so actually represents a liberal 'people'. Liberal peoples have three characteristics: (i) a reasonably just constitutional democratic government that, being effectively under members' political and electoral control and so not autonomous or directed by economic and corporate powers, serves their basic interests; (ii) citizens connected by what John Stuart Mill calls 'common sympathies' (as constitutive of a 'nationality'); (iii) a moral character (Rawls 1999b: 23-24). This being so, Rawls (cf. 1999b: 23, 43 n.53, 2001: 4, 2005: especially 272) can philosophically defend European nation-states and perceive their increasing empirical interconnectedness as a moral problem (against Dobson 2006: 517-518). Indeed, from the perspective of Rawls's theory, regional (or global) interconnectedness may be deeply unjust or undemocratic (and environmentally unsustainable; Little 2011) and thus cannot be accepted uncritically as a 'reality'. Again, Rawls's 'closed' society is a (realistically) liberal ideal, not just an empirical characterization (which, for example, permits him to be critical of the United States without having to disqualify it as a nation-state; cf. Rawls 1999b: 101). That is why Rawls is skeptical toward transnational economic practices and institutions that weaken or even undermine the independence, the level of justice or solidarity (cf. Føllesdal 2006: 300), and the democratic content of such societies, something that arguably is the case at the EU level (cf. Kamminga 2013: 13). That the EU's decision-making system does not meet the criteria of democracy as found in the nation-state and even has the capacity to override or circumvent constitutional settlements (cf. Dobson 2006: 512) makes it implausible to see the EU as potentially satisfying Rawlsian criteria of domestic justice. From Rawls's viewpoint, whereas European institutions, secondary and supervenient as they are, need be justified on basis of the primary (national) ones, such a justification does not seem possible.

Importantly, Rawls's reliance on Mill goes further still. Rawls (1999b: 107 n.33) adopts 'Mill's view that the purpose of saving is to make possible a just basic structure of society; once that is safely secured, real saving (net increase in real capital) may no longer be necessary'. For Rawls (1999b: 107), then, '[g]reat wealth is not necessary to establish just (or decent) institutions'. Thus, Rawls's anti-capitalism - he finds a 'capitalist welfare state' basically inconsistent with his view of justice (Rawls 2001: 8 n.7, 135-140) - and anti-consumerism are philosophically derived from Mill's 'stationary state' (cf. the introductory quote above), with the consequence that the domestic intergenerational duty of just savings (like the international duty of assistance) has the goal of creating just (or decent) institutions instead of increasing, let alone forever maximizing, the average wealth level, or the wealth of any society or any social class (Rawls 1999b: 107, 2001: 63-64, 159-160). As Leif Wenar (2006: 95) has aptly commented: 'A people, in Rawls's view, is startlingly indifferent to its own material prosperity.' Surely this makes Rawls's criticism of the EU - much an economic growth-oriented, social capitalist 'state' (cf. Hay and Wincott 2012) that draws

European states further away from Mill's 'stationary state' - conceivable. According to Rawls's theory of domestic society, the European nation-states should actually try to cherish their self-determination and independence and restrict their economic welfare, rather than handing over themselves and their (relative) social 'closed-ness', in an insufficiently democratic way (cf. Rawls 1999b: 43 n.53), to a single European market and process of ever closer European unification (cf. Kamminga 2013: 13).

To be sure, Rawls does see a legitimate route towards a larger, rather more European society, or nation. Thus, his theory approves of 'two or more of the liberal democratic societies of Europe, say Belgium and the Netherlands, or these two together with France and Germany,...to join and form a single society, or a single federal union' (Rawls 1999b: 43 n.53). However, having typically evolved 'top down' from the perspective of European citizens at least - economically, politically, and legally -, the EU has become unable to satisfy Rawls's two liberal democratic requirements: 'any such union must be agreed to by an election in which in each society the decision whether to unite is thoroughly discussed', and 'the electorate of these societies must vote on which political [liberal] conception [of justice] they believe to be the *most reasonable*' (Rawls 1999b: 43 n.53; emphasis in original; cf. Rawls and Van Parijs 2003). Significantly, Rawls does not mention the EU even here. Thus, for example, Rawls defender David Reidy (2006: 185) is inaccurate to claim that Rawlsian 'liberal democratic peoples may rightly federate (*as in the European Union*)' (emphasis added). The EU as it has come to exist has no place in this vision of Rawls's, as it has not been the product of a fully democratic procedure in all its member states.

In sum, the EU is by no means a liberal democratic society in Rawls's sense. From a Rawlsian perspective, the strongly developed European integration, while having merely secondary and supervenient status, has characteristically had morally dubious effects on national societies and their basic structures and thus cannot be accepted as a cooperative reality. Accordingly, EU-wide principles of (roughly) egalitarian distributive justice make no sense (against Crum 2013 and Føllesdal 2006: 311).

Not in line with Rawls's Society of Peoples

My second argument is that the EU cannot meet the requirements of the Society of liberal and decent Peoples, which is Rawls's conception of international society. In trying to make this argument as clear-cut as possible, I shall - consistent with the previous section - assume the historical primacy of the European nation-state as a Rawlsian domestic society that offers a justifiable structure for inter-human solidarity (cf. also Crum 2013).

Of key relevance for the present argument is Rawls's Law of Peoples (Rawls 1999b, cf. 1993) as the international extension of his domestic political liberalism (Rawls 2005). Rawls defends an international theory in which not only 'liberal' peoples (described in the previous section) but also 'decent' peoples have basic significance. 'If all societies were required to be liberal,' Rawls (1999b: 59) explains, 'then the idea of political liberalism would fail to express due toleration for other acceptable ways...of ordering society.' Decent peoples, then, differ from liberal peoples in merely holding particular requirements that make them 'tolerable' from a liberal perspective: (i) their outward behavior is non-aggressive; (ii) they respect a set of 'urgent' rights as 'human rights', that is, a 'proper subset' of the rights and liberties protected by liberal democratic societies, including the rights to life (thus, to subsistence and security), freedom from slavery and serfdom, liberty of conscience, property, and formal equality (hence excluding rights such as those to equal political participation, unrestricted liberty of conscience, and non-discrimination, and the demand of full equality for women or equality of religious freedom); (iii) they each have a common good political conception of justice; (iv) they each contain a 'decent consultation hierarchy' (Rawls 1999b: 64-84). And 'to tolerate means not only to refrain from exercising political sanctions...to make a people change its ways [but] also...to recognize these nonliberal societies as equal participating members in good standing of the Society of Peoples' without denying them 'a due measure of respect' (Rawls 1999b: 59, 61). The Society of all such well-ordered Peoples facilitates societies to take their internal responsibility for ('urgent') human rights, and it helps 'burdened societies' to acquire the capacity to become decent or liberal and, accordingly, a member of the international Society.

Several reasons can be given for why the EU cannot be adequately understood in terms of Rawls's Society of Peoples. First, from the perspective of the Society of Peoples as developed by Rawls, the EU is characteristically unduly selective and demanding. Again, Rawls's international Society accepts all liberal and decent peoples in the world as members. On this basis, Rawls (1999b: 25, 35-36, 42-43, 70) makes room for cooperative organizations for fair trade, centralized banking, and (human) security, which are roughly analogous to, respectively, the General Agreement on Tariffs and Trade (GATT, the pre-1995 predecessor of the World Trade Organization (WTO)), the World Bank, and the United Nations (UN). Rawls (1999b: 70) adds that 'it makes sense to think of liberal *and decent* peoples together in an original position when joining together into regional associations or federations' (emphasis added).[3] Thus, for a cooperative or regional organization to tolerate decent peoples means that it does not basically exclude such societies from membership; indeed, decent peoples have a right to co-decide in the organization's set

up. However, seen as such, the EU is unduly intolerant for not truly respecting decent peoples and not treating them as equal 'members', having aimed to exclude such peoples from its very beginning. Because of its economic integration objective (which is deeply troubling from an international as well as domestic Rawlsian perspective) and core values (such as freedom, equality, non-discrimination, gender equality, solidarity, democracy, and the rule of law, according to the Charter of Fundamental Rights[4]), the EU is only prepared to accept (roughly) liberal (European) states as members. This typical, principled refusal of the EU to welcome non-liberal yet decent peoples (Barcelos and Queiroz 2008: 5, 11; with arguably Turkey as the most striking case), as expressed in the Copenhagen criteria for accession that require candidate member states to become (roughly) liberal first,[5] is to be rejected as intolerant from a Rawlsian perspective and thus is inconsistent with the Law of Peoples (cf. Kamminga 2013: 13-14; Rawls 1999b: 59-81). In addition, from a Rawlsian perspective, the EU's practice of offering 'pre-accession' incentives to (roughly) decent European societies to become more liberal and qualify for membership not only leads to unequal treatment of, and risks conflict among, outside societies (contempt, bitterness, resentment; cf. Rawls 1999b: 122) but also clashes with the overriding demand to a liberal government to consider its duty of assistance toward societies burdened by unfavorable conditions (cf. Rawls 1999b: 84-85). Most important is that burdened societies, European or not, are helped to become well-ordered and achieve membership of the Society of Peoples.[6]

Second, from a Rawlsian perspective, the EU cannot be valued as a realization of the 'Society of liberal Peoples' as the first and most, or even only, 'reasonable' step of Rawls's international ideal theory (Rawls 1999b; against Barcelos and Queiroz 2008 and Taylor 2011: 286). To begin with, the EU is inappropriately interventionist. In Rawls's theory, even between liberal peoples there should be no principle of distributive justice because of the irrelevance of economic relations in this sense (Rawls 1999b: 11-58, 115-120; cf. Förster 2012: 140; Wenar 2006: 99). The EU, however, has long included a (relatively modest) scheme of redistribution through agricultural subsidies, structural funds, and investments in research, education, and infrastructure. It now also features a solidarity scheme, the European Stability Mechanism, for offering financial support to vulnerable member states, under the condition of serious macroeconomic adjustments (cf. Crum 2013: 36, 41). Thus, the EU has put into practice some transnational, rather limited but still un-Rawlsian, standard of distributive justice. Next, from a Rawlsian perspective, to argue that the EU should basically be understood as a 'society composed of *strictly* liberal peoples' (Barcelos and Queiroz 2008: 12; emphasis added), even if conceivable, is simultaneously to criticize it for failing to show due international toleration. Indeed, for Rawls, that the Society of liberal Peoples should make the second, less 'reasonable' but not 'unreasonable', step and accept as equal members decent peoples as decent peoples, without trying to convert societies to political liberalism as the EU has tended to do, is a cornerstone of his international ideal theory. International toleration may be controversial among liberal theorists, but for Rawls (1999b) as an international *political* theorist it is crucial for avoiding liberal imperialism, allowing reasonable pluralism, adequately addressing humanity's 'great evils', and promoting international peace, stability, and justice (cf. Förster 2012). Finally, at this basic level of ideal theory, the EU being regionally limited, somehow, to 'Europe' - only 'European' states may apply for membership (cf. article 49 of the Maastricht Treaty[7]) - conflicts with the universal scope of even a Rawlsian Society of merely liberal Peoples.

Third, from a Rawlsian perspective it is dubious that European states have been integrating for mutual advantage voluntarily without first or at least simultaneously trying to meet systematically the universal (and already mentioned) duty to assist burdened societies, which they as peoples have according to the Law of Peoples (Rawls 1999b: 37, 105-119, cf. 84-85), and which may have become even more extensive due to the harmful effects of European agricultural policy (cf. Rawls 1999b: 43, 115). As for the European countries geographical proximity has been a stronger cause for active concern than the extent of burdenedness, current EU expenditures to development assistance seem merely a kind of compensation. Thus, the EU has constantly given priority to widening and deepening of its own integration, rather than attempting to help far-away societies to become well-ordered (liberal or decent, which does not mean 'rich') and thus to acquire full membership of the Society of Peoples (cf. Kamminga 2013: 14; Rawls 1999b: 118). From a Rawlsian perspective, then, the EU typically lacks justification to those elsewhere living in burdened societies as well as to those subjected to integration.

In sum, the EU is not to be regarded as in line with the Society of Peoples, as Rawls's international position, like his domestic one, implies a deep critique of the project of European unification.

No Rawlsian 'European Community'

One may think that the argument of the previous section is vulnerable to a statement from Rawls himself, one in which he does seem to put the EU in a favorable light. Thus, he writes:

'[I]t makes sense to think of liberal and decent peoples together in an original position when joining together into regional associations or federations of some kind, such as the European Community, or the

commonwealth of the republics in the former Soviet Union' (Rawls 1999b: 70, cf. 1993: 55 n.34).

Yet my third argument is that this sudden and sole, possibly confusing reference does not entail any theoretical support for the EU.

First, then, Rawls not only mentions the European Community (EC) only twice if not once (as the 1999 formulation restates the 1993 one[8]), but also does so without explicitly referring to European integration or the post-1992 EU, even when writing at the end of the 1990s. Here he could have wanted to make a positive comment about the pre-1992 EC only, while consciously avoiding mentioning the EU with its 'single market'. From the 1970s until the early 1990s, it was usual to refer to the three European institutions - European Economic Community, European Coal and Steel Community (ECSC), and Euratom - together as the EC (Blair 2010). At any rate, the 1992 Maastricht Treaty may have been a bridge too far for Rawls, as it postulated a distinctive 'Union', not simply a 'Community' of roughly sovereign member states (cf. Dobson 2006: 513). Yet more likely is that Rawls does not even endorse this earlier, tripartite EC with its economic community, as he, in the text around the quote as well as elsewhere in his philosophical work, says nothing, let alone something theoretically positive, about European 'economic integration' (cf. Morgan 2008: 6) or the 'common market' (thus, the pre-single one). It is, therefore, of philosophical significance that Rawls once expressed himself negatively - 'unofficially' yet consistent with his theory of justice - about the (integrated) EU and globalization for their invasive effects on national societies.

Second, empirically, Rawls's EC reference is rather loose, like how he treats all the international organizations he mentions as rough analogies of their non-ideal world counterparts: the UN, the GATT, the World Bank, and the International Monetary Fund (Rawls 1999b: 42-43, 84-85). To begin with, whereas the (integrated) EU is typically a project of liberal democratic states and does not aim to accept decent peoples (as discussed earlier), Rawls invokes the EC as an example of an organization consisting of liberal *and decent* peoples; this is consistent with his theory's international original position but inconsistent with the EU's principled exclusion of decent peoples. Moreover, Rawls mentions the EC in a single breath with the Commonwealth of Independent States (CIS; 1991), a loose, non-integrated association between former Soviet Republics that also has not qualified as an organization of liberal and decent peoples, arguably not even as one of merely decent peoples due to member states' lasting human rights violations. Therefore, anyone who wants to defend Rawlsian support for the EU (or the EC as its predecessor) on the basis of our quoted text should be willing to defend Rawlsian support for the CIS as well, which is absurd.

Third, normatively, Rawls's reference to the EC seems ideal-typical and is as such (implicitly) *critical* of European integration - again, roughly like with other international organizations he mentions.[9] Philosophically, if Rawls is not to be taken as somehow confused about the EU (if he were, the EU would still lack Rawlsian support), he would arguably advocate a 'weaker' (less domestic justice, democracy, and autonomy affecting) and 'wider' (more decent societies accepting) organization build up and evaluated from the perspective of his original position of 'liberal and decent peoples together'. Rawls, then, would *conditionally* favor a European organization of peoples, but reject the EU's *typical* refusal to accept and include decent peoples as equals and its demand of societies that they become liberal first.[10] Crucially, as it is hard to imagine the EU without the characteristics Rawls as philosopher would presumably criticize - the open market and exclusion of non-liberal yet decent peoples - we are not dealing here with merely 'repairable defects'. That Rawls would still be in support of a European regional organization is no surprise, as, in his view, such an organization of decent as well as liberal peoples may help to prevent the great evil of unjust war on the European continent (cf. Rawls 1999b: 52 n.65); it may thus function as one building block of future world society (Rawls 1999b: 70). Indeed, Rawls's positive reference to the EC may have been inspired simply by a belief that the EC has contributed to peace on the European continent, since the ECSC has reconciled the arch-enemies Germany and France by eliminating nationally based war productions.

Fourth, as a result, one should not misread Rawls's EC statement in the following way:

'Rawls, in the single moment where he refers to the EU in [*The Law of Peoples*], situates it, wrongly, in the range of regional organisations that can be constituted in the framework of the Society of Peoples. This way of facing the Union does not take into consideration the existing supranational character of the European integration' (Barcelos and Queiroz 2008: 9).

Again, Rawls does not refer to the contemporary EU literally; so he need not be 'situating it wrongly'. Consequently, this reading - albeit rightly noting the incompatibility between Rawls's Society of Peoples and the EU - misses the point that, for Rawls, the 'existing supranational character of the European integration' may be the very problem from the Society of Peoples (as well as the domestic) perspective, and that this framework would suggest a very different, more open as well as more modest, European regional organization.

In sum, Rawls's at first glance rather puzzling reference to the EC is, or at least can be explained as, consistent with his overall theory of justice and even as an implicit criticism of the EU. For Rawls, what is problematic is not European cooperation - thus, he is positive about (fair) cooperation, negotiation or diplomacy, and trade as legitimate, beneficial, and cheap instruments for peoples to meet basic (security) needs and economic interests (Rawls 1999b: 19, 38, 42-43, 46, 52, 64, 69, 93) - but European integration as a quintessential ingredient of the European unification project.

A rejection of 'realistic utopia' counter-arguments

My fourth argument is that counter-arguments about the EU as a realization of Rawls's idea of a realistic utopia do not succeed. The realistic utopia idea fuels Rawls's political-philosophical project and, as such, aims to provide one key criterion for any viable political philosophy (cf. Rawls 2001: 1-5). 'Political philosophy is realistically utopian when it extends what are ordinarily thought of as the limits of practical political possibility,' Rawls (1999b: 6, cf. 11) writes. To say, then, that the Law of Peoples, or any other political theory, is 'realistic' is to say that 'it could and may exist'; to say that it is 'utopian' is to say that 'it joins reasonableness and justice with conditions enabling citizens to realize their fundamental interests' (Rawls 1999b: 7). I shall discuss, and reject, arguments offered by Glyn Morgan and Jürgen Neyer, which entail that the EU indeed belongs to the best we can achieve within the scope the world permits (cf. Rawls 1999b: 124-128, 2005: 88).

According to Morgan (2008: 12), 'Rawls is wrong to reject a Federal Europe. It is possible...to share much of Rawls's political philosophy and come to the conclusion that a Federal Europe is "a realistic utopia".' Morgan (2008: 12-15), then, suggests two 'Rawlsian' arguments in defense of a 'Federal Europe'. The first argument includes two 'routes' to a Federal Europe based on Rawls's theory of domestic justice. Route one entails that, at least from the perspective of the newer EU member states, Rawlsian basic liberties (as opposed to socio-economic goods) are better protected in an enlarged, Federal Europe than in a smaller, intergovernmental Europe or a nation-state. 'A Romanian...might argue that her basic liberties would be better protected by the European Union than by her own only very recently liberal and rather tenuously democratic country' (Morgan 2008: 13). Route two, which starts from the assumption that security is a primary good - something Rawls is rather silent about but presumably would accept -, entails that for their security in today's world Europeans 'need the power that a Federal Europe can alone provide' (Morgan 2008: 14).

Morgan's second argument, rooted in Rawls's theory of international justice (thus, the Law of Peoples), entails that 'a Federal Europe provides a way that liberal wealthy states can fulfill their duties of assistance to the burdened societies in their region' (Morgan 2008: 15). Whereas Rawls (1999b: 108) concedes that 'no easy recipe' exists for helping a burdened society change its political and social culture, a Federal Europe might do just that for states such as Romania and Bulgaria as regional examples of politically-culturally burdened societies.

However, I believe that both Morgan's arguments, taken as arguments for further deepening of the EU (toward a 'Federal Europe'), fail. The first argument's first, 'basic liberties' route may be empirically true, but it is normatively inconclusive for assuming what needs to - but presumably cannot - be explicated: that, from a Rawlsian perspective, European nations should accept the special responsibility to protect basic liberties in other European countries. Indeed, it is hard to see why a shared 'European-ness' as such should give rise to transnational moral obligations on Rawlsian grounds, including realistic utopia ones, as that is morally irrelevant from a Rawlsian perspective. The second, 'security as a primary good' route is dubious in the sense that the United States or the North Atlantic Treaty Organization may be able to (continue to) protect the security of Europeans better than, or just as well as, a Federal Europe could do, and it at best offers an instrumental, conditional, or pragmatic, but not ideal-theoretical and Rawlsian, justification for such a 'European superstate' (cf. Dobson 2006: 519-520). This route is at best realistic but does not seem 'realistically utopian'. Here Morgan (2008: 14), who acknowledges the 'controversial' nature of his security-based justification for a Federal Europe, relies more heavily on political realist theory than on Rawls's philosophy (cf. Morgan 2005, especially as reviewed by Schmalz-Bruns 2007). Like the first argument's first route, the second, 'regional duty of assistance' argument fails even if empirically true (which is not certain): it is dubious to suggest that, from a Rawlsian perspective, European countries should be particularly concerned about duties of assistance to other European countries (especially when these are already partially liberal-democratic) as opposed to duties of assistance toward burdened societies *outside* their region (notably in Sub-Saharan Africa) - duties that have long been more pressing. Again, from a Rawlsian - realistic utopian - perspective, Morgan attaches an unwarranted as well as undefended moral significance to common 'European-ness'.

Neyer offers a third argument, one that requires more attention. Attempting to develop a 'realistic normative conception' of the EU, Neyer (2012b: 527-528) claims to follow Rawls's advice to link normative reflection to what is politically feasible. Thus, from the realistic utopia perspective, political-theoretical

principles must be workable and applicable to ongoing political and social arrangements, expanding the boundaries of what we consider possible without losing touch with reality. Neyer concludes from this that a political theory must somehow mix normative and empirical claims; only then can it assist us when trying to understand EU governance and the merits of its policies. Rawls's pragmatic outlook is helpful in this regard, as idealism, not realism, will bring us back to constitutional nationalism. This argument of Neyer's, then, is a direct one for why the EU is in line with Rawls's realistic utopia as political-philosophical starting-point.

However, Neyer's reading of Rawls's realistic utopia fails for being unduly, if not suspiciously, conservative regarding the EU. First, like the EU, European nation-states are an empirical reality and not merely an ideal, and thus could fall within the range of a realistic utopia, in which, in the absence of a world government, boundaries and coercive structures of some kind must exist (cf. Rawls 1999b: 39; Wenar 2006: 106-110). Second, Neyer does not explain why Rawls himself would disagree with an EU application of his realistic utopia. Rawls regards Mill's stationary state as both realistically utopian and opposed to the EU, as he made clear in his exchange with Van Parijs by adding the following to the passage quoted earlier: about Mill's stationary state, 'I am under no illusion that its time will ever come - certainly not soon - but it is *possible*, and hence it has a place in what I call the idea of realistic utopia' (Rawls, in Rawls and Van Parijs 2003; emphasis in original). And again, Rawls's endorsement of nationality is ideal-normative rather than realistic-empirical and thus has an intentionally utopian dimension. Third, Neyer is unduly quick in connecting the EU as empirical reality to the idea of a realistic utopia (as if Rawlsians simply must accept the EU). But Rawls's realistic utopia, aiming to be realistic in a utopian way, is principally normative and thus potentially critical of particular empirical developments. As Rawls explains:

'[T]he limits of the possible are not given by the actual, for we can to a greater or lesser extent change political and social institutions and much else. [What we have to argue] is that the social world we envision is feasible and might actually exist, if not now then at some future time under happier circumstances' (Rawls 1999b: 12, cf. 2001: 5).

Thus, Neyer's pro-EU misconception of Rawls's realistic utopia blurs the Rawlsian distinction between what is 'realistically utopian' or even 'realistic' on the one hand and what is 'empirical', a 'reality', or 'actual', on the other. Rawls's philosophy may well take the presence of the EU (like that of globalization) seriously and aim to be helpful for understanding it, but it can (and does) still end up being negative about this *suu generis* empirical reality and deem EU policies as merely of non-ideal or superficial importance at best.[11] There is no reason why a Rawlsian must take the EU as somehow limiting realistic utopian possibilities for the future. A non-integrated Europe may be hard to achieve but cannot plausibly be seen as impossible (if we only think of the possibility of a 'Brexit', of the United Kingdom leaving the EU). Neyer's argument, then, is based on a tacit and thus uncritical acceptance of the moral worth of the EU.

In sum, the above three arguments for defending the EU on Rawlsian realistic utopia grounds all fail. The EU is too much empirically 'realistic' and too little 'utopian' to qualify. Again, we have not been offered a valid reason to think that by starting from Rawlsian premises we will arrive at the EU instead of, say, a European society of fully autonomous national societies; quite the contrary.

Conclusion

I have argued that the EU cannot be morally justified from a Rawlsian perspective. Rawls's Euro-skepticism is to be explained from his overall political philosophy in which no room exists for political-economic integration 'from above' and fundamental exclusion of all non-liberal peoples. As a result, anyone who finds Rawls's political philosophy plausible should basically be a Euro-sceptic as well.

According to critic Allen Buchanan (2000: 701), 'Rawls's Law of Peoples...is a set of rules for a vanished Westphalian world and hence is of limited value for our world', as that includes global and regional organizations such as the WTO and the EU (Buchanan 2000: 706). If my argument has been correct, Buchanan is surely right to suggest the incompatibility of Rawls's philosophy on the one hand and the EU (and presumably the WTO) on the other - although we should note that the Law of Peoples does regard the era of absolute sovereignty obsolete. However, while 'our world' may actually be like Buchanan describes it, we should not rule out the possibility that the present world is wrong and that Rawls's philosophy, by making this clear, is not 'of limited value for our world' at all. Rawls's own skepticism about the EU shows that he, for one, acknowledges that 'our world', or some part of it, could be the very problem philosophically. Perhaps his philosophy is right to regard the historical project of European unification as a morally unjustifiable one. To be sure, those who remain convinced that the EU is morally justified could try their luck elsewhere. Yet, in view of Rawls's status as the 'political philosopher to beat' and the reasonable suspicion that a distinctively cosmopolitan philosophy of global (distributive) justice may well be even more skeptical of the EU than Rawls's (cf. Beitz 1999: 215-216), their success is far from certain. Indeed, this outcome is something that the literature on 'cosmopolitan Europe' and philosophical reflection on the EU

should take much more seriously than has occurred so far.

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Notes

[1] I thank Jan Van der Harst for his helpful comments.

[2] That, for Rawls, society is involuntary does, of course, not mean that he must regard every kind of human group formation that features involuntary participation as a 'society'.

[3] While this quote entails the essence of what Rawls says, it is not complete. The next section discusses the fuller version.

[4] http://www.europarl.europa.eu/charter/pdf/text_en.pdf

[5] The EU demands 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union' (quoted in Blair 2010: 142).

[6] Compare also the present section's third sub-argument.

[7] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:FULL:EN:PDF>

[8] The 1993 version reads: 'We can go on to...think of groups of societies joining together into regional associations or federations of some kind, such as the European Community or a commonwealth of the republics in the former Soviet Union.'

[9] In his Rawlsian-inspired analysis of the WTO, Pietro Maffettone (2009) misses this very point. Maffettone argues that Rawlsian principles of fair trade and international cooperation (Rawls 1999b: 42-43) may regulate GATT-style international trade but cannot guide today's WTO-style trade. What Maffettone overlooks, however, is that for Rawls (1999b, who, perhaps not coincidentally, speaks of the GATT in terms of an ideal-typical cooperative organization and leaves the WTO unmentioned, rather like how he mentions the EC instead of the EU) WTO-style trade may be incompatible with his theory of justice and, as such, ought not to be legitimized by designing principles for it. Indeed, from Rawls's perspective, the very transition from the GATT with its tariffs-based, free policy choice, and shallowly integrated approach to the WTO with its almost inescapable scope and impact and deeply integrated approach (Maffettone 2009) may well be deplored (like the EU and globalization in general) for its basic attack on social justice.

[10] While Rawls speaks of 'societies' as potential EC members in the 1993 version of our quote (see note 8), in its 1999 version (quoted in the text) he states that 'decent peoples' should be considered members alongside liberal ones.

[11] Compare how Rawls (2001: 135-140) tries to assess 'welfare state capitalism' but concludes that it should be replaced by 'property-owning democracy', a 'realistically utopian' system clearly far removed from actual reality.

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