

## **Justice and Democracy : Are they Incompatible ?\***

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Figures 1 and 2 not included

It happened some months ago, in a peculiar village on the banks of the Volga. After a long series of toasts at the end of the meal to mark the completion of the Summer School in which I had participated, a man in his sixties, Professor of Philosophy at the Academy of Sciences and active collaborator of the Gorbachev Foundation, came up to me. « You are Belgian », he said to me and had I been Canadian or Swiss, or even Spanish he would doubtless have spoken much the same. « You know that for us, living in the former Soviet Union, Belgium represents something important. Because it constitutes a rare example of a multi-national state which has succeeded. At the Gorbachev Foundation we were and remain very attached to the Soviet Union, not because it was soviet but because it was a union. And we believe that only such a union can guarantee not just an effective protection of the minorities within its diverse regions, but also a higher degree of solidarity between its more prosperous and its poorer regions ».

Listening to him speak I felt myself becoming more and more embarrassed (as no doubt too, I would had I been Canadian) thinking of the most recent vicissitudes in the chronic and ever-present disputes which characterise the multi-national state which he believed was so successful. At this point, I was thinking in particular of the demand to secede from the national social security system that had been forcefully made by a collection of Flemish cultural organisations. According to these organisations, each of the two peoples which make up the Belgian state should have the right to fashion, according to its own preferences and with its own resources, all interpersonal transfers, and it was thus urgent to put an end to the current system which transferred each year from Flanders (Dutch speaking, more prosperous and more populated) to Wallonia (French speaking, less prosperous and less populated) from three to four per cent of their respective GDPs.

The connection between these two examples (and a crucial starting-point for this essay) is that both the dislocation of the USSR and the possible breaking up of the Belgian social security system remove us from implementing a conception of justice involving a strong solidarity across the frontiers between peoples, while —

rightly — appealing to a concern with achieving more democracy. For a people's right to determine its fate and to fashion their social policies in their own way is closely linked with what is customarily meant by the ideal of democracy. This double example thus enables me to stretch the thesis that I will try in a moment to substantiate by using two further illustrations : contrary to the misleading impressions conveyed by political rhetoric, the relation between democracy and justice, very far from expressing a pre-established harmony, is on the contrary highly problematic.

### **1. Which Justice, Which Democracy ?**

Before going any further with these illustrations, I must define what I mean here by justice and what I will call democracy. As I believe not only in the virtues of Ockam's razor, but even more in those of a conceptual trimmer — I hate fat concepts into which one sinks and becomes entangled — I will offer in both cases a deliberately simple, even simplistic, definition. I will define democracy as the combination of majority rule, universal suffrage and free voting. Of course, each of the elements of this definition requires further precision. But since my argument is largely independent of their exact specification, I will not dwell on his definition, except to stress that this is a purely procedural definition of democracy : what makes a society democratic is that public decisions are (ultimately) taken according to a procedure which satisfies the three conditions mentioned, and not that these decisions are conducive to some specific substantive result.

Further, I will define justice as the maximin of material conditions, possibly subject to satisfying certain constraints, such as respect for fundamental liberties. What makes a society just, in other words, is that thanks to its institutions the conditions of the least advantaged among its members are made (lastingly) better than what would have happened if other institutions (satisfying the same conditions) had been chosen. In this characterisation of justice, I deliberately use the indeterminate notion of material condition, which can be specified for example in terms of income, potential income, wealth, standard of living, endowments, resources, capacities, socioeconomic advantages, etc. For simplicity, however, I will suppose here that net monetary income constitutes an adequate index of this material condition. It is the maximin, applied to this variable, which constitutes the criterion of justice. However, an argument analogous to the one presented here applies a fortiori to more egalitarian conceptions of justice (that is, to conceptions which imply that a worsening of the condition

of the worst-off can lead to more justice if it produces a greater equality of conditions), and also though, more weakly, to more aggregative conceptions of justice (that is, to conceptions which imply that a worsening of the condition of the worst-off can lead to more justice providing it give rise to an improvement in the average situation). The maximin will consequently be used here as a privileged member of a larger family of criteria of distribution.

Even if one takes account of these caveats, the conception of justice put forward here remains particular and controversial. On the one hand, it is a liberal conception of justice, in the sense that it makes no appeal, in deciding what is just, to some particular conception of the good life ; instead, it is intended to be compatible with an equal respect for the various conceptions of the good life which co-exist within our pluralist societies. This first limitation is scarcely a problem, in the sense that the great majority of contemporary conceptions of justice are also liberal in this sense. But the conception of justice proposed here is not simply liberal. It is also solidaristic, i.e. in the sense that it requires an equal concern for all citizens, an equal consideration of the interests of all members of society. Solidaristic conceptions contrast with entitlement conceptions, which regard justice as nothing other than the absence of any violation of individual natural rights, existing prior to all social institutions<sup>i</sup>.

The choice of a solidaristic perspective — and in particular for the maximin of material conditions adopted here as its most plausible interpretation can be justified in at least two ways. First of all, along with the conceptions of Rawls, Sen, Dworkin, and many others, the conception of justice to which I am personally committed is liberal-solidaristic in the sense indicated ; it is thus natural that, in my thinking about the relations between justice and democracy, I pay this interpretation a privileged attention. In addition, it is also intrinsically more interesting to explore the relation between democracy and solidaristic justice than the relation between democracy and justice as entitlement. For according to those who support the latter conception, democracy most often constitutes an obvious threat menace for justice, understood as respect for pre-defined individual rights, and their whole institutional strategy consists in strictly limiting the exercise of democratic power, sometimes to the point of practically annihilating it, so as to guarantee to the individual protection against the oppression by the majority. That there are strong tensions between democracy and this sort of justice is nothing to be surprised at, and has moreover been forcefully emphasized by numerous authors<sup>ii</sup>. But when by contrast justice is conceived as equal concern for all members of society, would we not expect that democracy (in the sense indicated above), by according to each an equal weight in the outcomes of voting procedures, supplies justice

with a steadfast ally ? We shall see that this is not so, and that between solidaristic justice and democracy the presumption of a pre-established harmony will not withstand analysis<sup>iii</sup>.

## **2. Maximed versus maximin**

To understand an initial tension between democracy and justice as defined here, let us begin by supposing that democracy operates through an electoral system in which two parties confront each other trying to obtain a majority which will permit them to govern ; that the voters are motivated by their personal self-interest, itself exclusively determined by the level of their income that they are costlessly and perfectly informed of the implications of the programs of both parties and hence that they vote for the party whose program maximises their income ; that the only question to be settled is the fixing, between zero and 100 per cent of the flat rate of taxation upon incomes that will be used to finance an unconditional grant paid to everyone ; and that the total of incomes is not influenced, even after a time lag, by the level of that rate.

In this extremely simplified model, where is the dynamics of democracy leading ? The answer is clear : everything depends on the respective levels of the median income and of the mean income<sup>iv</sup>. If the median voter — the one whose vote is required to obtain 50 +  $\square$ % of votes and whose preferences are therefore decisive — earns a gross income greater than the mean income, each one of these two parties will have an interest in proposing a zero rate of tax, and thus a distribution of net incomes identical to the distribution of gross incomes. For all strictly positive rates will leave the median voter with a net income closer to the mean income, and thus smaller than what he would receive in the case of a zero tax. If by contrast the median voter earns a gross income smaller than the mean income, each of the two parties will have an interest in proposing a tax rate of 100%, and thus a strictly egalitarian distribution of net incomes, since for all rates below that the median voter would receive a smaller net transfer. The rate of 100% is of course also — in both cases — the rate for which the smallest incomes are maximised. However, one universal feature of the distribution of gross incomes in capitalist countries is skewed upward, so that the mean income lies beyond, and often well beyond, the median income. It is therefore the second of the above-mentioned cases that is relevant. In the context of the model described in the preceding paragraph (and represented in Figure 1), therefore, there is no tension between what justice requires and where democracy leads. The maximisation of median income, secured the democratic

process, coincides with the maximisation of minimum income, which is demanded by an equal concern for the condition of all.

[Figure 1 about here]

The model of Figure 1, however, rests on the very restrictive assumption that the total income yielded is in no way affected, even in the long term, by the manner in which that income is distributed. Even when fully anticipated by the economic agents, the payment to all of an unconditional income absorbing the whole disposable income, for example, would not diminish one's eagerness to seek a job, to muster effort, to save or to make risky investments, nor the capacity of talented persons to exercise their talents. When one abandons that highly unrealistic assumption to take into account the dynamic effects of taxes and transfers, the harmony between justice and democracy breaks down. True, a tax of 100% still raises both the minimum income and the median income to the level of the mean income. But the mean income (gross or net) with a tax of 100% is no longer equal to what it would be in the absence of any tax. It has every chance of being considerably smaller, and even smaller than the net median income and the net minimum income would be for lower rates of taxation. Neither a concern for winning the favours of the median voter nor a concern for serving the interests of the least advantaged would therefore lead to advocating a tax rate of 100%.

Moreover, and this is most important for our topic, there is now no reason why these two concerns would lead to selecting the same rate of taxation. Figure 2 shows three hypothetical curves that represent the distribution of net income corresponding to tax rates of zero, 30 and 100%, when the dynamic effects (ignored in Figure 1) are taken into account. We can see there that the mean income (and thus the total) is slightly smaller when the rate is 30% than when it is zero, and considerably smaller when it is 100%. Of the three rates, however, it is still 100% which is the best from the point of view of maximin, as the positive effect on the minimum income of the equalization (when passing from 30 to 100%) more than compensates the negative effect of the reduction in aggregate income. From the point of view of the median income, by contrast, the opposite is true, and 30% is consequently the preferred rate. The order of preference corresponding to the two points of view thus ceases to coincide, and there is no longer any reason to expect that the optimal rate of taxation will be the same according to the two criteria. In the situation partially described in Figure 2, for example, it is quite possible that the median income would be maximised for a tax rate of 25%, while the minimal income would be

maximised for a rate of 75%. The reassuring convergence between the maximed of democracy and the maximin of justice has well and truly disappeared.

[Figure 2 about here]

Of course, even after having relaxing the assumption that aggregate income is insensitive to the rate of taxation, the model still remains strongly unrealistic. The parties may be many and their electoral programs multidimensional, the tax may be progressive and the transfers strongly differentiated, the personal interest of the voters may be far from reducing to the level of their net income, and their perception of the impact of the various platforms from the point of view of that personal interest may be burdened by a high degree of inexactitude and/or uncertainty. Lifting these assumptions, however, considerably complicates things, without doing much to raise hopes of abolishing, or even attenuating, the divergence that was pointed out. Quite to the contrary, in removing some of the most unrealistic assumptions, we see a further deepening of the gulf which separates the actual functioning of our democracies from the realisation of justice as maximin.

Thus, if one takes account of the fact that it is necessary to make the party and its candidates known to the voters, that one must convince them that the electoral platform of the party is closer to their interests than that of its opponents, and sufficiently so to make it worth the trouble to get out to vote, and if especially one takes account of the fact that to do all that effectively requires a lot of money, then our assumption of the income maximisation of the median voter becomes clearly less plausible than the rival assumption of the income maximisation of the owner of the median dollar, as a predictor of the electoral platform of the parties. And in that case, we do not even need to appeal to the dynamic considerations discussed above for the gulf between maximed and maximin to deepen. The (gross) median dollar, indeed, has every chance of hiding in the pocket of a voter whose gross income is far higher than the mean income. In this case, consequently, and even excluding (as in Figure 1) all negative effects of taxation on the aggregate income, the democratic dynamic leads, under our simplified assumptions, to selecting a zero rate of taxation, and thus one that lies as far as possible from a rate of 100% which, under our assumptions, maximin requires one to choose<sup>v</sup>.

Whether we deviate from the overly simplified initial model by one or the other of these two roads — by bringing in a dynamic consideration or economic power — the preestablished harmony between justice and

democracy obviously evaporates. Instead there emerges a profound tension, to which I shall return in a moment. But before that, I would like quickly to discuss a second tension, quite different from the first.

### **3. Democracy against migration**

Let us apply a conception of justice of the type held here to the world level. It is clear that the disparities of condition related to being a citizen of one nation rather than another constitute massive injustices in this sense. How can they be reduced ? Hesitation is out of place : destroy the borders, that is to say remove at once the obstacles to the circulation of capital — to its free movement towards the poorest countries — and to the circulation of the workers — to their free migration towards the richest countries. Is this what democracy leads us to ? It is certainly not what a brief glimpse of the evolution of the political fate of migrations over the course of the last century would urge us to think<sup>vi</sup>.

When international disparities began to widen because of the emergence of industrial society, the capitalist nations were far from being democratic. Politically, neither the influx of foreign workers nor the exodus of capital was then a problem. The bourgeoisie who exercised a direct control over political power had little to fear, and much to gain, from the influx of a cheap and eager work force, which they did not even have to risk having to put up with their fashionable suburbs. The borders, consequently, could remain wide open.

It was only after the first world war that the requirement to obtain an entry visa, which made its appearance in the course of the nineteenth century, was generalised across the industrial world. Why suddenly this general closing of borders, new to the history of mankind ? Essentially because of the conjunction of two factors : first, the deepening of the inequality of conditions on a world scale which derives from the expansion of capitalism and the demographic and ecological developments more or less directly linked to it ; second, the growth in the political power of the working class and its organisations, closely related to the progressive implementation of universal suffrage. In short, the closing of borders was the joint product of capitalism and democracy. While capitalism generates migratory pressures, democracy provides those who (in their salaries and living environment) would suffer from these migrations, with the ability to stem them.

If at least this very stylised outline is (albeit approximately) correct, it is the very extension of democracy that constitutes the main obstacle along one road— perhaps the only significant one — towards more

justice on the world scale. Here, too, we are far from a preestablished harmony between justice and democracy, since it is the very deepening of democracy which creates an increasingly robust obstacle to the realisation of justice as maximin of conditions at the world level. And the spread of democracy to all the nations of the world — which is different, of course, from the advent of a world democracy — will not diminish, but indeed will contribute to, the strength of that obstacle<sup>vii</sup>.

#### **4. Democratic engineering**

Once aware of these two, quite different, tensions, what conclusions can we draw ? I shall propose two : one rather broad, the other more refined.

If we cannot assume a preestablished harmony between justice and democracy, if on the contrary there exists between them — and for deep-rooted reasons — some acute conflicts, we must ask which of the two it is preferable to sacrifice. My reply to that question is clear : let us stick to justice, and sacrifice democracy. Indeed, the latter is not part of an ideal that it is important to pursue<sup>viii</sup>. It only constitutes an institutional instrument which it is legitimate to deviate from if the pursuit of the ideal requires it. I stress the “if” because while more democracy may take us further from justice, less democracy — need it be said ? — does not necessarily bring us closer to it<sup>ix</sup>.

This first conclusion is without doubt somewhat too crude. Perhaps it treats the venerable theme of democracy too swiftly. But above all, it does not address the really important question. For if it is a matter of realising the conception of justice adopted here, it is difficult to see how a non-democratic procedure (one which does not satisfy the three minimal conditions set forth) can offer the best guarantees. This does not necessarily hold for the other conceptions of justice. Thus, the American neo-liberal economist Henry Hazlitt (1968) proposed, in order to dramatically weaken the electoral pressure to increase social transfers, withdrawing the right to vote from all citizens in debt with respect to the state : the recipients of social benefits could only regain the right to vote when they had paid more in taxes and contributions than they had received in benefits<sup>x</sup>. This negation of universal suffrage no doubt reduces the tension between the “democratic” process and justice as Hazlitt and other neo-liberals understand the latter, but it still widens the gap which separates that process from justice as maximin. To pursue the latter effectively, it is highly unlikely that we need ever renounce one or other

of the three conditions which define democracy, and most probable on the contrary that rigorously respecting them — notably by extending the right to vote to immigrants and lifting administrative obstacles to the effective participation of the least advantaged elections — constitutes a crucial precondition to all significant progress in that direction. The most relevant question is thus not whether justice requires democracy in the sense indicated. It is rather to know which, among the numerous setups for collective decision-making which satisfy the three minimal conditions, is the most capable of ensuring the implementation of the conception of justice adopted here.

To resolve, or at least markedly to reduce, the first of the two tensions discussed above, for example, it is essential that the setup chosen should permit the emergence of a public debate through which all the parties concerned can make their positions and arguments heard and above all influence, from the sole fact that they are known to listen, the contents of the speeches and the tenor of the decisions. Only the existence and the liveliness of such a debate can generate and ceaselessly regenerate throughout society a sense of justice that conforms to the conception of justice adopted here. Moreover, they alone are capable of making democracy an institutional mechanism which enables this sense of justice to fashion the laws that society gives itself and, through those laws, its actual functioning. Not only does democracy thus institutionalised appear in this case as a promising means of pursuing the realisation of a solidaristic conception of justice, such as the maximin of material conditions. But it is very difficult to find any other plausible foundation for the hope of significantly bringing the way in which material resources are divided between the members of our societies significantly closer to justice as maximin.

The general thesis that I have thus tried to formulate, illustrate and thereby support, is that, in reflecting and acting on democratic institutions — the electoral system, referendum, decentralisation, the balancing of powers, the recruitment, remuneration and rotation of elected officials, the financing of election campaigns, etc. — what is at stake is not the elaboration and pursuit of a democratic ideal which would make sense in itself. The aim should not be, for example, in the name of democracy as an end in itself, to design an electoral system which will produce an assembly as “representative” of the people as possible, statistically speaking, nor to build a system of collective decision making which will produce choices as close as possible to the “popular will”, i.e. to the true preferences of the majority of citizens. No : when it makes a search for optimal combinations — between independence and submission of the elected to their electoral base for example, or between the law of the majority and constitutional constraints, or between governmental stability and the expression of minorities —

democratic engineering should not be guided by an autonomous democratic ideal — equality of power between all citizens, the realisation of the general will, etc. — but by an ideal of justice, in relation to which any democratic ideal that one might wish to formulate constitutes, at best, a sheer instrument.

This thesis and the contrast which underlies it may be usefully clarified by another illustration, very different from those introduced so far. In 1931 there took place in London the second Round Table Conference to decide the political future of India. Among the participants figured B.R. Ambedkar, a brilliant lawyer and the political leader of the Untouchables. With the support of the British, it was agreed that the Untouchables would choose their own representatives, and thus would not participate in the general elections<sup>xi</sup>. Gandhi was so incensed by this decision that he began a hunger strike. Ambedkar gave way and accepted a compromise — the Poona pact — whereby 148 seats were assigned to the Untouchables, but without dividing the electorates. In each one of the constituencies concerned — the number of which corresponds approximately to the proportion of Untouchables in the total population of India (15%) — candidates from the Untouchable caste alone can stand, even though the latter constitutes, in each of these constituencies, only a minority of the population. In the other constituencies, the seats are in principle open to members of all the castes, although the Untouchables are de facto practically excluded from them (they currently occupy three out of a total of more than 400).

The system conceived at that time still functions more than a half a century later. And the fact that it was preferred to Ambedkar's constitutes proposal probably one of the key facts capable of explaining the astonishing persistence of (formal) democracy in one of the planet's most crowded, vast, poor and divided countries. For the dynamic of the two systems is profoundly different. If, in the context of the system actually adopted, a party wants to have a chance of capturing the seats reserved for the Untouchables, it is compelled to recruit from among the Untouchable elites and thus to fashion its electoral platform accordingly. Of course, such a system deprives the most radical among the Untouchables of parliamentary representation — which helps us understand of the passionate disagreement between Ambedkar and Gandhi. But at the same time it is probably closely linked to the remarkable fact that, for a half century now, the Untouchables have been enjoying an astonishing range of measures of positive discrimination. Hence it does not seem absurd to conjecture that the system adopted has strongly contributed, not only to the stability of the democratic institutions, but also to the realisation of a solidaristic conception of justice<sup>xii</sup>.

The most general empirical hypothesis this analysis suggests is that, from the point of view of the conception of justice which I am committed to, a dynamic democracy embracing all categories of the population

— as is the case, in relation to the cleavage already considered, in the current system in India — is clearly preferable to the dynamic mixture combining electoral competition within each category and power relations of forces — in the best case, diplomacy — between the various categories, which would have prevailed in India if Ambedkar had carried the day<sup>xiii</sup>. This hypothesis may be true or false. But to know which is the most appropriate democratic setup, it is this type of hypothesis that we must evaluate. Is it not anti-democratic to deprive the (non-untouchable) majority of the right of eligibility in the constituencies reserved for Untouchable candidates ? Without doubt. But who cares ? What matters is to evaluate coolly, in the light of the most relevant empirical evidence and theoretical analysis, the impact that can be expected from the various possible setups, as far as social justice is concerned.

## **5. Globalising democracy**

This approach can easily be extended to the twofold example with which I began. When deciding whether we must keep a federal level or not and, if so, what powers must be attributed to it, what mode of political representation must be adopted there, etc, the question that must be asked — in the case of the ex-Soviet Union as in the case of Belgium (or Switzerland or Canada or Spain) — is not what would be most democratic. The important thing is rather to identify the distribution of powers which has the best chance of promoting the realisation, on the largest possible scale, of the conception of justice to which we are committed.

That task, needless to say, is difficult and complex, and it branches out rapidly into multiple sub-questions. With respect to this twofold example, I shall therefore do no more than express a (perhaps too) simple and (perhaps too) strong conviction that I have developed while casually observing the situation in Belgium and in Europe. It is that from the vantage of the conception of justice adopted here, it is essential that key decisions about the distribution of resources — and also about fundamental liberties<sup>xiv</sup> — should be taken by a federal parliament whose members directly represent the citizens of the federation and not the federated entities, and where all would be done, for example at the level of the method of voting, of the constitution of parliamentary groups, of the relations with the media, etc., so that the decisive cleavages are more ideological than national<sup>xv</sup>. The important thing, in other words, is that the dynamics be such that the policies adopted would not be a sheer compromise negotiated between the representatives of the various national components<sup>xvi</sup>, but that they would be

subjected to the constraint of having to be justified by way of arguments that appeal to the citizens of the whole federation<sup>xvii</sup>.

What this conviction illustrates, once again, is the answer I am offering to the question posed in the title. If there is a compatibility between democracy and justice, it is not by virtue of a happily preestablished harmony between the two ideals. It can only be as a result of laborious, ingenious, sometimes frankly Machiavellian, institutional engineering, aiming not only to establish or to preserve democracy, but above all to select, among the innumerable democratic setups, those which have the best chance — sometimes still very feeble — of rendering our world a little more just — or at least a little less massively unjust — than it is today.

This holds in particular for the most resilient tension, illustrated by the example of migration, which confronts democracy at the level of nations (be it of all nations) and solidaristic justice at the world level. That this is indeed a tension which should arouse our concern is not unanimously admitted. For many argue that between justice within a nation and justice on the world scale, there is a radical difference. Whereas within one nation a solidaristic conception makes obvious sense, between the nations, on the other hand, justice only demands rules of international trade securing the equivalence of the goods exchanged, a fair division of the surplus of mutually advantageous cooperation and an assistance in the case of famine or of catastrophe<sup>xviii</sup>. When applied to the twofold example just discussed preceding and above all when extended to the case of migration, the point of view adopted here presupposes on the contrary that this dichotomy is illegitimate, that the solidaristic conception can legitimately apply across the borders of nations, and that if democratic institutions which are capable of lending credibility to such an extension do not exist, one should fight to put them in place. The only borders which constitute anything other than a temporary pause, imposed by pragmatic imperatives, in the progress of globalisation (as opposed to sheer diffusion) of democracy and, thereby, of a solidaristic conception of justice, are the borders of mankind itself.

The realisation of this vision implies neither drastic centralisation nor massive uniformity. Providing systematic use is made of the principle of subsidiarity, the realisation of a solidaristic conception of justice and, therefore, the putting into place of institutions which make the latter possible are, on the contrary, ever more essential to protect the diversity of cultures against the pressure towards uniformity which stems from the growing hold of the world market. For a solidaristic vision of global justice, does not require that one should rush to break down frontiers and thus to allow the migratory flux to rapidly erode differences. That would be a very crude way of contributing to the world maximin of conditions on a world scale. Much as the necessity of

tackling the causes of vagrancy played a crucial role in the pre–history of the Welfare state, i.e. of those institutions which aimed to implement equal concern at the national level, so it from the need to stabilize the vagrants of our era, the transnational migrants, that we can expect a decisive impact in the establishment of the institutions required to realise something like equal concern at the world level. And, just as in the setting of individual nations, such institutions should include a system of transfers as individualized, as unconditional and as high as possible.

Is this utopian ? Of course it is — and this is precisely the central theme of this essay — as long as appropriate democratic institutions have not been established<sup>xix</sup>. But isn't the very establishment of such institutions utopian ? Is it not already too ambitious to want simply to preserve, deepen and generalise democracy within nations ? Is a multinational democracy, as John Stuart Mill (1861, pp. 291–92) believed, not bound to remain, if it ever comes into existence, extremely precariousness ? Perhaps so. And in this case the tension between justice and democracy illustrated by the example of migration will persist in all its acuteness. World justice and democracy will always be incompatible. But perhaps not. For all of us, people of the Earth, often through grief and conflict, are becoming ever more aware that we share the same surface to walk and dwell on, that we live, directly or indirectly, the same natural resources, that our wastes are discharged into the same air and water, that our goods and services are contending in the same markets ; in short that we are bound, for better and worse, by the ever tighter interdependence from which there is no escape but through further involvement. If barbarism and chaos are to be avoided, this can only be through the establishment, no doubt laborious and meandering, of true democratic institutions beyond the national level.

Hence, the failings and difficulties of supra–national states should not make us give up. Instead, they should educate and guide us. For the sake of the man who came up to me on the bank of the Volga and for the sake of many others across the world, what needs doing today is try differently what has not succeeded and dare to try what has not yet been.

What is at stake here is, for sure, the reconciliation of democracy and justice. It is perhaps also our very survival.

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Van Parijs, P. 1993b. Solidarité et responsabilité : une contradiction insurmontable ? La Revue Nouvelle 11 : 58–64.

## Notes

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<sup>i</sup> Van Parijs (1991, chap. 10) articulates and discusses more systematically the various families of conceptions of justice summarily characterised here.

<sup>ii</sup> The locus classicus is Hayek (1960, chap. 7), which cites some earlier formulations of this tension between democracy and liberalism by Jose Ortega y Gasset, Hans Kelsen and others.

<sup>iii</sup> If we consider that the definition of solidaristic justice includes the equal distribution to all of the right to vote and freedom of speech — as is the case in Rawls (1971 ; 1993), for example — it is clear that this tension fades away (a non–democratic society is necessarily unjust), or rather it must be reformulated as an internal tension between the different components of justice as equal concern.

<sup>iv</sup> This section is of course inspired by (the most elementary version of) the economic theory of democracy, whose origins go back to Downs (1957). See, for example, Ordeshook (1986) for a survey of the literature.

<sup>v</sup> Among the other complications worth exploring is the gap between the actual and the expected impact of various electoral programs. If the voters are typically the victims of a static illusion, which makes them neglect the dynamic impact of the redistributions, that are being contemplated does the median voter not have a

tendency to promote, in the belief that it serves his personal interest, redistributive policy which serves much more the interests of voters poorer than him ? Conceivably. But isn't instead the tendency nowadays — as a result of the spectacular collapse of European communism but also because of the uncertainty induced by an ever deeper immersion in the world market — to an overestimation by the electorate of the negative consequences of strongly solidaristic policies ?

<sup>vi</sup> This section is based on several of the contributions contained in by Barry and Goodin's (1992) very stimulating collection.

<sup>vii</sup> According to this analysis, while capitalism and democracy are jointly at the source of the closing of borders, it is democracy, not capitalism, which is (here) in conflict with justice as maximin. For it is of course capitalism which generates a very unequal development, but it is democracy which blocks a wider distribution of the fruits of that development through migration. This analysis of the relations between capitalism, migratory movements and global justice is of course still very schematic. See Van Parijs (1993a, chap. 7) for a somewhat less summary treatment.

<sup>viii</sup> This purely instrumentalist conception of democracy is of course far from being new. One finds it for example in Schumpeter (1943, p. 242) : « Democracy is a political method ... incapable of being an end in itself, irrespective of what decisions it will produce under given historical circumstances. And this must be the starting point of any attempt at defining it. »; in Hayek (1960, pp. 106, 117) : « However strong the general case for democracy, it is not an ultimate or absolute value and must be judged by what it will achieve. It is probably the best method of achieving certain ends, but it is not an end in itself ... The danger is that we will mistake a means for ensuring justice for justice itself »; and, in most systematic fashion, in Dworkin (1989), who distinguishes detached conceptions of democracy, which justify it without any reference to its consequences, and dependent conceptions, which propose by contrast a consequentialist justification of democratic institutions. Even diversely interpreted, justice only constitutes, of course, one of the ends by reference to which it dependent (or instrumental) conceptions can conceivably be defined. Peace and growth, for example, constitute further possibilities. But with Dworkin as with Hayek, it is also by reference to justice that democracy is made instrumental.

<sup>ix</sup> This is why, as Norman (1990, p. 119) suggests, it may be politically expedient, in circumstances where it can contribute to discrediting them, to strike at some undesirable reforms by denouncing their anti-democratic nature, even if the basis of their undesirability does not reside in their anti-democratic nature.

<sup>x</sup> One finds a sketch of the same idea in Hayek (1960, p. 105) where he notes that “it is also possible for reasonable people to argue that the ideals of democracy would be better served if, say, all the servants of government or all recipients of public charity were excluded from the vote.”

<sup>xi</sup> One solution of this type is apparently in force today, as far as the four seats reserved for New Zealand’s Maoris (also geographically dispersed) are concerned (Nagel 1993, p. 11).

<sup>xii</sup> For further details — and nuances — see Delière (1993) and Jaffrelot (1993).

<sup>xiii</sup> In the United States, it is gerrymandering, the ad hoc redrawing of electoral boundaries, which has been adopted to try to ensure a significant representation for scattered minorities (particularly blacks) despite the first-past-the-post system. But this solution holds little attraction from the point of view of a solidaristic conception of justice — and no doubt contributes notably to explaining the pitiful performance of the richest nation on the planet in matters of social policy. As Douglas Rae (1993, p. 14) notes, the solution has as its inevitable side-effect that the number of members of Congress who have practically no Blacks in their constituencies is being maximized: « it frees the majority of incumbents from anxiety about the needs and perceptions of African-Americans. Surely, this is not what we need if we are to achieve better and fairer outcomes nationally. ».

<sup>xiv</sup> As noted at the beginning, the maximin of conditions can be subjected to the constraint of a strict respect for fundamental liberties. And a central task of democratic engineering — for example, in the choice between monist democracy, dualist democracy and rights foundationalism, to borrow Ackerman’s terminology (1991) — will consequently consist in determining the optimal status and contents of constitutional protections. The hypothesis outlined here, concerning this component of a complete conception of social justice, is that fundamental liberties have more chance of being adequately determined (by the standards of this conception) and effectively protected if that determination and that protection are carried out by a larger entity than if they are carried out by smaller and thus probably more homogeneous entities in ethnic, linguistic or religious terms.

<sup>xv</sup> In the same vein, the Indian example discussed in the preceding section suggests that if one day the European Community had to choose its President by direct elections, it might for example be advisable to

impose each time (and by rotation) the member state(s) of which all the candidates must be citizens each time, with each European citizen of course each time enjoying of course the right to vote.

<sup>xvi</sup> In the manner of the Council of Ministers of the European Community, of the conference of presidents of the Confederation of Independent States, or of the so-called « dialogue of community to community » which sometimes threatens to short-circuit the national Parliament in Belgium.

<sup>xvii</sup> The importance of this distinction between arguing and bargaining is usefully stressed by Jon Elster (1991) in the context of a comparative analysis of Constitutional Assemblies.

<sup>xviii</sup> One finds some variants of this view, for example, in the above-mentioned document by Flemish cultural organisations which I discuss in Van Parijs (1993b), but also in the formulation that Rawls (1993b) has recently given to the extension to the « law of peoples » of his conception of justice as fairness.

<sup>xix</sup> Through systems of individual transfers produced by the functioning of democratic institutions at the level of the Belgian state, Flanders (5,800,000 inhabitants) transfers annually (net) to Wallonia (3,300,000 inhabitants) nearly 3% of its GDP, which is the equivalent of about US \$ 3 billion or two and a half times the total GDP of a country such as Burundi (5,600,000 inhabitants). If one compares this total to the derisory sums that Belgium annually transfers to Burundi (one of its former protectorates) by the way of development aid, we can get some idea of the difference it makes to belong to the same democratic entity. An intermediate illustration is provided by the net transfers to the member state of the European Union which benefits most from the Union's overall system of social transfers (the so-called Structural Funds) : Portugal (with 10,600,000 inhabitants and a GDP per capita less than half that of Wallonia) gets annually about one billion dollars in net transfers from the remainder of the European Union. (Main sources of these figures : L'Etat du Monde, Paris, La Découverte, 1992 ; Le FEDER en chiffres 1975–1988, Luxembourg, Fonds européen de développement régional, 1988).