



Synthetizing ETHOS papers on the interplay & tensions between Justice Claims, Mechanisms that impede and Faultlines of Justice

Paper 7.3.1 : Bert van den Brink, Miklos Zala & Tom Theuns

Paper 7.3.2 : Trudie Knijn & Basak Akkan

Paper 7.3.3 : Trudie Knijn, Jelena Belic & Miklos Zala



Funded by the Horizon 2020
Framework Programme of the European Union

Acknowledgements

Although there is only one author listed, this report was very much a collaborative effort. The author would like to thank the coordinators of WP3, Marie-Pierre Granger and Barbara Oomen, for continuous advice and guidance. Without the reports by the country rapporteurs, Veronika Apostolovski and Markus Möstl for Austria, Orsolya Salat for Hungary, Laura Henderson for the Netherlands, Laura Brito and Jessica Morris for Portugal, Ulaş Karan for Turkey and Pier-Luc Dupont for the United Kingdom, it would have been impossible for me to write this report. A judicious reader will notice the very frequent references to their excellent country reports. The country reports are available on the ETHOS website. I thank country rapporteurs for their dedication and hard work. I also wish to thank Sybe de Vries for a helpful review of an earlier version of the report, and the external reviewers of the European Commission for some further helpful suggestions.



Want to learn more about what we are working on?

Visit us at:

Website: <https://ethos-europe.eu>

Facebook: www.facebook.com/ethosjustice/

Blog: www.ethosjustice.wordpress.com

Twitter: www.twitter.com/ethosjustice

Hashtag: #ETHOSjustice

Youtube: www.youtube.com/ethosjustice

European Landscapes of Justice (web) app:
<http://myjustice.eu/>

This publication has been produced with the financial support of the Horizon 2020 Framework Programme of the European Union. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Commission.

Copyright © 2019, ETHOS consortium – All rights reserved ETHOS project

The ETHOS project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No. 727112

About ETHOS

ETHOS - Towards a European Theory Of juStice and fairness, is a European Commission Horizon 2020 research project that seeks to provide building blocks for the development of an empirically informed European theory of justice and fairness. The project seeks to do so by:

- a) refining and deepening the knowledge on the European foundations of justice - both historically based and contemporary envisaged;
- b) enhancing awareness of mechanisms that impede the realisation of justice ideals as they are lived in contemporary Europe;
- c) advancing the understanding of the process of drawing and re-drawing of the boundaries of justice (fault lines); and
- d) providing guidance to politicians, policy makers, advocacies and other stakeholders on how to design and implement policies to reserve inequalities and prevent injustice.

ETHOS does not merely understand justice as an abstract moral ideal, that is universal and worth striving for. Rather, it is understood as a re-enacted and re-constructed "lived" experience. The experience is embedded in firm legal, political, moral, social, economic and cultural institutions that are geared to giving members of society what is their due.

In the ETHOS project, justice is studied as an interdependent relationship between the ideal of justice, and its real manifestation – as set in the highly complex institutions of modern European societies. The relationship between the normative and practical, the formal and informal, is acknowledged and critically assessed through a multi-disciplinary approach.

To enhance the formulation of an empirically-based theory of justice and fairness, ETHOS will explore the normative (ideal) underpinnings of justice and its practical realisation in four heuristically defined domains of justice - social justice, economic justice, political justice, and civil and symbolic justice. These domains are revealed in several spheres:

- a) philosophical and political tradition,
- b) legal framework,
- c) daily (bureaucratic) practice,
- d) current public debates, and
- e) the accounts of the vulnerable populations in six European countries (the Netherlands, the UK, Hungary, Austria, Portugal and Turkey).

The question of drawing boundaries and redrawing the fault-lines of justice permeates the entire investigation.

Alongside Utrecht University in the Netherlands who coordinates the project, five further research institutions cooperate. They are based in Austria (European Training and Research Centre for Human Rights and Democracy), Hungary (Central European University), Portugal (Centre for Social Studies), Turkey (Boğaziçi University), and the UK (University of Bristol). The research project lasts from January 2017 to December 2019

Executive summary

This Deliverable 7.3 belongs to ETHOS' Workpackage 7, 'Theory of Justice in Europe'. It synthesizes the programme's findings in three separate papers. The first paper (7.3.1) written by Bert van den Brink and Miklos Zala focusses on the interplay and tensions between justice claims. The second (7.3.2) written by Trudie Knijn and Basak Akkan aims to analyse mechanisms that impede justice. The third paper (7.3.3) written by Trudie Knijn, Jelna Belic and Miklos Zala explores the fault lines of justice. Each of these papers is based upon all ETHOS theoretical and empirical studies conducted over the past three years of the programme, although the accents of the papers differ.

The first 7.3.1. paper evaluates ETHOS' findings from a philosophical perspective with empirical input by analysing the trade-offs between the three justice claims; redistribution, recognition and representation. It then assesses the practical operationalization of transformative versus affirmative interventions by comparing and contrasting the resulting (Weberian) ideal types to Fraser's non-ideal framework. The paper finally reflects on a European theory of justice and fairness by seeing if Fraser's approach to resolving trade-offs between justice claims is applicable in light of lessons learned from the ETHOS project or that alternative approaches should be considered.

The second 7.3.2. paper takes the non-ideal philosophical assumption of ETHOS as a starting point to evaluate the mechanisms impeding justice that are presented in the empirical studies on law, labour market analyses, political and media discourses, resolution means and everyday experiences of vulnerable populations. It defines mechanisms and their properties as well as activities of entities as mechanisms that impede (in)justice and vulnerable populations as a threefold category; a universal human condition, a category of people in need of support and as a constructed category of dependants. The paper concludes that multi-level governance interpretations of recognitive justice results in diverging acknowledgement of (group)identities, that EU led austerity politics and policies hamper national and local governments in redistributive justice, and that vulnerable populations are badly represented in social institutions. Overall the paper signals that justice principles in Europe do not (yet) contribute to participatory parity and the development of capabilities of the most needy populations.

The third 7.3.3. paper also starts from the non-ideal philosophical assumption of ETHOS by exploring boundary lines drawn between 'us' and 'them'. The synthesized findings are based on the empirical studies on law, labour market analyses, political and media discourses, resolution means and everyday experiences of vulnerable populations. The paper distinguishes boundary lines between citizens and non-citizens as well as boundary lines between citizens belonging to political communities. It concludes that what could be imagined as universal justice principles is hampered by territorial affectedness, sedentariness and ethnic belonging. However, formal belonging is not sufficient due to boundary lines drawn in the context of austerity. Social closure, reciprocity claims and categorization along lines of age, able-bodiedness, ethnicity and gender pertain misdistribution, misrecognition and misrepresentation.

CONTENT

Executive summary	4
List of abbreviations	6
Tables	7

Bert van den Brink, Miklos Zala and Tom Theuns:

The Interplay and Tensions between Justice Claims: Fraser's conception of justice, ETHOS empirical research, and real world political philosophy (paper 7.3.1.)

Executive summary	9
Introduction	10
Participatory parity and the trilemma of justice	11
Trade-offs between dimensions of justice	13
The tripartite understanding of justice in light of ETHOS theoretical and empirical research	18
The ETHOS proposal with regard to the interplay and tensions between justice claims	26
References	30

Trudie Knijn and Basak Akkan:

<i>Mechanisms that impede justice</i> (paper 7.3.2)	35
Executive summary	35
Introduction	36
Mechanisms as entities and activities	36
Theoretical and methodological considerations	37
Entities (with their properties) as mechanisms of justice	40
Activities as mechanisms of justice	47
Conclusions and discussion	60

References	62
------------	----

Trudie Knijn, Jelena Belic and Miklos Zala

<i>Living and Theorizing Boundaries of Justice</i> (paper 7.3.3)	65
Executive summary	65
Introduction	66
Methodological Clarification	68
Boundary drawing between citizens and non-citizens	69
Boundary drawing among citizens	73
Categorization and differentiation	77
Categorizing Fault Lines of Injustice	79
Concluding remarks: Refining the preliminary ideal types	84
References	86

List of Abbreviations

ADR = Alternative Dispute Resolution

CESRC = UN Committee on Economic, Social and Cultural Rights

CJEU = Court of Justice of the European Union

CRPD = Convention on the Rights of Persons with Disabilities

CSO = Civil Society Organization

ECB = European Central Bank

ECHR = European Convention on Human Rights

EctHR = European Court of Human Rights

EU = European Union

HRC = Human Rights Committee

ICCPR = International Covenant on Civil and Political Rights

ICESCR = International Covenant on Economic, Social and Cultural Rights

ILM = Independent Living Movement

IMF = International Monetary Fund

LGBT = Lesbian, Gay, Bisexual, and Transgender

RESC = Revised European Social Charter

TEU = Treaty on European Union

UK = United Kingdom

WP = Work Package

Tables

Table 1: Fraser's original table.	15
Table 2: Fraser's account of remedies to injustice — de-ideologized, with the dimension of representation added.	17

The Interplay and Tensions between Justice Claims: Fraser's conception of justice, ETHOS empirical research, and real world political philosophy

Paper 7.3.1. by Bert van den Brinl, Miklos Zala and Tom Theuns

Executive Summary

The starting points of ETHOS research, Nancy Fraser's philosophical tripartite understanding of (in)justice and its evaluative standard of participatory parity, were developed from a 'non-ideal' theoretical, 'context-sensitive' approach in critical social theory. As such, it is not far removed from the 'real world political philosophy' approach developed in ETHOS deliverable D2.3. Now that ETHOS has conducted in-depth empirical work, the aim of this deliverable is to contrast the project's 'real world political philosophy' approach to theorizing justice to the Fraserian model – where it goes beyond it, and how its theoretical and empirical underpinnings may lead to empirically-informed perspectives on justice in Europe.

The deliverable starts with an introduction to Fraser's position regarding the 'trilemma' of justice (i.e. when proposed one-dimensional solutions to redistributive, recognitive and representative injustices are pulling in different directions) and the meta-value of parity of participation. The tripartite Fraserian understanding of justice that ETHOS started from is valuable as a heuristic tool emphasizing that constellations of injustice are nearly always multi-dimensional phenomena. Its use in ETHOS has also shown that, as an empirically informed theory of concrete forms of injustice, Fraser's theory has its limits. It poses many of the right questions, but it cannot provide us with easy answers to them.

In section 2, the deliverable engages Fraser's views on the interplay and tensions between justice claims, including the possible 'trade-offs' between the various dimensions of justice in the real world and her ideas about 'transformative' versus 'affirmative' strategies to alleviate injustice. The paper updates Fraser's original understanding of dimensions of justice and remedies for repairing them in light of the ETHOS project. With this new matrix in mind, the paper moves on to section 3 in which we show through empirical ETHOS empirical work that we have to *complete and adjust* Fraser's framework in at least three ways. First, the Fraserian categories are incomplete because there are further dimensions of justice which are

important in the European context. Second, Fraser's approach sometimes requires *additional explanatory and normative work*. Third, justice in Europe requires an *alternative framing of justice*; specifically, one that can justify the special mid-level in between full-blown global justice and the nation state. The paper concludes with a brief reflection on the dimensions of justice and presents contours of an alternative approach to analyzing and theorizing injustice – real world political philosophy.

Introduction

The ETHOS project took a tripartite distinction between justice as redistribution, justice as recognition, and justice as representation, taken from the work of Nancy Fraser, as a starting point for conceptualizing justice. This conceptualization was then developed, amended, and complemented by two strands of ETHOS research. The first strand, looking at different academic disciplines' theoretical conceptualizations of justice, can be found in deliverables D2.1, D3.1, D.4.1, D.5.1, and D6.1. These were synthesized in deliverable D2.3. The second, empirical strand comprises mainly D3.4-6, D4.2-5, D5.2-5 and D6.2-5.

Nancy Fraser's philosophical tripartite understanding of justice and injustice and its evaluative standard of participatory parity were developed from a 'non-ideal' theoretical, 'context-sensitive' approach in critical social theory. In that sense, methodologically, it is not far removed from the 'real world political philosophy' approach developed in ETHOS deliverable D2.3. While in both in Fraser's and in the ETHOS approach, 'idealizations are essential' (van den Brink et. al. 2018: 10), both 'examine how things go wrong in the real world instead of what justice would require in an ideal situation' (ibid.). Now that ETHOS has conducted in-depth empirical research, it is time to contrast the project's 'real world political philosophy' approach to theorizing justice to the Fraserian model – where it goes beyond it, and how its theoretical and empirical underpinnings may lead to empirically-informed perspectives on justice in Europe. Our main thesis is that ETHOS empirical research shows that Fraser's tripartite theory rightly points out some genuine tensions between justice claims, but also that her tripartite conception is not wholly adequate, in that additional dimensions of justice and tensions arise that her theory cannot account for.

This paper starts with 1) an introduction to Fraser's position regarding the 'trilemma' of justice and the meta-value of parity of participation. Then it 2) engages her views on the interplay and tensions between justice claims, including the possible 'trade-offs' between the various dimensions of justice in the real world and her ideas about 'transformative' versus 'affirmative' strategies to alleviating injustices. With this in mind, the paper moves on to 3) analyzing the ETHOS theoretical and empirical work on the conceptualization of justice, comparing and contrasting the resulting conceptualizations of justice to Fraser's largely non-ideal schema. This will enable us to 4) reflect on Fraser's schema of the various dimensions of justice, and on the extent it is applicable in light of the ETHOS project, as well as presenting our own ETHOS approach to analyzing and theorizing injustice – real world political philosophy – as an alternative.

Participatory parity and the trilemma of justice

Fraser's tripartite understanding of justice has deep roots in European social and political theory, and more specifically the critical social theory of the Frankfurt School, led by intellectuals such as Max Horkheimer, Theodor W. Adorno, Jürgen Habermas, and Axel Honneth. These European roots are characterized by a rejection of ideal theory and by the philosophical articulation of normative criteria for evaluating justice claims from everyday practice and the history of social struggles (Habermas, 1981; Honneth, 1996). Fraser has observed that this approach is characterized by a 'distinctive dialectic of immanence and transcendence' (Fraser and Honneth 2003: 202). This enigmatic phrase captures the idea that the standards for criticism of given social interactions are already present (or 'immanent') in those interactions (Thompson 2006: 12). Articulating ideals of justice is not in essence a matter of abstract theorizing, it is rather a matter of articulating ideals that are immanent in practice. By virtue of their normative force, these ideals 'transcend' those practices, giving them a critical and proscriptive edge.

Fraser's work offers a social-theoretical toolbox for understanding and addressing real-world experiences of injustice caused by given institutional arrangements in society. At the heart of her 'dialectic of immanence and transcendence' sits the ideal of the *parity of participation* that permits all members of society to participate as peers in social interaction.

This principle starts from of ‘the equal autonomy and moral worth of human beings’; It is deontological — i.e. claimed to be binding on all as a matter of mutual respect between autonomous persons — and non-sectarian (Fraser and Honneth 2003: 229). This is the liberal core of Fraser’s normative theory, which is immanent in the emancipatory social movements of late modernity (remember that in the US context, ‘liberalism’ as a term stand for a moderately left-wing, civil rights focused political view). From liberal normative beginnings, Fraser’s normative theory is developed through deep social-theoretical insight into the dynamics of social and political struggle. It does not focus on liberal ideals and formal rights, but on their social and institutional implementation and realization. It is therefore unsurprising that redistribution, recognition, and representation are the dimensions of justice that Fraser and the ETHOS project focus on (Knijn et. al. 2018: 6). Responding to constellations of injustice with restorative strategies of redistribution, recognition, and political representation of individuals and groups belongs to the standard repertoires of justice in modern welfare states and societies.

The distinction between economic and cultural injustice that is central to the approach is analytical (Fraser 1997: 15). However, while we may agree that both forms of injustice should be remedied in culturally diverse societies that are characterized by capitalistic market relations, the remedies they propose often seem to pull in different directions, leading to apparent tensions between justice claims. Whereas claims to cultural recognition draw attention to the specificity of group identity, redistributive claims ‘often call for abolishing economic arrangements that underpin group specificity’ (for instance received interpretations of socio-economic roles for women and particular immigrant groups) (ibid: 16). The ‘redistribution-recognition dilemma’ states that ‘[p]eople who are subject to both cultural injustice and economic injustice need both recognition and redistribution. They need both to *claim and deny their specificity?*’ (ibid. emphasis added). We are also confronted with a frequent lack of fit between authoritative political forms of representation and state transcending forms of moral affectedness typical of contemporary forms of economic and cultural injustice (Fraser 2005: 75ff., Knijn et. al. 2018: 8-9). Adding the perspective of justice as *representation* results in what we may call a ‘trilemma of injustice’.

Authors in the ETHOS project used these dimensions of justice as a very fruitful starting point of analysis. The theory is multi-dimensional, articulates a principle of parity of

participation that has great normative force, and leaves room for additional normative and empirical approaches to (in)justice. Perhaps the aspect of the multi-dimensional approach that ETHOS researchers have benefitted from most is the insight into the entwinement of dimensions of (in)justice. The intertwining of recognition and redistribution in most injustices that were studied in ETHOS is aptly highlighted by Orsolya Salát (2019: 2-3):

While originally (when designing the ETHOS project) it was assumed that education would first of all affect issues of recognitive justice, the research shows more and more that the three aspects are not or cannot be meaningfully separated alongside rights, or at least in a rights framework.

The trilemma of injustice generates several kinds of interplay and tension between justice claims. First of all, the redistribution-recognition dilemma serves to remind us that, when probing justice claims, it is important to always ask which consequences awarding more recognition for identity claims will have on people's socio-economic standing, and *vice versa*. Second, given that one dimension of justice cannot be reduced to the other, we need to acknowledge that tensions between justice claims cannot be made to disappear; if Fraser is right, they are here to stay. Third, as a matter of representation, even where we reach more or less justifiable balances between justice claims in social and political agreements, we need to be open to the possibility that the agreements reached do not fit the frame of the problem — i.e. the scope both of all subjected to injustice and of all those who deserve to be addressed by solutions. The tripartite understanding of justice that we started from is valuable as a heuristic tool that reminds us that constellations of injustice are nearly always multi-dimensional phenomena. Its use in ETHOS has also shown that, as an empirically informed theory of concrete forms of injustice, Fraser's theory has its limits. It poses many of the right *questions* but, it cannot provide us with easy answers to them.

Trade-offs between dimensions of justice

The view that we have developed under the term 'real world political philosophy' (van den Brink et al. 2018: 10ff; cf. Wolff 2011) was informed by an investigation into non-ideal theoretical approaches to justice. An important conclusion, informed by the non-ideal

theoretical work of Andrea Sangiovanni (2008: 2016), David Wiens (2012), Jonathan Wolff (2011, 2015), and others, is that:

[...] if we want to utilize philosophy for the purpose of public policy, we had often better apply a non-ideal theoretical, bottom up approach to justice that starts from real world problems or injustices and aims to provide solutions to them [...] Real world political philosophers work in that sense in a manner akin to a clinician who examines the patient first and then tries to provide a cure to the patient's problem (Wolff, 2011).

That is a different approach from thinking of problems of injustice in terms of dilemmatic conceptual oppositions. The dilemmatic approach runs the risk of failing to recognize injustices as they meet us 'on the ground', rather than in a pre-given conceptual dilemma between different and conflicting dimensions of justice.

Fraser has distinguished between 'affirmative' and 'transformative' strategies for repairing dilemmatic injustices. Affirmative remedies for injustice she presents as 'correcting inequitable outcomes of social arrangements without disturbing the underlying framework that generates them.' Transformative remedies, by contrast, are 'aimed at correcting inequitable outcomes precisely by restructuring the underlying generative framework' (Fraser 1995: 23, Knijn et. al. 2018: 8-9). Whereas affirmative remedies, in her view, generally promote and solidify problematic group differentiations, either in terms of class or naturalized group identities, transformative remedies 'deconstruct' such differentiations and ask how they facilitate or obstruct cooperation of members of society as peers. The latter have her strong preference. With this understanding of possible remedies to injustice in place, Fraser's account of justice and injustice becomes more than an analytical tool faced with a conceptual dilemma. In her 1995 seminal article, she summarized her view in a table:

	Affirmation	Transformation
Redistribution	<p><i>The liberal welfare state</i></p> <p>Surface reallocations of existing goods to existing groups; supports group differentiations; <i>can generate misrecognition</i></p>	<p><i>Socialism</i></p> <p>Deep restructuring of relations of production; blurs group differentiation; <i>can help remedy some forms of misrecognition</i></p>
Recognition	<p><i>Mainstream multiculturalism</i></p> <p>Surface reallocations of respect to existing identities of existing groups; supports group differentiation</p>	<p><i>Deconstruction</i></p> <p>Deep restructuring of relations of recognition; destabilizes groups differentiation</p>

Fraser's original table in Fraser 1995, p. 27.

This table strongly associates affirmative strategies with the liberal welfare state and mainstream multiculturalism on the one hand and transformative strategies and deconstruction of group identity with socialism. However, ETHOS research we have not found a *prima facie* reason why the liberal welfare state and mainstream multiculturalism could not be open to transformative politics.

Take the case of home care, thoroughly discussed by ETHOS in Trudie Knijn (2019). Knijn argues for the restructuring of the care sphere, promoting what she labels the 'chain model' of care. The chain model aims to 'stimulate capabilities of ageing individuals and the ones that care for them in whatever setting to avoid becoming and be treated as passive dependents' (Knijn 2019: 48). Knijn (2019: 48-49) reports that in the Netherlands, for example:

the [...] chain of care exemplifies a stepwise regulated and assessment based chain of care from the very light forms of care (housekeeping assistance) to more severe forms of care (care and nursing at home paid for by mandatory health insurance) and the most intensive form of care (individualized residential). Such a chain, if well-functioning, offers a tailor-made trajectory of recognition of care needs that is accessible on the basis of

assessment, no matter one's income, thus complies to redistributive justice claims. In all other countries in our study the chain is broken, fragmented and disturbed. Elements are missing in the recognition of care needs and the redistribution of the costs of care.

It would amount to a significant reform of the care sphere if in the countries in question the chain model will be applied (including the Netherlands, which do not fully satisfy the chain model's criteria). For it would significantly reshape the boundaries of the public and private spheres. But we believe that this kind of fundamental reshaping of important boundaries such as the public/private one can be made within the purview of the welfare state.

As Elizabeth Anderson (2008) points out, many aspects of public policy are not adequately captured by Fraser's original two dimensions of redistribution and recognition, which Anderson illustrates in a discussion of affirmative action for African Americans. She concludes that, once we recognize the correct rationale for race-based affirmative action, an affirmative-redistributive policy will *no longer* work against recognition. And what is equally important, the affirmation-recognition of the group will not be based on the group's cultural distinctiveness. For Anderson, this dissolves Fraser's dilemma. And indeed, it dissolves a blindness of the dilemmatic 'pull in two directions' proposed by Fraser. The pull in two directions is not so much there in reality; it is rather a result of how reality is conceptualized by the theorist of justice.

Furthermore, empirical ETHOS research done into the education of children with special needs (Salat, 2018: 44-46) and reflections on how different metrics of justice play into affirmative and transformative strategies (see Anderson 2019; Bugra and Akkan 2019) show that wholesale transformative approaches to injustice are often not reachable. Through their general and idealized agendas, they run the risk of neglecting the strong need for improving individual situations of persons in the here and now (Robeyns 2007). In conclusion, while we find the table analytically helpful, we ought to remove the perhaps all-too-ideological categorizations of liberal welfare state, mainstream multiculturalism, socialism and deconstruction from the remedies. We have added her insights into representation but we have not changed the basic descriptions of dimensions of justice and remedies to (paradoxes of) injustice.

	Affirmation	Transformation
Foundational conception of moral worth	Parity of participation	Parity of Participation
Redistribution	Surface reallocations of existing goods to existing groups; supports group differentiations	Deep restructuring of relations of production; blurs group differentiation
Recognition	Surface reallocations of respect to existing identities of existing groups; supports group differentiation	Deep restructuring of relations of recognition; destabilizes groups differentiation
Representation	Surface determination of inclusion in political representation in virtue of constitutional order of modern territorial state	Deep restructuring of relations of representation determination; destabilizes authority of modern territorial state as determinant of political inclusion

Table 2. Fraser's account of remedies to injustice — de-ideologized, with the dimension of representation added.

One fundamental insight that is not captured by the table is that the functional role of ready-made substantive theories of *social* justice might be replaced by theories of *democratic* justice, which treat justice as a subject of democratic deliberation rather than as a purely theoretical issue (Fraser 2005: 86ff.). Seen in this way, ETHOS holds the principle of parity of participation to have both a substantive evaluative role — specifying a desired end-state by which social arrangements may be evaluated — and serve as a procedural standard by which ‘all affected’ can determine whether the norms and expectations by which they are governed

are legitimate. Rather than looking at constellations of injustice through schematic categorizations, the imperative is to build a piecemeal theory of justice for *particular* constellations, as has been done for immigration (Cole and Heath Wellman 2011), the regulation of drugs (Husak and de Marneffe 2005), gambling (Wolff 2011: Ch. 2), prostitution (de Marneffe 2010), or same-sex marriage (Corvino and Gallagher 2012) (cf. van den Brink 2018: 10).

The ETHOS approach to real world political philosophy, then, does not focus on questions of the all-out justifiability of end-state societal systems but rather on elucidating and repairing specific constellations of injustice in the here and now. We are continually confronted with the question of whether affirmative and second-best options (Wolff 2011) should be fought for and accepted now, and how this will influence our chances at more transformative changes in the future. What seems needed is *combining* the best possible use of affirmative strategies that open up what may seem second best remedies in everyday life, with an analysis of the need for deeper restructurings of the institutional context.

The tripartite understanding of justice in light of ETHOS theoretical and empirical research

ETHOS's focus was deliberately limited to real world, manifest injustices in Europe and to vulnerable groups, such as the disabled, the Roma, immigrants and convicted prisoners. As far as the empirical work-packages (WP 3.2-WP 6.5) are concerned, this set the scope for the range of justice-concerns that were examined in six countries: Austria, Hungary, the Netherlands, Portugal, Turkey and the United Kingdom. The identification and analysis of these contemporary European problems was not only done from the perspective of different academic disciplines (law, sociology, political philosophy, political theory and economics), but also with a diverse methodological toolkit. These methodological tools, to name a few, included the analysis of legal texts, the discourse analysis of national newspapers and politicians' speeches, focus groups and ethnographies.

Before we go into more detail, we must ask ourselves what we can expect from the empirical deliverables regarding conceptualizations of justice. As Fraser herself points out regarding the question of who the subject(s) of justice social science should be, is unable to

provide the criteria that enables us to judge ‘who counts’ from the point of view of justice, and who does not. In her view, ‘such judgments necessarily involve a complex combination of normative reflection, historical interpretation and social theorizing’ (Fraser 2009: 292). As was discussed in van den Brink et al. (2018), empirical data must be combined with normative premises in order to be able to reach normative conclusions. For this reason, the empirical ETHOS research has aimed to look at justice and fairness through the threefold Fraserian lens of redistribution, recognition and representation. The application of this three-dimensional desideratum is not straightforward, however. The empirical deliverables frequently report that the examined countries understand the same justice-related issues differently; guarantee different rights and entitlements and confront vulnerable groups with different demands. They also justify the treatment of these vulnerable groups from different normative considerations. The empirical deliverables do not show that approaching these institutional, social and cultural contexts from one normative framework of justice is straightforward or likely to be successful. ETHOS empirical research shows we have to *complete and adjust* Fraser’s framework in at least three different regards. First, the Fraserian categories are incomplete because there are further important dimensions of justice beyond the ‘three Rs’, which are relevant in the European context. Second, Fraser’s approach sometimes requires *additional explanatory and normative work*. For Fraser’s three Rs are not always fine-grained enough to diagnose complex unjust situations in the real world. Third, we will argue that justice in Europe requires an *alternative framing of justice* to Fraser’s, specifically, one that can justify this special mid-level in between full-blown global justice and the nation state. Let us see these difficulties in more detail.

Starting with dimensions: while the Fraserian tripartite conception is certainly an illuminating framework in general, these three categories often miss important aspects of injustice. In other words, there are further important dimensions of (in)justice beyond redistribution, recognition and representation. The dimensions of recognition, redistribution, and representation do not always map easily on other articulations of dimensions of justice or injustice and it is unlikely that all these alternative justice claims can be reduced to the three dimensions that Fraser works with. Several empirical deliverables point to dimensions that do not fit well to Fraser’s categorization, such as redressing historical injustice (Akkan and

Hiah 2019), epistemic injustice (Lepianka 2019: 25-28) and justice as capabilities (Lepianka 2019; Bugra and Akkan 2019).

Historical injustice and the politics of commemoration are discussed by Lepianka (2019) and Akkan and Hiah (2019) and exhibit a complexity that redistribution, recognition or representation cannot easily theorize. The reason for this is that rectifying historic injustices falls under the category of corrective justice, (sometimes but not always related to Fraser's relational egalitarian goal of participatory parity).

Epistemic injustice as a missing dimension is discussed by Dorota Lepianka in deliverable D4.4. Epistemic injustice has two important versions, testimonial injustice and hermeneutical injustice (see Fricker 2007). Regardless of the specific definition or form, epistemic injustice is believed to be generated by stereotypes and prejudices about marginalized groups and a derivate of unequal power relations (Lepianka 2019, 25). At the end, those who are considered highly credible as 'knowers' are usually drawn from privileged groups. On a closer look, these epistemic power-relations are beyond the scope of Fraser's dimensions. For example, hermeneutical injustice, which refers to the phenomenon of lacking adequate conceptual resources to discuss injustice, comes closest to being a problem of misrecognition, but it has important aspects beyond recognition. Withholding the conceptual resources to talk about injustice is a special type of injustice, but it is not misrecognition as such.

As far as the capabilities approach (see Sen 1992; Nussbaum 2000) is concerned, this framework is discussed very positively in several ETHOS reports (e.g. Anderson 2019; Bugra and Akkan 2019). Fraser herself considers her approach as a broader capability view (Fraser 2007: 319). Surprisingly though, the capability view might actually be an alternative to Fraser's three-dimensional view. Bridget Anderson (2019), for example references Ingrid Robeyns (2008), who puts forward her capabilities approach defending distributive justice in opposition to Fraser. Robeyns' (2008) critique is not only that Fraser disregards the merits and potentials of distributive views as far as recognition is concerned, but also that Fraser supports only social capabilities, and not individual functionings (Fraser 2007: 319). Robeyns shows that this view is implausibly narrow: some personal functionings, like being well fed or educated, are inherently valuable, regardless of their social contribution to equal status (Robeyns 2008). In

that respect, agreeing with Robeyns, we hold that Fraser's approach is too narrow, because she disregards these important distributive considerations. ETHOS research shows that the capability approach provides important complementary considerations to Fraser's participatory parity.

A second insight is that Fraser's theory needs additional explanatory and normative work, because her three proposed dimensions can be insufficient to diagnose certain injustices. Consider the case of justice in education and the problems of the Roma. In the case of education, participatory parity is an incomplete principle for justice in education. As far as the Roma are concerned, the Fraserian framework faces difficulties when confronted with the diverse injustices experienced by this group. In other words, both issues are more complex than Fraser's three-dimensional categorization allows. Let us take a look at these two issues in turn.

Regarding education, Orsolya Salát looks at ETHOS country reports through the lens of Fraser's three justice-concerns and finds the intersection of redistributive and recognitive problems (Salát 2019: 44-46). But she also exposes problems that are more difficult to theorize within Fraser's scheme. Regarding schooling for disabled children, she highlights that 'no system examined here fully realizes inclusive education or even sees it possible for everyone. All countries maintain the possibility of sending pupils with disability[ies] into segregated education, although the trends are different' (Salát 2019: 44). For example, in case of Austria, an otherwise wealthy European country, Salát mentions that while the attempt to provide inclusive education can be seen in the creation of the so-called 'model regions for inclusive education', the 'implementation in the model regions...do not demonstrate unequivocal success, and it seems especially clear that an important obstacle to realize a well-functioning inclusive school is lack of resources in terms of finances, infrastructure, time, and personnel' (Salát 2019: 23). In our view, the lesson here for how we ought to conceive of justice is that while Fraser's approach is deliberately non-ideal theoretical, her theory of participatory parity forgets the 'theory of the second-best' (cf. Wolff 2011; Margalit 1996). Maximizing justice – in this case, participatory parity – certainly would require the widest possible inclusion of children with disabilities. But it might be the case that, in certain situations, investing more to the already functioning and less inclusive system leads to better educational results for disabled children. Of course, we do not want to suggest that this is certainly and always the

case. But Fraser's theory of participatory parity seems to overlook the importance of incremental *transitions* away from manifest injustice in the real world (cf. Sen 2010; van den Brink et al. 2018). Another problematic phenomenon that Salát's deliverable exposes is the question of religious education. Regarding the UK, Salát (2019: 45) points out that mandatory religious education and everyday acts of collective worship would be considered severe violations of freedom of religion – and, thus, would mean a disregard for recognitive interests – in other countries examined in this report. The UK however follows a state church model, although a reasonably soft one. Still, Salát claims that non-Christian pupils' full membership and recognition are hardly promoted by such a system.

While this issue is intertwined with questions of recognitive justice, it is also fruitful to acknowledge the more fundamental tension between religious establishment and state neutrality in this case. The British practice might be objectionably non-neutral and as such unjust, but it does not necessarily follow that (mis)recognition of pupils who (or whose parents) are not followers of The Church of England is at stake. Non-neutrality can be a problem of lack of recognition, for example, a crucifix on the wall can send a message to students from other religious groups that they are second-class citizens (see Kis 2012), but it does not automatically do so. Religious establishment might not lead to the devaluation of the identity of citizens who are not members of the religious group officially favored by the state. To wit, it might be the case that the state compensates minority religions and their members for favoring a given religion (even if just symbolically), or allows exemptions, just as Salát points out regarding the UK (2019: 45). In addition, state neutrality can be problematic reasons not related to recognition. Mandatory religious education might violate the principle of state neutrality for its being discriminatory, that is, for selecting out certain ways of life, disadvantaging atheist or minority religious groups. But this version of state neutrality, the idea of neutrality as nondiscrimination is similar to the requirement of non-paternalism (see Kis 2012: 321-322), not recognition. The problem in this case is that 'coercion is not a proper way to improve peoples' lives' (Kis 2012: 321), not that they are misrecognized.

The difficulty for Fraser here is not only that misrecognition, redistribution, or representation are not at the heart of understanding the injustice of these kinds of arrangements, but also that the question of state neutrality is out of her sight. This can be problematic in the European context – as the UK example shows --, where, unlike in the US,

there is an official state church in several countries. In our view, Salát's deliverable reveals that in some cases justice in education cannot be easily and fully captured by Fraser's dimensions and some additional normative reflection is required.

As we mentioned above, we wish to highlight issues arising from the ETHOS research into injustices experienced by the Roma. Theorizing the situation for the Roma is not only a challenge to Fraser, but also to all Western political theorists (see Kymlicka 2002). Anderson and Dupont analyze the case of the Roma in Europe and find that 'in the current European context, Roma is a contested, multidimensional and highly stigmatised identity which simultaneously evokes material poverty, racialised phenotypes, and cultural practices' (Anderson and Dupont 2018: 4). They also find that whereas there is a continued attempt in the EU since the 1990s to enhance the representation of this disadvantaged minority group, 'the results have been ambiguous' (Anderson and Dupont 2018: 4). On the one hand, in some national and municipal contexts, those who identify as Roma have the right to elect Roma representatives in local, regional and national governments, and Roma civil society leaders have had opportunities to influence policymaking through permanent and ad hoc consultative mechanisms. There have also been attempts to symbolically recognize Roma history, including their persecution, in official discourses. On the other hand, these measures do not seem to have translated into substantive representation, to the extent that Roma interests and perspectives continue to be widely overlooked by public authorities.

Anderson and Dupont are not the only ones, of course, who observe the complexity of the situation of the Roma (Kymlicka 2002). Fraser considers the Roma as an example of unjust exclusion that is a result of 'the combined operation of culture and political economy' (Fraser 2007: 316). As such, 'status hierarchies map onto class differentials to prevent some actors from participating at all in mainstream arenas of social interaction' (Fraser 2007: 316). But, as Kymlicka (2002: 75) points out, it is not clear what these 'mainstream arenas' should be: for instance, should the Roma be defined as a national or a transnational minority? Fraser's approach of participatory parity cannot provide a clear answer to this question - we must again look elsewhere for theoretical resources. But Fraser's approach requires important complementary work in another regard as well. Here, the shortcoming of the tripartite conception of justice is not that they cannot capture the complexity of certain justice related phenomena, but that these dimensions overlook an important site, or medium of justice: law.

This is especially problematic in the European context. Tom Theuns (2018) provides a comparative report on the legal rules and practices regulating the exercise of the right to vote in local, national and EU elections of marginalized groups, such as convicted prisoners, disabled persons and immigrants. A large part of Theuns' analysis fits to Fraser's framework, but the lacunas are telling too. To wit, differences among the six countries regarding, for example, the voting rights of convicted prisoners are based on principles, not merely different, unreflective practices. For example, referring to the country reports, Theuns emphasizes that the UK's legal system approaches the question of voting rights regarding both convicted prisoners and (mentally) disabled persons in epistemic terms, unlike other countries. This might be described as an instance of recognitive injustice, but only if this justification is refuted. Fraser's theory, on the other hand, does not engage or respond to the matter of epistemic concerns for matters of representation and political rights. Similar problems arise regarding franchise for non-citizen residents and non-resident citizens. Theuns also discusses the case of dual citizenship of kin minorities, which, in the case of Hungary, has led to the interesting two-fold problem: one being the question of the permissibility of external voting, the other the unequal voting rights for these external voters/dual citizens (Theuns 2018: 42-45; cf. Bauböck 2007). This shows that ETHOS's tripartite justice concern is complicated by the different national-supranational legal frameworks which sometimes overlap, and sometimes clash, and Fraser's approach does not provide us with tools to discuss these difficulties in adequate detail. The core problem here, as William Scheuerman (2017) aptly observes, is that Fraser tends to ignore fundamental questions of law. As such, Scheuerman points out, she cannot provide answers to important questions regarding the law; in his words:

I remain rather skeptical that 'participatory parity' can get us far enough in grappling with the nuances of modern law or rights... Could we, for example, usefully rely on the idea of participatory parity to develop a sophisticated defense of negative or 'liberal' liberties? Or even some basic concept of legal personality, arguably a constitutive feature of modern subjectivity? How far could participatory parity go in analyzing modern criminal or private law (property, contracts), or even international law, a legal arena in which many key principles and practices seem disconnected from Fraser's radical democratic normative starting point? (Scheuerman 2017: 153)

Readers of the legal work package research (WP3) might wonder what would be a Fraserian approach to the European multi-level legal order, with the interplay of international law, EU law, national law, and regional law. In other words, law provides an important site and medium to articulate and often regulate and execute justice claims (especially on the European level). Disregarding the complex system of law leads to feasibility concerns for a theory that aims to provide solutions to problems here and now.

Our final area where we found the need to move beyond Fraser's framework is that in an important sense, justice for Europe seems to require an alternative 'framing' of justice than Fraser proscribes. Fraser (2009) thinks that today we live in the time of 'abnormal justice'; the Westphalian framework is no longer exclusive, but relevant other frameworks are also present, and gaining in importance and support. Thus, Fraser extends the idea of the injustice of participatory disparity beyond the traditional framework of the nation state. When this happens, i.e. when a framework excludes people who should be represented by it, we are dealing with misframing (Fraser 2009: 287). The idea of (mis)framing arenas of justice allows the theorist to 'map' the adequate 'political space' for theorizing justice (Fraser 2009: 287). Against approaches of global justice based on mere personhood - such as the approach of Martha Nussbaum (1996), or the idea of all-affectedness like the later Peter Singer (2004) - Fraser defends a meta-principle of 'all-subjectedness', which holds that 'all those who are jointly subject to a given governance structure have moral standing as subjects of justice in relation to it' (Fraser 2009: 291).

To a large extent, the difficulty for justice in Europe arising from the ETHOS project, is the mapping of adequate political space – this is an important issue that Fraser aptly realizes. But her offered solution of the all-subjectedness principle cannot provide solutions to pressing European justice question regarding this mapping. How can we justify the existence of the EU? Why should rich members of the EU support Bulgaria, for example, if the same money could go to African countries that are relatively poorer still? (Van Parijs 2019). Regarding this, Fraser's all-subjected principle yields no answer. Van den Brink et al. (2018) suggest that something like Andrea Sangiovanni's practice dependent view of justice might be applicable to the case of justice in Europe. Sangiovanni tries to find an answer to 'the point and purpose' of the EU. He holds that the *raison d'être* of the EU is to provide important insurance for member states against the risks of the mechanism of European integration itself (2013). As

such, he accepts the limited distributive nature of the EU based on the facts of European integration. We disagree with his favored direction of the EU, but not with his mapping of the European political space. Again, Fraser's attempt to provide a realistic political theory for responding to injustice is underspecified for a real-world situation. The more nuanced, Europe (and EU) focused analyses of Sangiovanni and Van Parijs reveal challenges for theorizing justice in Europe which seem not to be on Fraser's radar.

The ETHOS proposal with regard to the interplay and tensions between justice claims

So, what we have found is this. Analyzing questions of injustice and justice in terms of three dimensions — redistribution, recognition, and representation — and two strategies — affirmation and transformation — has been fruitful for ETHOS. As a heuristic tool, Nancy Fraser's framework helps articulate real world concerns about injustice in light of an ideal implicit both in everyday experiences across Europe and in the main institutions of state and society: that each member of society should be treated as a peer in social cooperation. Yet, we have also found that the dilemmatic approach to the multi-faceted approach to justice is very schematic and has limitations when guiding policy decisions and normative theory. In analyzing concrete injustices in Europe studied by our ETHOS work-packages and in thinking through possible remedies for such injustices, we reached the important conclusions that Fraser's instructive analytical tool requires *additional normative work, empirical work* and is often in need of *alternative and more fine-grained approaches* in normative theory, such as the capabilities approach.

In its core, the theory invites awareness of the fact that awarding more recognition for identity claims will also have consequences for the socio-economic standing of members of society, and *vice versa*. Second, it makes clear that the tension between justice claims cannot be made to disappear by being reductionist about what justice *is*. Third, even where we reach more or less justifiable balances between justice claims in social and political agreements, we need to be open to the possibility that the agreements reached do not fit the frame of the problem — i.e. the scope both of all subjected to the problem of injustice and of all those who deserve to be addressed by solutions. We found that when formulated in terms of catchy 'dilemmas' of justice, the social world may appear as an inescapably tragic universe in which,

whatever those affected by injustice will do, they end up in trade-offs by which victims of injustice either lose their sense of identity and self or their socio-economic status.

Despite Fraser's non-ideal orientation, her trilemmatic approach to justice is tied to a near utopian, end-state vision in that injustices are best addressed through the deep restructuring of society on the socio-economic and political level and the deconstruction of collective identities on the recognitive level. This is the point at which ETHOS' empirically sensitive approach of real world political philosophy takes a different stand. As van den Brink et al. (2018: 3ff.; cf. Valentini 2012) clarified, a standard conceptual taxonomy of the ways theories of justice can be ideal or non-ideal distinguishes between three sometimes overlapping metrics: the degree to which a theory assumes 'full compliance', is 'fact-sensitive', and is 'transitional' or 'end-state'. Fraser's approach is non-ideal on the first two metrics: it accepts that facts about socio-economic, cultural, and political dimensions of identity determine justice concerns all the way down. But on the third metric it is firmly focused on end-state rather than transitional considerations. Indeed, a socialist agenda of deep economic restructurings and a de-constructivist approach to collective identity sets the horizon for real transformation of society and overcoming of injustice in Europe. When confronted with Europe's deep political and cultural pluralism, this substantive focus on a socialist and post-traditional horizon of end-state justice sits uneasily with ETHOS findings in both the normative and the empirical work packages. It also sits uneasily with an often-neglected aspect of Fraser's own theory, i.e., its openness to a theory of *democratic* justice and her professed anti-sectarianism.

Seen as a theory of democratic justice Fraser's own interpretation of what the principle of parity of participation demands will play a *substantive and partial* (socialist, de-constructivist) evaluative role while supporting a *procedural standard* by which all affected by a constellation of injustice — including those who would not follow the socialist and de-constructivist agenda — can determine whether the norms and expectations by which they are governed can be accepted as legitimate. Rather than presenting an objective framework for all theories of justice, the theory will then be seen as one among several normative theories that theorists and policy makers can appeal to when analytically making sense of and normatively seeking solutions to injustices in society. The results of that will have to be

brought in democratic debate with those subject to the injustices and the policy makers through lenses of redistribution, recognition and representation.

This reading of Fraser's theory brings it closer to the real-world political philosophy strategy that the philosophical work package in ETHOS has developed. As we have shown earlier, *an* empirically informed yet monolithic European theory of justice and fairness is not feasible (van den Brink et al 2018). What ETHOS shows is that empirically informed and action-guiding theories of justice need to be case based: they should be geared to helping us better understand, evaluate and recommend responses to European injustices. Such theories combine solid normative reasoning with empirical research and policy analysis in order to comprehend 'why [a policy area] generates moral difficulties, and then to connect those difficulties or dilemmas with patterns of philosophical reasoning and reflection.' (Wolff, 2011: 9).

The interplay and tensions between justice claims are always strongly contextual. Real world political philosophy starts from identifying gross injustices from a set of overlapping perspectives inspired by reasonable and publicly shared normative principles like the principle of parity of participation. The hope is that reasonable views will be able to unite against identifications of what is clearly unjust, even when they do not agree on what perfect justice would be. As we said in deliverable 2.2., reasonable people will accept that it is unjust for states not to accommodate disabled persons to exercise their right to vote. These same reasonable people may well disagree about why this is unjust. Some may claim it harms human rights, others may claim procedural democratic justice is harmed, still others may view it as blatant discrimination. But regardless of why people consider it to be unjust, it is possible to build a coalition around the finding that it is, and that a solution needs to be found.

This approach is in parallel with what Cass Sunstein (1994) labels 'incompletely theorized agreements'. Sunstein's main focus is on law and legal decisions but his point is generalizable. In his view, there are three possible levels of disagreement (Sunstein 1994: 1739-1742; Howard 2019: 32). Two people might disagree about an abstract theory, they can disagree about mid-level principles, and they can disagree about particular outcomes. Sunstein proposes the type of *incompletely theorized agreement* where there is an agreement about the actual outcomes, and people are in favor of the outcome from various abstract

theories and perhaps even from mid-level principles. We hold that real-world political philosophy embraces this type of incompletely theorized agreements. Thus, Fraser's theory is an important lens through which we can analyze justice in Europe, but often what is more important is that there is a convergence regarding a policy outcome (such as affirmative action in education) that helps eliminating injustice here and now. Being ecumenical, we believe that this is a strength, and not a weakness of real-world political philosophy.

References (all ETHOS reports are available at <https://ethos-europe.eu/>)

Anderson, B. 2018. Justice, care and personal assistance. ETHOS deliverable 5.3.

Anderson, B., and Dupont, P. 2018. 'How does it feel like to be a problem?' What we can learn about Justice as Political Representation from empirical case studies. ETHOS deliverable 5.2.

Anderson, E. 1999. What is the point of equality? *Ethics* 109 (2): 287-337

Armstrong, Ch. 2003. Equality, Recognition and the Distributive Paradigm. *Critical Review of International Social and Political Philosophy*, 6:3, 154-164

Barry, B. 1995. *Justice as Impartiality*. Oxford: Oxford University Press.

Buğra, A. and B. Akkan 2019. Discourses on minorities (and vulnerable groups) access to education, inclusionary and exclusionary aspects. ETHOS Deliverable 4.3.

Cole, Ph. and Ch. Heath Wellman 2011. *Debating the Ethics of Immigration: Is there a Right to Exclude?* New York: Oxford University Press.

Corvino, J. and M. Gallgher 2012. *Debating Same-Sex Marriage*. Oxford: Oxford University Press.

De Marneffe, P. 2010. *Liberalism and Prostitution*. New York: Oxford University Press.

Forst, R. 2011. *The Right to Justification: Elements of a Constructivist Theory of Justice*. New York: Columbia University Press.

Fraser, N. 1995. From Redistribution to Recognition. *New Left Review* I (212): 68-93

_____ 1997. *Justice Interruptus. Critical Reflections on the "Postsocialist" Condition*. New York and London: Routledge.

_____ and A. Honneth 2003. *Redistribution or Recognition? A Political-Philosophical Exchange*. London and New York: Verso.

_____ et al. 2004. Recognition, redistribution and representation in capitalist global society: An interview with Nancy Fraser. *Acta Sociologica* 47(4): 374-382.

_____. 2005. *Scales of Justice: Reimagining Political Space in a Globalizing World*. New York: Columbia University Press.

_____. 2007. Identity, Exclusion, and Critique: A Response to Four Critics. *European Journal of Political Theory* 6 (3): 305-338-

_____. 2009. Who Counts? Dilemmas of Justice in a Postwestphalian World. *Antipode* 41 (1): 281-297.

Habermas, J. 1981. *Theorie des kommunikativen Handelns*. Vol. 1: *Handlungsrationalität und gesellschaftliche Rationalisierung*. Vol. 2: *Zur Kritik der funktionalistischen Vernunft*. Frankfurt am Main: Suhrkamp.

_____. 1992. *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechtes und des demokratischen Rechtsstaats*. Frankfurt am Main: Suhrkamp.

Hegel, G. W.F., ed. Georg Lasson. 1967. *System der Sittlichkeit*. Hamburg: Meiner

Honneth, A. 1996. *The Struggle for Recognition: The Moral Grammar of Social Conflicts*. Cambridge, MA: MIT Press.

Howard, J. 2019. The public role of ethics and public policy. In *The Routledge Handbook of Ethics and Public Policy*, A. Lever and A. Poama (eds.). London and New York: Routledge, pp. 25-36.

Husak, D. and P. de Marneffe. 2005. *The Legalization of Drugs*. Cambridge: Cambridge University Press.

Kis, J. 2012. State Neutrality. In *Oxford Handbook of Comparative Constitutional Law*, M. Rosenfeld and A. Sajó (eds.). Oxford: Oxford University Press, pp. 318-335.

Knijn, T., T. Theuns and M. Zala 2018. A Multidisciplinary perspective on Justice in Europe. ETHOS deliverable 2.3.

_____. 2019. Boundary lines between private and public care; Living independently at home or in a home. ETHOS deliverable 5.4. Available at: https://ethos-europe.eu/sites/default/files//docs/d5.4_website_complete.pdf

- Kymlicka, W. 2002. Western Political Theory and Ethnic Relations in Eastern Europe. In *Can Liberal Pluralism be Exported?: Western Political Theory and Ethnic Relations in Eastern Europe*, Will Kymlicka and Magda Opalski (eds.), Oxford: Oxford University Press, pp. 13-106.
- Lepianka, D. 2019. Mapping the construction of justice and justice related tensions in Europe – A comparative report. ETHOS deliverable 4.4.
- Margalit, A. 1996. *The Decent Society*. Cambridge, MA: Harvard University Press.
- Nussbaum, M. 1996. *For Love of Country?* Boston, MA: Beacon Press Books.
- _____. 2000. *Women and Human Development: The Capabilities Approach*. Cambridge: Cambridge University Press.
- Pettit, P. 1997. *Republicanism: A Theory of Freedom and Government*. Oxford: Oxford University Press
- Pitkin, H. 1967. *The Concept of Representation*. Berkeley, Los Angeles, London: University of California Press.
- Rawls, J. 1971. *A Theory of Justice*. Cambridge, MA: Belknap Press
- Ricoeur, P. *Oneself as Another*. Chicago: University of Chicago Press, 1994.
- Robeyns, I. 2008. Is Nancy Fraser's Critique of Theories of Distributive Justice Justified? In *Adding Insult to Injury*, Kevin Olson (ed.). London: Verso, pp. 176-196.
- Salát, O. 2019. "A comparative report on the right to education: An assessment of the legal framework of six countries from the perspective of recognitive and redistributive justice." ETHOS Deliverable 3.6.
- Sangiovanni, A. 2008. 'Justice and the Priority of Politics to Morality.' *Journal of Political Philosophy*, 16(2): 137-164.
- _____. 2013. Solidarity in the European Union. *Oxford Journal of Legal Studies* 33 (2): 1–29
- _____. 2016. 'How practices matter.' *Journal of Political Philosophy*, 24(1): 3-23.

Schemmel, Ch. 2011. Why Relational Egalitarians Should Care About Distributions. *Social Theory and Practice* 37 (2011), 365-390

Scheuerman, W. 2017. Recognition, Redistribution, and Participatory Parity: Where's the Law? In *Feminism, Capitalism, and Critique: Essays in Honor of Nancy Fraser*, B. Bargu and Ch. Bottici (eds.). Palgrave Macmillan, pp. 139-157.

Sen, A. 1992. *Inequality Reexamined*. Cambridge, MA: Harvard University Press.

_____. 2010. *The Idea of Justice*. Cambridge, MA: Harvard University Press.

Singer, P. 2004. *One World: The Ethics of Globalization*. New Haven: Yale University Press.

Sunstein, C. R. 1994. Incompletely theorized agreements. *Harvard Law Review* 108: 1733-1772.

Taylor, Ch. 1992. The Politics of Recognition. In *Multiculturalism: Examining the Politics of Recognition*, Amy Gutmann (ed.). Princeton: Princeton University Press, pp. 25–73.

Theuns, T. 2018. A comparative report on the legal rules and practices regulating the exercise of the right to vote (eligibility and representation) in local, national and EU elections of marginalised groups. ETHOS deliverable 3.4.

Thompson, S. 2006. *The Political Theory of Recognition. A Critical Introduction*. Cambridge: Polity

van den Brink, B., S. Rippon, T. Theuns and M. Zala 2018. Report on the workshop “Ideal and Non-Ideal theories of Justice”: Towards a Non-Ideal Theory of Justice in Europe. ETHOS deliverable 2.2.

van Parijs, P. 2019. Just Europe. *Philosophy & Public Affairs* 47 (1): 5-36.

Wiens, D. 2012. ‘Prescribing institutions without ideal theory.’ *Journal of Political Philosophy* 20(1): 45-70

Wolff, J. 2011. *Ethics and Public Policy: A Philosophical Inquiry*. Routledge.

Wolff, J. 2015. 'Social equality and social inequality.' In *Social Equality: Essays on What It Means to be Equals*, eds. C Fourie and F Schuppert and I Wallimann-Helmer. Oxford University Press: 209-225.

Mechanisms that impede justice

Paper 7.3.2. by Trudie Knijn and Basak Akkan

Executive summary

This paper is based on a secondary analysis of all Deliverables produced in the three-year ETHOS research programme. Its aim is to unravel mechanisms of redistributive, recognitive and representative justice causing outcomes for vulnerable populations in Europe that are supportive for reaching the capability to living the life one values (focus on individual development) and participatory parity (focus on equal social participation). Such mechanisms consist of entities (with their properties) and the activities that these entities engage in bringing about change. The type of change brought about depends upon the properties and activities of the entities and the relations between them. The concept of vulnerability is defined in this paper as both a universal human condition and a situational context dependent outcome of institutional, discursive and social practices. The paper concludes that due to constitutional pluralism in Europe there is an interplay between local, national, EU and human rights-informed understandings of justice principles. Most striking in this complex governmental hierarchy is the ambivalent position of the EU regarding redistributive versus recognitive justice. On the one hand the European Union and its institutions are profound defenders of minority rights, of gender equality and LGBT and disabled persons' rights offering lots of programs and initiatives to stimulate recognition of diversity. On the other hand the EU has promoted a free market of persons, capital, services and goods with strict economic budgetary restrictions to all its Member States, has stimulated austerity measures and put Member States under rigid regulations affecting the participatory parity and capabilities of exactly these minorities, women, frail elderly and disabled persons. Nation states and its subnational entities have reduced welfare benefits, excluded categories from welfare benefits, outsourced social housing programs to the competitive market, reduced care facilities for elderly and disabled persons, and introduced new criteria of access and eligibility challenging redistributive, recognitive as well as representative principles. In that process social institutions and vulnerable populations adapt preferences with consequences for affirmative and transformative remedies. Justice principles expressed in visions, codified and

institutionalised in legal tradition and/or bureaucratic, professional, cultural and social practice determine not only the shape, scope and site of justice experienced by individuals, groups and societies, but also the choice of remedies, that is the claims for justice to tackle the injustice. Democratic and interactional negotiation of these principles is an ongoing process presuming some dialogical openness.

Introduction

Throughout the ETHOS research program mechanisms have been investigated that generate injustice as well as mechanisms that contribute to justice via examination of the legal rules and practices related to the exercise of a specific right, exploration of discursive constructions of justice related tensions in political and advocacy discourses through analysing the struggles for justice and – last but not least – by bringing in the perspective and “lived experience” of (in)justice by vulnerable populations and stakeholders in the domain of cash (welfare benefits) and care (at home). The focus was on social groups that are defined as vulnerable by case law of the European Court of Human Rights (ECtHR), in EU law and in EU legislation such as the Roma, people with disabilities and asylum seekers (Granger, Oomen, Salat, Theuns and Timmer 2018), and also on ethnic and national minorities because they represent a broader social minority group than the Roma. Frail elderly, migrant care workers and young unemployed women are included because they embody intersectional categories of age, minority and gender in specific configurations.

Mechanisms as entities and activities

In its most evidential description, a mechanism is something that brings forward something else. Elster (1989: 3-4) formulates the crucial role of mechanisms as follows:

“To explain an event is to give an account of why it happened. Usually... this takes the form of citing an earlier event as the cause of the event we want to explain.... [But] to cite the cause is not enough: the causal mechanism must also be provided, or at least suggested.”

For instance, it is insufficient to explain increasing inequality (see Piketty 2013; Inchauste and Karver n.y) in Europe by the increasing dominance of neo-liberalism; for a real understanding of the relationship between the two phenomena mechanisms of de-regulation, trade in worthless financial packages, dominance of financial over economic capital, interinfluences of political and financial elites and political reactions to economic crises should be analysed. In the same way, the well-being of disabled people cannot be explained by the absence or reduction of public care services only; it also demands to explain what images of disabled people circulate in the political and media discourse, what alternative forms of care exist and how these create forms of (in)dependency between people in need of care and care givers. The main purpose of using the concept of ‘mechanisms’ is to offer a causal and intelligible analysis of regularities being observed by specifying in detail how they were brought about. Machamer, Darden and Craver (2000) state that mechanisms consist of *entities* (with their properties) and the *activities* that these entities engage in bringing about change. The type of change brought about depends upon the properties and activities of the entities and the relations between them. A mechanism, thus defined, refers to a constellation of entities and activities that are organized such that they regularly bring about a specific outcome (Hedström and Ylikoski 2010).

Theoretical and methodological considerations

Mechanisms thus cause an outcome, at first instance explored in the ETHOS programme in relation to justice and fairness. These concepts needed further elaboration because, obviously, there are multiple interpretations of what justice and fairness ought to be and what it is. As a starting point we have used Nancy Fraser’s theory of – the relationship between – redistributive, recognitive and representative justice (Fraser 1997; 2003; Knijn and Lepianka, 2018). Secondly and methodologically, we opted for applying non-ideal theorizing (as Fraser does) instead of aiming for an ideal theory of justice. As Van den Brink, Rippon, Theuns and Zala (2018: iii) outline this implies ‘partial’ instead of ‘full’ compliance with the demands of justice, ‘fact-sensitivity’ and articulating ‘transitional’ improvements towards greater justice. The latter means a focus on injustices and thinking about the ways in which these could be overcome.

The three forms of justice as distinguished by Fraser – redistributive, recognitive and representative justice – inspired our analysis by formulating ideal types of justice (Knijn and Lepianka, 2018). These are for redistributive justice ‘institutional, social-cultural practices and discourses settings targeting principles of redistribution; material and immaterial resources, political, legal and academic discourses on social-economic issues.’ For recognitive justice these are ‘institutional and social-cultural practices and discourses settings targeting principles of recognition; political and policy narratives, legal, educational, professional, media and academic discourses on identities reflected in every-day language’. And for representative justice these are ‘Institutional and social-cultural practices and discourses settings targeting principles of representation; (political and social) participation, voice, freedom of expression and organisation, representation in institutional settings’ (ibid: 22).

The non-ideal theorizing then demands that these ideal types serve our research heuristically, that is for formulating if-then propositions. *If* entities aim for redistributive, recognitive and representative justice *then* the provisory reform activities X would further the ideal type of justice-as-representation’ or, conversely, ‘reform activity Y would take us further from, say, the ideal type of justice-as-recognition’ (Theuns, de Maagt and Knijn 2019). Beyond these singular forms of justice the ETHOS research within the normative framework of Fraser assumes that belonging, inclusion, and having a say are crucial for making claims with the ultimate goal of ‘participatory parity’, that is, the possibility to partake in the social, political and private realms on an equal footing with others. Hence, forms of injustice, whether it be maldistribution and misrecognition are problematic in virtue of violating the principle of *participatory parity* meaning that individuals or certain identified social groups are hampered to ‘participate as peers’ in a democratic society (Fraser 1997; 2003). Because participating as equal peers does not depend on one single form of justice and because the three forms of justice influence each other monolithic theories that emphasize one of these forms of justice are inadequate; denying their interconnectedness in creating unjust states of affairs (Fraser 1997).

In the theoretical and empirical studies conducted in the ETHOS research program Fraser’s framework has been nuanced and extended by detecting first that redistributive, recognitive and representative justice are not evidential or monolithic concepts. Each of these concepts are contested and interpreted in multiple ways. Redistributive principles can be

based on prioritisation, sufficientarianism or egalitarianism; recognitive principles could operate by acknowledging group differences and identity claims or be universal, and representative justice acknowledges a plurality of political communities. Moreover, in an effort to include human agency in the analysis of participatory parity and its grounds the ETHOS research program has adopted Sen's Capability Approach (Sen 1999; Nussbaum 2000; Robeyns 2005; 2017) offering an open framework for understanding diversity in people's capabilities to function in ways that make their lives valuable. By distinguishing between capabilities – the real freedoms (opportunities) that people have to live the life they value, means (resources) to realize these outcomes, conversion factors (contextual and relational embedding) and outcomes ('functionings') Sen has offered methodological tools to study in an open and flexible way diverse routes to justice. After all, the world is full of human and environmental diversity, with the consequence that people's needs differ. By counting only real opportunities for functioning in valuable ways, the approach considers the fact that individual capability to apply resources or formal opportunities into well-being is highly context dependent. More generally, it considers the wide range of means that are necessary for people to realize capabilities, such as financial resources, particular political institutions, social or cultural climate (e.g. acceptance of ethnic or gender difference), social structures, norms, traditions and habits (cf. Robeyns 2007; 2011).

Most important here is that the ETHOS studies focus on justice principles pertaining 'vulnerable populations', which is a paradoxical concept as Rippon et al. (2018) and Granger et al. (2018) outline. By referring to Fineman and Gear (2013), Mackenzie et al. (2014) and Butler (in Kania 2013) they point at the various and even paradoxical interpretations of vulnerability. On the one hand vulnerability is universal since it is intrinsic to the precarious human condition stemming from the fact that human beings are embodied, mortal, needy and depend on others in risky social contexts. On the other hand, vulnerability is particular and situational because it 'may be caused or exacerbated by the personal, social, political, economic, or environmental situations of individuals or social groups' (Mackenzie et al. 2014, 7). Moreover, it may become pathogenic if resulting from 'morally dysfunctional or abusive interpersonal and social relationships and socio-political oppression or injustice' as well as special cases when the attempt to alleviate someone's vulnerability leads to 'the paradoxical effect of exacerbating existing vulnerabilities or generating new ones' (Mackenzie et al. 2014,

9), a situation called ‘precarity’ by Butler (in Kania 2013, 33). According to Butler precarity is ‘induced’ and ‘precaritization helps us think about the processes through which precarity is induced – those can be police action, economic policies, governmental policies, or forms of state racism and militarization’ (ibid, 33). Most important is that vulnerability is often understood as something negative, degrading human dignity and self-esteem and triggering dependency. Hence being categorized as vulnerable is a Janus-faced qualification of being acknowledged in one’s needs because of seen as weak and dependent. Fineman and Gear (2013) tend to solve this dilemma by challenging liberal assumptions of neutrality, autonomy and rationality not reflecting real human beings while the embodied subject with material needs, and social and institutional relations should form the basis of our justice projects (Rippon et al. 2018; Granger et al. 2018). This analysis therefore focuses on mechanisms – entities, their properties and activities - entailing justice principles by providing or withholding resources via public goods to cater special needs of vulnerable populations, and mechanisms that create vulnerable populations as categories of difference with or without their consent. The aim of this paper therefore is to unravel mechanisms causing outcomes in order to reach the *capability* to living the life one values (focus on individual development) and *participatory parity* (focus on equal social participation) to which recognitive, redistributive and representative justice can contribute. The principle of ‘participatory parity’ is denied if ‘social arrangements that institutionalize obstacles to participation are unjust’ (Fraser 2007, 315) and hamper individual capabilities.

Entities (with their properties) as mechanisms of justice

For analytical reasons the more prosaic concept of *entities* is used instead of conversion factors understood as contextual and relational embedding of individuals and groups. In Europe multiple entities are involved reaching from the supranational level of the United Nations, the World Bank, IMF, EU’s Parliament and Commission, the European Council and the European Courts (both the CJEU and the ECtHR) to the national and sub-national governmental levels but also social institutions as schools, media, courts, care systems and welfare offices. A main finding is that while the international and European entities provide a legal and discursive framework for justice, the translation of these principles at the level of the nation state and their subsequent interpretation in national laws and regulations and practices like work, care, education, media and law do not operate with the fundamental

assumption of participatory parity. More specifically, in a levelling-down process the recognitive and redistributive justice principles of the highest supranational level set out in binding law like Conventions, Regulations and Directives but also in Declarations, Charters and Guidelines gradually lose meaning the lower one gets in the constitutional hierarchy due to pre-occupations, scarce resources or exclusionary practices.

Illustrative for the relationship between various governmental entities is the redistributive justice principle of the *right to housing* as an accepted human right at supranational levels like the International Covenant on Economic, Social and Cultural Rights (ICESCR). Recognizing the right of everyone to ‘an adequate standard of living ...including adequate ... housing...’, the UN Committee on Economic, Social and Cultural Rights (CESCR) set out that ‘freedoms, such as a protection from forced eviction and arbitrary interference, as well as entitlements, such as the security of tenure and equal and non-discriminatory access to adequate housing’ should be guaranteed, the Human Rights Committee (HRC) declared ‘the right to live somewhere in security, peace and dignity’ , and the Revised European Social Charter (RESC) set out in Article 3: ‘with a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: (1) to promote access to housing of an adequate standard; (2) to prevent and reduce homelessness with a view to its gradual elimination; and (3) to make the price of housing accessible to those without adequate resources.’ (Granger et al. 2018). Many of the Covenant’s rights however are programmatic in nature entailing minimum core obligations and the same goes for the recognition of the right to housing and protection in relation to particularly vulnerable groups such as persons with disability, children, and refugees. The United Nations and the Council of Europe leave it to the nation states to take the appropriate and necessary measures to implement it, and usually provide for only soft monitoring mechanism (Granger et al. 2018). At the governmental level of nation states the maximum commitment expected is to work progressively towards the full realization of that right without discrimination. Whether this maximum commitment is practiced depends on the domestic constitutional and legislative instruments. The analysis of Granger et al. (2018) shows that some countries regarding some aspects of human rights in general and housing rights in particular have legal instruments for invoking international treaties against national measures, but with some exceptions the right to housing assistance is categorized as a ‘principle’, which, in the context of the EU law, only has a programmatic

value. These principles are meant to guide legislative and policy action and judicial interpretation, but do not grant subjective rights, which could be enforced in court. All in all, the redistributive justice principles regarding the right to housing in Europe are based more upon a sufficientarian coupled with prioritarian justice vision than upon the desire to strive towards an egalitarian one. The focus is on ensuring access to minimum standard housing for low income households, and providing for the specific needs of particular groups, such as persons with disabilities, families and children, women, Roma, internally displaced persons and migrant workers, and not on equalising housing conditions across Europe.

This example however is not intended to claim that at the supranational entity justice principles are of the highest degree and that these are spoiled, denied or neglected by lower (sub-) national entities. One form of evidence to the contrary is that justice principles, such as the right to housing for marginalized groups laid down at the international and the supranational level can, potentially, be realized at the local level. However, the EU and its member states, in proclaiming the liberalisation of the housing market and enforcing cutbacks in public spending on social housing, housing subsidies and tax reductions affecting a decrease in affordable housing, have minimized the realisation of these justice principles. Instead of applying the supra-nationally agreed right to housing, nation states have passed for responsibility for social housing to the free market and the subnational level of local government. Redistributive justice regarding the right to housing thus involves multiple governmental levels as well as the free market with its specific properties, values and resources. Recent developments show that right principles are substituted by sufficientarian coupled with prioritarian justice principles in a process of austerity and liberalisation. The free market principles of demand and supply nor local governments will and can compensate for its un-equalizing effects.

In the field of *recognitive* justice, the relational mechanism defining the boundary lines between us and them, this levelling down of the fundamental assumption of participatory parity also becomes clear. Recognitive justice principles defined in supranational entities only have a meaning if put in practice in daily life in the interaction between social groups and individuals, expressed in media and political discourse and ‘lived’ in the way people interact in social institutions such as schools, court, welfare offices and care settings. Our empirical studies show that recognitive justice principles as set out in international and European

human rights treaties and EU law, become diffused, dispersed, fragmented and contrasted and contested in social institutions, discourses and in daily practices. In pluralistic societies, homogeneity deriving from the notion of common humanity becomes a flawed idea in the wake of needs for recognition of different and multiple identities.

Illustrative for a contentious tendency towards recognitive justice are public discourses on commemoration of national histories (Akkan and Hiah 2019) and on education for minority group children (Bugra and Akkan 2019; Lepianka 2019). Involved in the discourse are media, politicians and opinion leaders each of which represent 'power elites' that is entities having the power to define situations and by doing so affect boundary drawing between us and them (Miller 1999; Goffmann 1959; Bourdieu 1979). They set 'the rules of the game', defining (in)justice and the principles according to which claims to justice might be established and/or evaluated as legitimate; and the type of remedies that might be sought to correct for injustice by possessing discursive resources that can be employed in struggle for a hegemonic interpretation of 'legitimate social needs' as well as of universal moral respect and egalitarian reciprocity and thus the right of some to participate in parity in moral conversation (Benhabib 2004). The exclusion of certain voices by missing out or ignoring certain public interests and misrepresenting common interest (Pettit 2004) result from and reflect unequal power relations.

Properties at stake in the educational discourse are legal and policy instruments to define the distributive and recognitive inclusiveness of the educational systems affecting children's position as an element of capability promotion or deprivation shaping the future life chances. Moreover, the school curriculum representing the moral values and societal norms that the education system incorporates and promotes constitutes an issue which is especially relevant in today's pluralistic societies where conflicting values coexist. Bugra and Akkan (2019) point at three related problems of capability deprivation in education; 1) the segregated character of the education system and the inequalities of access to education due to different quality of schools according to the class- and ethnicity based neighbourhoods; 2) Difference blindness and misrecognition and attitudes toward the worth of different cultures limit education in meeting the expectations about capability development and social cohesion. They make the minorities feel discriminated against, alienated or excluded, and consequently lead to an erosion of trust in society; 3) Minority claims for cultural recognition

are seen as a threat to social cohesion, their access to channels of representation is often limited and they do not have the opportunity to adequately express their grievances and claims and to contest stereotyping and stigmatising tendencies concerning about their values or their culture. Lepianka (2019) in addition focused on the media as relevant entities in informing and influencing public discourse. Their properties consist in communicating politics to the public thus contributing to a specific rank-ordering of 'social problems' that demand public attention. Media also are an important outlet for popular discontent with existing educational practices. The questions of what is just, to whom and on what moral grounds are debated albeit that no straightforward conclusions can be drawn regarding recognitive justice principles. Instead, the analysis shows that debates about justice principles are uncrystallised and evolve recognitive justice principles about the assimilative agenda of schools denying minorities the opportunity to co-author the curriculum. In such an assimilative agenda, minorities have few opportunities to nourish own identity (ibid: 38). Recognitive justice is also at stake in media debates on distinguishing 'better' and 'lesser' languages and cultural backgrounds, and more importantly in an ambivalent evaluation of minority recognition claims as self-exclusion which disadvantages not only the individual or group in question, but the whole national community. Media outlets as entity for redistributive grievances permeate discussions about access to quality education, school admission policies, education tracking system, redistribution of public resources among various types of schools. Underpinning all those claims is a firm belief in the role of education in nourishing talent and ambition, on the one hand, and its significance for the alleviation of social inequalities, on the other. The debates revolve around the question of whether or not and 'how' the current educational system, succeeds in fulfilling its fundamental social mission; they expose tensions over the principles that govern the allocation of "justice", and – indirectly – groups whose well-being is, often implicitly, prioritized.

Akkan and Hiah (2019) analyse majority/minority groups as entities functioning as 'imagined communities' whose identities are contested when it comes to recognitive justice. While recognizing diversity and pluralism in contemporary nation states, acknowledging that commemoration is increasingly identity-based instead of nation state based, and without ignoring the relevance of history for our times and its influences on the normative core of society, opinion makers and politicians point at the complex moral dilemma of

commemorating the historical past (Akkan and Hiah 2019). Commemoration practices are about the relationships established with other groups, about a glorified past or about historical injustices and victimhood paving the way to build the links between the present and the past. Majorities might want to solve the moral dilemma by avoiding remembrance built on a discourse of “the past should stay in the past” or “perception of complex figures in their own times”. Minorities in contrast, see commemoration as recognition of continuities between past and present injustices, its influence on the normative core of society and as a mode to ‘coming to terms with the past harms’.

Social institutions as entities dealing with populations depending on income support and/or care have a few *properties* in common. While economic rights are increasingly regulated at the supra- and international level, social rights are not covered by the four freedoms (mobility of capital, goods, services and labour) of the European internal market but regulated by national social laws, to be put in practice by local or regional authorities or outsourced to markets. Other involved entities are advocacy organisations such as SCO’s and client organisations assumed to represent clients’ interests. Regarding care systems and cultures Anderson and Dupont (2019) and Knijn (2019) conclude that among European countries there is no similarity between ways of institutionalising and organising care and income support, which means that that no consensus exists on what redistributive justice principles are nor on which needs will be recognized on what grounds. Regulation of care workers’ rights shows a rich variation reaching from strict national labour regulations for care work, cash-and care- and personal assistance systems to unregulated private contracts. Care provision is also very vulnerable to policy reforms that define the responsible entities; shifts from the family to residential settings and vice versa seem to be less inspired by the voices of involved represented care givers and care recipients than by austerity measures or processes of individualisation and independency. Most important however, is that families as private entities of care and income support are included in an often-unrecognized way without being compensated or at a very low level. What characterizes the entities of care work most is that redistributive and recognitive justice are shaped in a continuous and direct interaction and deliberation between care recipients that might be capable to express their needs and care workers who might be able to fulfil these. Our studies show that these interactional justice principles are under pressure because of multiple constraints: limited budgets, low quality

residential settings, low wages, limited labour protection and work pressure form serious barriers for providing quality care while these same limitations in combination with underestimation of the meaning of family dependency and in some countries the still patronizing attitude towards frail elderly and disabled persons undermine the capabilities of care recipients, their caring family members and the (migrant) care workers.

Regarding welfare benefits local welfare offices are entities deciding on re-distribution in the context of national welfare states' regulations and laws. They are funded by mandatory taxation, potentially redistributive, specific in its aims, compulsory, and surveilling. Social assistance is the most basic non-contributory benefit in the states studied. It is targeted at individuals and households living under a defined minimum income and in some cases are reserved to specific categories of vulnerable populations, such as families with children or poor elderly people. (Anderson and Dupont 2019: 1-2). A main property of social assistance is that national laws and regulations are implemented by social workers and claimant managers in direct contact with the welfare clients with their multiple identities. Despite strict guidelines and criteria these social workers (or client managers) have significant discretionary power to define who is eligible, what conditions must be fulfilled, and what level of income and which goods are redistributed. Because of the variation in individual conditions and characteristics of clients, the interpretation of their needs and deservingness depends on social workers in an unequal power relationship. Moreover, the lack of transparent procedures and clear formulations of rights of claimants, criteria for sanctions, surveillance and accountability seem to allow for tailor-made approaches but the counter argument is that these may undermine claimants' capability to decide what one needs because of insecurity about the rules and procedures, and thus prevent participation on equal grounds.

Conclusion on entities

In the above section multi-level governments, social institutions and public discourses as entities (with their properties) are analysed as mechanisms of justice from the perspective of their contribution to improving capabilities and to participatory parity. Justice takes shape within these contexts and these entities setting the rules of the game, being positioned to decide on public resources, influencing public opinion and representing its battlefield. Justice for vulnerable people depends on how they are imagined, classified and treated by

governments, social institutions, courts, discourses and majority populations. In Europe with its diverse and pluralistic societies supranational entities intend to promote recognitive justice principles for women, ethnic minorities and migrants as well as for disabled persons. The application of these principles in new recognitive frameworks goes along with tensions that arise from nationalistic discourses. At the same time redistributive justice principles are constrained and in decline due to austerity policies, cutbacks in public spending driving national governments and social institutions to misrecognition of needs.

Activities as mechanisms of justice

Mechanisms of justice exist in entities that 'are' and 'do' by their activities. In an interactive process of affirming and transforming justice principles activities as mechanisms of justice draw boundary lines of belonging, give shape to voice and representation and conclude on desert and needs by setting standards for appropriate behaviour and living. The shape, content and form of these actions may differ per social sphere (Walzer 1983).

A main consideration in analysing these activities concerns the relationship between equality and difference as two poles of distinction, that is on the relationship between redistributive justice and recognitive justice. Inequality and exclusion may follow different 'logics' though a sharp distinction between the two poles of justice – equality and difference – cannot be made if only because the rules of the game dictate who is 'up' or 'down', or 'in' or 'out' (Silver 2007). Exclusion from representative justice– on whatever basis, being it race, ethnicity, religion, gender or age – has consequences for equality (Nullmeier, Pritzlaff-Scheele and Zauchner 2019). Nonetheless, activities contributing to enforcing equality differ from activities promoting inclusion even if the entities that operate in bringing forward justice in both arenas are the same. Although differentiation is unavoidable and even needed in reaching justice in diverse and plural societies it may contribute to injustice due to its often-arbitrary character. Differentiating activities resulting in individual capabilities and participatory parity that will be outlined in this paper are 1) the categorization of difference, 2) accessibility and eligibility (to resources), 3) equity, need and deservingness, and 4) Negotiating justice on behalf of participatory parity and capabilities.

1) *The categorization of difference.*

Categorization of group difference points at the controversy between universalist liberal principles and politics of identity as is outlined by Bugra (2018). Four main issues are relevant here: 1) justice principles and activities need to be inspired by group differences which inform different experiences and shape different aspirations and demands concerning participation in society; 2) intersectionality as an element of non-homogeneity of group identity, 3) reconciliation of group difference with the common good of the society, and 4) plurality and dynamics of individual lives that cannot be locked up in one prominent identity; individual non-conformity and dissidence remain important. Hence, Bugra (2018: 27) states: 'The question of just representation is to be addressed by recognizing the differences within the society as well as within the groups demanding the recognition of their difference.'

There are groups who are excluded by the very nature of the nation state form and its relationship with territoriality which inevitably turns certain people, including formal citizens, into outsiders as they are not considered settled, or settled for long enough. A core question is whether minority policies (that is differentiation based on categorization) contribute to participatory parity; are they in or out and what are advantages and disadvantages? Regarding groups like Roma it is not easy to juxtapose a universalistic versus a minority group discourse (See Anderson and Dupont 2018; Bugra and Akkan 2019; Lepianka 2019). In contemplating participatory parity, cultural recognition of Roma minority culture could bring forward activities (segregated schools) resulting in exclusionary outcomes for individuals' capabilities to fit in the common good of society aimed to promote participatory parity. Roma's positioning as a disadvantaged minority group is also problematic as redistributive policies that target disadvantaged group suffer from a mixture of colour-blindness (treating all as equals without acknowledging minority cultures) and discriminating institutional and interactional practices. Illustrative is the denial by local authorities of the legitimate human rights-based claim for living in mobile homes as a fundamental right, in combination with the stigmatized and stereotypical treatment of all Roma in social welfare practice (Hiah and Knijn, 2018; Anderson and Dupont 2018). Stigmatization is the other matter in dealing with redistributive rights of minority groups. If the willingness of the minority group to contribute to the majority claim of the common good is doubted non-homogeneity of the group is overlooked and individuals are treated as representing ascribed identities. Categorization of difference regarding Roma populations therefore reduces individual options to escape also

affecting representative justice. The ideological constructs of a dominant group contribute to self-definition reason why minority candidates may be less likely to put themselves forward as political representatives of a stigmatised group.

Differentiation based on categorization does not operate in a similar way for different groups in society. What goes for Roma deviates from citizens who do not conform to the male white able-bodied norm. Activities contributing to their participatory parity recognizing their autonomy and capabilities are increasingly put on the supranational, EU, and domestic political agendas but generalisations and categorisations like ‘the elderly’ or ‘the disabled’ do not justify the rich variety of capabilities and lifestyles within and among both groups of people (Anderson 2019; Knijn 2019). From the perspective of recognitive justice it is imperative not be colour-blind to their – and their families’ needs – by requesting autonomy and self-responsibility, not to classify elderly and disabled persons as vulnerable categories of the population per se and to avoid a patronizing approach that neglects their freedom of choice to live the life they prefer.

With respect to international and EU law, categorization of difference can operate as a mechanism to identify vulnerability categories; in the legal mechanisms categories of vulnerability are developed to exercise anti-discrimination practices. With that objective mechanisms of categorizing differences are pertained that prioritize the needs of certain groups classified as *disadvantaged and vulnerable* with respect to protection and exercise of rights. For political reasons these categories are rather broad and non-specified such as ethnicity and religion-based minorities or women, children, older persons, and persons with disability (Granger et al. 2018). In applying this to the right to education ETHOS studies show that activities that pursue ‘anti-discrimination’ emerge as mechanisms of accommodating the exercise of rights to education at individual and group level. Salat (2019) highlights a complex case law developed by European Court of Human Rights to be read in conjunction with Art 14 prohibiting discrimination requiring to “pay particular attention to the special needs of vulnerable persons (be they ethnic or religious minorities, persons living with disabilities, etc).” Regarding the categories of difference, the Court emphasizes inclusive education as a guarantee of universality and non -discrimination for pupils with disabilities, as well as to the ethnic minorities. In line with this understanding, ECtHR jurisprudence has stated positive obligations, as well as procedural and substantive requirements with regard to segregated

schools. At the national level, although the constitutional context differs among the countries, all countries operate within the framework of non-discrimination influenced by EU equality law, international human rights instruments such as the Convention on the Rights of Persons with Disabilities (CRPD), and strongly the European Convention on Human Rights (ECHR) (Salat 2019).

Counteractivities that may undermine this legal framework are present in discourses in media and politics operating by labelling, othering of ethnic and religious minority members, and generalization of negative stereotypes that hamper justice (Lepianka 2019). For instance, the categories of race as a mechanism of exclusion operate at different levels: by applying the term 'black' to denote schools with over 50 per cent of a non-western background inherently applying this to children with Moroccan, Syrian, Iranian, Surinamese, Latin American and African background as is the case in the Netherlands. Or by presenting insulting and pejorative images of Africans as 'primitive peoples' with no history of their own in Portugal. Activities of overemphasizing, as in Austria, the 'otherness' of members of religious and ethnic minority groups whose mother language is not German that pursue reducing difference through education could have negative implications on the pupils' prospects by undermining their self-esteem, their sense of belonging and their ability to participate on equal grounds. Defining minority cultures as different could also result in defining their culture/language as less-worthy; that of 'others' while difference blindness often accompanies the discursive framing of equality in terms of equal opportunities. Yet where the disadvantages are dissociated from the underlying social and cultural inequalities, the recognition of disadvantage might easily articulate with discriminatory tendencies. For instance, as an aspect of the "colour-blindness" in the Hungarian education system where the ethnic registration of Roma children is prohibited, the term "disadvantaged" refers to Roma students (Salat 2019: 44).

In understanding categorization of difference as an activity, the interplay between temporality and history in shaping (ideas about) the socio-economic order, the vision of common good, the permanence of class structure, and/or the permanence of ideas about justice claims of minority and marginalized populations is imperative. In many cases (minority) claims to recognition and/or representation can be understood through the lens of history or

rather, a specific memory of (national) history, which may differ between various social groups (Anderson and Dupont 2018; Akkan and Hiah 2019; Lepianka 2018).

The categorization of difference as a mechanism operates at different levels in different entities. The empirical studies carried out under ETHOS project demonstrate that the categorization of difference is one of the major activities that define the boundaries of participatory parity with respect to redistributive and recognitive as well as representative justice in a particular context. The activities that are scrutinized in the realm of entities like law, media, education, and the welfare state operate with a categorization of difference; such categorization determines who has access to certain resources, whose identity and claims are recognized and whose voice is heard.

2) Having access and being eligible

Openness and approachability of the public domain, and availability of resources, relevant institutions and people are major conditions for realizing capabilities and participatory parity. However, access to quality education, residential care, social housing, employment and welfare benefits are increasingly limited due to a combination of reduced public budgets, flexibilisation of the labour market and the neo-liberal self-responsibility paradigm. Universal justice principles implicate activities guaranteeing an equal level playing field in accessibility to and eligibility of public goods. Giving access is one side of the coin accentuating minority and vulnerable populations' dependency on powerful institutions dominating the redistribution of public goods and allowing for the recognition of minority cultures and lifestyles. Claiming or taking access is the other side of the coin expressing resilience of people defined as marginal or vulnerable who oppose differentiation based on categorization. In the process of giving and taking access the principle of equity of humans comes to the fore. The ETHOS studies show that this equilibrium is partly reached in case of personal assistance for disabled people which is an effective materialization of the access claim of the Independent Living Movement (Anderson and Dupont 2019; Knijn 2019) and in the case of welfare benefits and social housing for acknowledged temporary status holders (Knijn and Hiah 2019). These are exceptional examples, in most cases the effect of austerity politics combined with a neo-liberal paradigm is an imperfect and suboptimal application of having access and being eligible as justice activities. What happens can be best illustrated by the case of young women's access

to the labour market as analysed by Meneses, Araujo, Ferreira and Safradin (2018). The entities at stake are the European Union and the European Council during the economic crisis in alliance with the IMF and ECB. Their activities exist in forcing the Southern Member States to accept austerity policies by reducing public spending and outsourcing public goods resulting in diminished redistributive justice among and within EU Member States, in particular the Southern ones. The redefinition of the 'common good' in terms of the priority of economic market principles above principles of redistributive justice and the acceptance of global financialization illustrate the relevant activity institutionalized by unequal power relations in representing the 'common good'. It results in substituting universal social rights by deservingness and reciprocity principles that limit redistribution of public goods to those who adapt to proper behaviour and do something in return. It also leads to 'adaptive preferences' of the economic vulnerability of especially young - female - persons and their acceptance of the neoliberal 'rules of the game':

[L]egitimacy by fear asserts itself as a mechanism for converting the narrative of austerity into a dominant political-social model, assuring the absolute priority of the moral values of economic and labour neoliberalism (Ferreira 2011). Facing this reality young people became a very vulnerable working mass that is available to accept almost anything in order to have a job. Plans for the future are put on hold and the survival in the present is a permanent struggle between precarious jobs and family help (Meneses et al. 2018: 81-82).

Such a narrative of fear appears to be able to become so dominant that parts of the new generation instead of claiming representative justice tend to accept the 'austerity model' and do not formulate claims for justice targeting power relations nor address hegemonic paradigms. The same mechanism operates in other domains and regarding other social groups; 'adaptive preferences' we see in frail elderly adapting to reduced care provisions (Anderson and Dupont, 2018; Knijn 2019) and among welfare recipients and social workers accepting deservingness and reciprocity criteria (Anderson 2019). Problematic is that from a representative justice perspective, organizational and political choices are not transparent nor result of a democratic process in which all voices are heard. Moreover, precarity that describes growing levels of vulnerability and exploitation in the labour market, invokes lives characterised by uncertainty and instability. It does concern people who are permanently

exposed to instability and insecurity (Meneses, Araújo and Ferreira 2018). The financial and economic crisis have deepened exploitation, with negative consequences for vulnerable workers, many of whom being migrants who may lose their jobs in the current downturn or may remain in work facing worsening conditions and reductions in pay as is shown by the allowed practice in the UK and the Netherlands to offer people 'zero hours' contracts.

Being eligible is conditional to getting support in creating and improving justice by stimulating capabilities and choosing the live one prefers. Setting eligibility criteria is an activity that defines the right to receive resources and to get access to organizations that matter, such as schools, (health)care, media, trade unions, or legal processes. Human rights outline the broad criteria for eligibility but do not suffice for its specification. This relates to diversity of human beings and their specific needs implying that organisations responsible for public goods must set thresholds by way of selection criteria, and private goods go at a price. Setting eligibility criteria is an unavoidable as well as a normative activity in welfare organisations, public healthcare, education migration offices, social housing and even in the media. By consequence, eligibility criteria intended to be inclusive inevitably define the boundary lines of belonging, and of acceptable behaviour often with the intention to minimize the target group. Hence, eligibility criteria per definition contrast with universalism. For example, although entire populations of Europe suffered from WWII, not all can claim compensation. It took many years before categorization impedes recognition, and some extremely suffered populations (Jews) were recognized more easily than others (Roma). The same eligibility mechanism involves older people; while most people at old age might get mobility problems though there is common sense that only those who are diagnosed might claim additional moving equipment. Eligibility criteria can be defined as just and fair if they define target groups at criteria that are in tune with the intention of the redistributive character of the public good, recognize needs of minorities and individuals within minority groups, are transparent and democratically debated, and exclude all other implicit criteria. Eligibility for social housing and social assistance therefore should only be based on income, not on ethnicity, cultural or religious background or gender. Eligibility for good quality schools at all levels should be universal given its importance for development of individual capabilities as well as for society at large, and the same goes for healthcare. Nevertheless, it becomes clear from our studies that many eligibility criteria are not appropriate from the perspective

of justice. This is related to several assumptions on eligibility criteria that impede its implementation such as prioritization and localism in rights to housing. Eligibility for housing benefits and retention of one's home are increasingly tied to reciprocity as societal contribution and integration meaning being employed or actively looking for jobs, being committed to the local community, having children, displaying good behaviour while, the exclusion of drug consumption related illnesses and disability reveals how legal frameworks set the mechanism of access and eligibility pertaining to the redistributive frames targeting special needs individuals who are to 'blame' for their fate (Granger 2019).

3) *Deciding on deservingness.*

A third form of justice creating activities can be viewed as a subcategory of having access and being eligible. Selectivity and conditionality divide deserving from the undeserving vulnerable populations grounded in criteria of equity, need, and reciprocity resulting in increasing numbers of homeless people, poor households including poor children, and job and income insecurity. Moreover, the empirical ETHOS studies manifest that feelings of insecurity contain a broad spectrum of negative outcomes that cannot be reduced only to the loss of a job and a wage. Rather the effects of these new risks depend on the difficult connections between equity, need and reciprocity as deservingness criteria in plural and diverse societies. Exclusion and polarization between the 'us' that belong to the political community that owes us and to which we are due and the 'them' that undermine our sense of belonging as well as our public goods is just one of its manifestations.

In this context scapegoating is a performative mechanism expressed in the (social) media by politicians and the populations at large blaming a certain category of the population as cause of 'the problem'. For instance, in the Netherlands one speaks about 'migrant benefits', because the majority of welfare beneficiaries are migrants coming from third countries (Knijn and Hiah 2019) and in Portugal prejudice against Roma as allegedly being dependent on subsidies creates a feeling of injustice among claimants, although most of the time this is based on wrong information and years of racism institutionalized against this group (Araújo and Brito, 2018).

Self-blaming or blaming one's group identity is another reaction on limited accessibility of scarce public goods. It comes to the fore among disabled people who accentuate their right

to live independently and to take autonomous decisions but this recognitive justice claim may impute those who are 'passive' care dependents (Knijn 2019), it pops up among welfare beneficiaries blaming each other for not doing their very best to get a job (Anderson and Dupont 2019), among young unemployed women who blame themselves for not having a regular job (Meneses, Araújo, Ferreira and Safradin 2018) and among Roma whose potential representatives struggle with the stigma attached to their community (Anderson and Dupont 2018).

The equity principle once developed in social psychology for determining whether the distribution of resources is fair to both relational partners compares the ratio of contributions (or costs) and benefits (or rewards) for each person. Nowadays the principle and its activities are increasingly based on an argument of guilt understood as the attribution of a lack of individual contributions. 'The rejection of need fulfilment is not a response to misconduct that has to be punished, but rather the consequence of a lack of contributions by the individual. Being at fault is interpreted as lacking achievement. Instead of the criterion of need, the criterion of desert dominates' (Nullmeier, Pritzlaff-Scheele and Zauchner 2019: 8). Most clearly this principle is detected in the ETHOS studies on welfare benefits and social housing. Indeed, the existence of needs regarding these public goods are accepted but envisioning it as the result of a self-inflicted need gap leads to the ambiguous criterion of desert that simultaneously speaks to charity and justice (Anderson and Dupont 2019) in the fulfilment of needs. 'Reciprocity', 'contribution' or 'counter-achievement', are put central in times of austerity exacerbating the restrictive tendencies of the deservingness paradigm. Public work programs for instance in Hungary aim to replace benefits. It is used as a quasi-punishment since its introduction, in 2008, when it was stated that there is no welfare without work (Meneses, Araújo and Ferreira 2018). Deservingness encourages suspicion-based activities toward claimants' purported needs and contributions and the relegation of large sections of the population to the ranks of the undeserving. By implication, in the context of social assistance the equity principle of justice is 'mainly supportive of the taxpayer whose money must be spent prudently rather than of claimants who must be protected from destitution at the same time as their deservingness is assessed.' (Anderson and Dupont 2019: 28).

Similar activities characterize the sphere of social housing where increasingly, according to Granger (2019: 67): 'claims for recognition of the particular needs of certain

vulnerable groups, in particular those of persons with disability, promoted by global human rights frameworks and largely endorsed by European legal actors, interact with dynamics of prioritisation.’ By identifying special needs status-related criteria operate alongside socio-economic criteria in the allocation of housing resources but remain infused with notion of deservingness, alongside, or above, consideration of needs. Equity criteria come to the fore in tying access to housing benefits and retention of one’s home to societal contribution and integration (being employed or actively looking for jobs, being committed to the local community, having children, displaying good behaviour, etc). The exclusion of drug consumption related illnesses and disability, for instance, reveals how legal frameworks exclude from redistributive frames targeting special needs individuals who are to ‘blame’ for their fate. At the same time criteria of vulnerability, prioritization and redistribution are applied even more strict or even absent for Roma, refugees, undocumented migrants and unemployed mobile EU migrants. Their particular needs are in some countries (Portugal, Hungary) rarely directly addressed in the law while in practice they only benefit if they fit the socio- economic depravity criteria laid down in legal regulations, and which they may not be able to comply with (Granger 2019: 67).

4) *Negotiating justice on behalf of participatory parity and capabilities.*

Categorizing difference as a justice related activity may lead to the recognition of cultural minority identities and related needs of some vulnerable populations or the rejection of belonging and dismissal of the needs of others. Processes of defining access and eligibility appear to increasingly focus on deservingness, equity and reciprocity. Therefore, the mechanisms – entities, their properties and activities - entailing justice principles not only provide or withhold resources via public goods to cater special needs of vulnerable populations, they also create vulnerable populations as categories of difference. Negotiating vulnerability, its categorization and the resources to overcome unequal participation and incapability are imperative activities from a justice perspective. The ETHOS studies present various activities giving shape to vulnerability that result from their legalization in human rights and EU law, institutionalization in voting rights, charters and dialogues, discussed memorisation practices, and lived in social interactions.

Interestingly, in EU law the use of the notion of vulnerability and its relevance is growing. Developed in the context of human rights law, it increasingly serves as a point of reference for the design of EU policies, and in the interpretation of EU law. Though the concept of vulnerability is not yet explicitly included in Treaty provisions (Granger et al. 2018), its use in international and European law such as Convention on the Rights of the Child and the Convention on the Rights to Persons with Disabilities has an increasing influence on migrant, minorities and disabled persons' rights, for instance in the sphere of access to education and inclusiveness. The rise in relevance of international, European human rights and EU law regarding vulnerable groups adds to the complexity in which these legal orders interrelate, to be understood as a pyramid, a network or otherwise. This complexity is legally managed by concepts like the 'the margin of appreciation' (for the European Court of Human Rights) and subsidiarity, supremacy and constitutional identity (EU law). What the interplay between legal systems means for the substance of a given right, however, depends on the national context meaning that a straightforward recognition of vulnerability and ways to overcome depends on lower level dialogues and negotiations.

To offer another instance of negotiations that arise out of different mechanisms, the ETHOS study on the right to vote for citizens as protected by international human rights instruments like the ICCPR, also shows an increasing sensibility for the rights of vulnerable and marginalized populations. While still in the hands of domestic law-makers, pressure by both the ECtHR and EU law (European Convention of Human Rights and the case law of the European Court of Human Rights) resulted in a greater enfranchisement of immigrants, and mentally disabled persons, and in a partial re-enfranchisement of convicted prisoners who had been subject to exclusionary measures. Although with limitations and conditionalities regarding foreign residents, mentally disabled persons, and criminals potentially undermining the foundations of the democratic system of government, increasing enfranchisement boosts representation of those categories (Theuns 2019).

A quite different conclusion is drawn from the analyses of the recognition and protection of vulnerable groups when it comes to their work-related social rights. As outlined by Castro Caldas (2017) a tendency to "economise on justice" has detrimental practical implications in respect to the realization of social justice. Castro Caldas argues that the separation between economy and moral philosophy is not obvious and unavoidable. Meneses,

Araújo and Ferreira (2018) indeed show how economy is surpassing justice whilst European economic policy is not aligned with social justice premises but rather with the rules of financial markets. Araújo and Meneses (2018), De Vries and Safradin (2018) as well as Araújo, Safradin and Brito (2019) in their ETHOS studies search for formal and informal activities of negotiation and deliberation that may offer instruments for strengthening redistributive justice by recognizing vulnerable populations, their interests and representatives. Their conclusions are in some respects disappointing. De Vries and Safradin (2018: 5) explain that an attempt to improve the implementation of social and economic rights at the European level by strengthening the Treaty system of the European Social Charter within the Council of Europe and its relationship with EU law, was vital since both the economic and political crises left many groups of citizens in a fragile position. Especially vulnerable groups such as the elderly, youth, persons with disabilities and migrants have been undermined in effectively enjoying their fundamental rights. The authors found however that up until now the European Court of Justice (CJEU) responsible for supervising the implementation of the Charter has taken a cautious approach in dealing with national cases that challenged austerity measures based on fundamental rights. This illustrates that the EU's social nature has been seriously undermined during the Euro zone crisis. Recently launched measures that are aimed to guarantee social rights, such as the European Social Pillar, are conceived as a recognition that the EU's commitment in the Eurozone crisis has neglected its social dimension (De Vries and Safradin 2018).

Path-dependency is determinant for institutional change for instance in representative justice as Araújo and Meneses (2018) show in their analysis of work-related social dialogues. Redistribution and protection of vulnerable groups depends on social dialogue structures that are under pressure even in countries where their presence had deeper roots. Trust between social partners built up in a strong welfare state tradition is imperative for protecting workers and national economies. A lack or disruption of such a tradition (such as in the UK, Portugal, Hungary and Turkey) is a fundamental part of the problem. Araújo, Safradin, Brito (2019) in search for alternative dispute resolution (ADR) mechanisms as functional instruments such as mediation to improve access to labour justice see potential in ADRs to surpass some of the barriers to access justice because they are less expensive, faster and geographically closer to citizens than courts, use a language that the ordinary citizen understands, and are more

familiar and easy to understand (ibid: 59). In multiplex situations such ways of representative justice by conflict solving allows a deeper comprehension of the conflicts and helps to solve not only the superficial dispute but other underlying problems that may exist. The authors warn however for a dual justice system, with courts serving first class citizens, and informal justice serving second class citizens that cannot afford or understand courts procedures. This may result in the reproduction of societies' power asymmetries, the possibility of being co-opted by the state, and the risk of an individualized approach undermining collective action in a neo-liberal and fragmented labour market (ibid: 60).

Deliberation as an activity can like negotiation not overrule power asymmetries though is another means to strive for participatory parity. For instance, restorative justice is at stake in disputes on commemoration of minorities' past and present belonging to European societies. Akkan and Jiah (2019) present commemoration practices not only as a context of contemporary debates but also as one of the significant battlefields of justice. Showing an increasing sensitivity to historical injustices, the ongoing effects of the colonial and imperial past points at awareness of the need for redefining the collective identity. In that process deliberations on moral dilemmas identify the injustices in the majority/minority relations. Majority voices may favour the discourse of "the past should stay in the past" or refer to the "perception of complex figures in their own times", but clearly silencing is no longer an option in ensuring a sense of belonging to a society. Deliberating alternative narratives is a manifestation of a moral dilemma evident in plural and diverse societies.

Efforts to improve recognition of vulnerable groups and negotiate minorities' status exist in top-down as well as bottom-up activities in an entwined process of advocating, deliberating, convincing, processing and claiming as exemplified by the case of restoring disability rights. Building upon the claims of the Independent Living Movement (ILM) a strong coalition of CSO's and service providers' lobbies occasioned a paradigm shift in the EU approach on disabled and ageing persons. By recognizing in the Active Ageing Year the Independent Living discourse and in the Disability Strategy 2010-2020 the claim to participate in and get equal access to all domains of life (education, employment, health services leisure activities) and by stimulating their human rights and combatting discrimination inclusion participatory parity in the good life has been improved, or at least stimulated (Knijn 2019). Again however, the success of such an approach depends on redistributive justice principles,

that is on conditions, resources, contexts and implementation processes, and on interactions between, in this case, disabled persons and elderly people and their caregivers in the private home, with multiple results. Where family dependency becomes an unrecognized though substantial alternative for collective resources not only people in care of need but also their caregivers become vulnerable whether they are – mostly female - kin or migrant care workers. When care recipients are heard, and caregivers are interacting on equal grounds but the resources to fulfil care needs are lacking both cannot realize their ‘beings and doings’ resulting in ‘moral distress’ among care workers. And if the discourse of self-determination, is institutionalized as in the case of the Austria, service users reach a sense of self-determination at the cost of obfuscating the care work needed to get it done. Maybe the latter exemplifies best the complex and potentially conflicting claims to recognitive justice when moral philosophy is substituted by a liberal discourse on self-determination, autonomy and individualized capabilities in times of scarce resources. If participatory parity of the one goes at the cost of the other (their work contract, dignity and voice) capabilities are not conferred by connection with other people. In the case of care for elderly and disabled persons this implies gender-inequality; in all country studies female family members or female migrant workers provide care under precarious informal or commodified conditions. The fact that both ‘family’ and ‘home’ care, whether paid or unpaid, is predominantly female seems to be taken for granted. Precisely because of its obviousness, the gendered nature of affiliation, emotion and interdependence thus remains an unspoken assumption.

Conclusions and discussion

This paper considered the mechanisms (entities and activities) that lead to justice outcomes in Europe. Regarding entities, one important mechanism is that of multi-level governance. All the countries considered are members of the Council of Europe with its dedication to human rights, democracy and the rule of law. In addition, all – save for Turkey – are Member States of the EU. Within nation states, the subnational levels of regional and local government play an important role in setting out understandings of justice as well. This creates a constitutional pluralism in which there is an interplay between local, national, EU and human rights-informed understandings of justice principles. Most striking in this complex governmental hierarchy is the ambivalent position of the EU regarding redistributive versus recognitive justice in the context of suboptimal representative justice. On the one hand the European Union is a

profound defender of minority rights, of gender equality and LGBT and disabled persons' rights and offers lots of programs and initiatives to stimulate recognition of diversity. From that perspective one could say that participatory parity of under- or unrecognized groups and individuals as well as their representation in policy aims of Europe became an undeniable aspect of the European theory of justice and fairness, although lower governmental levels do not always adapt to these principles. On the other hand the EU has promoted a free market of persons, capital, services and goods with strict economic budgetary restrictions to all its Member States, has stimulated austerity measures and put Member States under rigid regulations negatively affecting the participatory parity and capabilities of exactly these minorities, women, frail elderly and disabled persons. Nation states and local and regional authorities have reduced welfare benefits, excluded categories from welfare benefits, outsourced social housing programs to the competitive market, reduced care facilities for elderly and disabled persons, and turned towards a paradigm of distrust based on reciprocity and deservingness. These developments challenge or even violate redistributive, recognitive as well as representative principles. In that process vulnerable populations are badly represented and instead adapt preferences with consequences for their capabilities and for affirmative and transformative remedies. Justice principles expressed in visions, codified and institutionalised in legal tradition and/or bureaucratic, professional, cultural and social practice, determine not only the shape, scope and site of justice experienced by individuals, groups and societies, but also the choice of remedies, that is the claims for justice to tackle the injustice. Power asymmetry stands in the way of differentiation without categorization, equal access to and eligibility of (public) resources while desert has substituted rights. Negotiation and deliberation as activities of representative justice are ongoing but so far did not result in realizing the full development of vulnerable people's capabilities nor in ensuring participatory parity.

References (all ETHOS reports are available at <https://ethos-europe.eu/>)

Akkan, B. and J. Hiah 2019. Historical memory and the practice of commemoration in public space – mapping moral sentiments of opinion leaders, ETHOS report D4.5.

Anderson, B. and P. Dupont 2018. How does it feel to be a problem?’ What we can learn about justice as political representation from empirical case studies, ETHOS report D5.2.

Anderson, B. and P. Dupont 2019. Just Deserts? Justice, deservingness and social assistance, ETHOS report D5.5.

Araújo, S and M.P Meneses 2018. The effectiveness of social dialogue as an instrument to promote labour justice. Comparative Report, ETHOS report D6.4

Araújo, S., B. Safradin and L. Brito 2019. Labour conflicts and access to justice: the impact of alternative dispute resolution. Comparative report, ETHOS report D6.5.

Benhabib, S. 2004. *The Rights of Others: Aliens, Residents, and Citizens*. Vol. 5. Cambridge University Press.

Bourdieu P. 1979. *La Distinction. Critique Sociale du Jugement*. Paris: Ed. de Minuit.

Brink, B. van den, S. Rippon, T. Theuns and M. Zala 2018. Report on the workshop 'Ideal and Non-Ideal Theories of Justice': Towards a Non-Ideal Theory of Justice in Europe, ETHOS report D2.2

Bugra, A. 2018. A Theoretical Review of the Conceptualization and Articulation of Justice in Political Theory, ETHOS report D4.1.

Bugra, A. and B. Akkan, 2019. Discourses on minorities (and vulnerable groups) access to education, inclusionary and exclusionary aspects, ETHOS report D4.3.

Castro Caldas, J. 2017. Economizing on Justice, ETHOS report D6.1.

Elster, J. 1989. *Nuts and Bolts for the Social Sciences*. Cambridge, UK: Cambridge University Press.

Fraser, N. 1997. *Justice Interruptus: Rethinking Key Concepts of a Post-socialist Age*, New York and London: Routledge

_____. 2003. Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation. In N. Fraser & A. Honneth, *Redistribution or Recognition? A Political-Philosophical Exchange* (1st ed., pp. 7 – 109). London, New York: Verso.

_____. 2007. Feminist politics in the age of recognition: A two-dimensional approach to gender justice. *Studies in Social Justice* 1(1): 23.

Goffmann, E. 1959. *The Presentation of Self in Everyday Life*. Garden City, N.Y.: Doubleday.

Granger M-P., B. Oomen, O. Salat, T. Theuns and A. Timmer 2018. Justice in Europe Institutionalized: Legal Complexity and the Rights of Vulnerable Persons, ETHOS report 3.3

Granger, M-P. 2019. Coming 'Home': the right to housing, between redistributive and recognitive justice, ETHOS report D3.5.

Hedström, P. and P. Ylikoski 2010. Causal Mechanisms in the Social Sciences, *Annual Review of Sociology*, 36: 49-67

Inchauste, G. and J. Karver (no year). Understanding Changes in Inequality in the EU Background to "Growing United: Upgrading Europe's Convergence Machine. World Bank Report on the European Union. World Bank Group.

Knijn, T. and D. Lepianka 2018. Report containing a conceptual framework for integration of findings, ETHOS report D7.1

Knijn, T. 2019. Boundary lines between private and public care; living independently at home or in a home. ETHOS report D5.4

Lepianka, D. 2019. Mapping the Construction of Justice and Justice-related Tensions in Europe – A Comparative Report. ETHOS report D4.4.

Machdamer P., L. Darden and C. Craver 2000. Thinking About Mechanisms. *Philosophy of Science* 67: 1-25

Meneses, M.P, S. Araujo, S. Ferreira and B. Safradin 2018. Comparative report on the types of distributive claims, interests and capabilities of various groups of the population evoked in the political and economic debates at the EU and at the nation state level, ETHOS report D6.2.

Miller, D. 1999. *Principles of Social Justice*. Cambridge: Harvard University Press.

Nullmeier, F., T. Pritzlaff-Scheele and P. Zauchner 2019. Needs-based Justice and Immigration, Paper presented at the 17th Annual ESPAnet Conference, Social Citizenship, Migration and Conflict - Equality and Opportunity in European Welfare States, 5-7 September 2019, Stockholm, Sweden.

Nussbaum, M. 2011. *Creating Capabilities. The Human Development Approach*. Cambridge (USA): The Belknap Press of Harvard University Press.

Pettit, Ph. 2004. *"The Common Good." Justice and Democracy: Essays for Brian Barry*. Cambridge University Press.

Piketty, Th. 2013. *Le Capital aux XXIe Siècle*, Paris: Éditions du Seuil.

Robeyns, I. 2005. The Capability Approach: a theoretical survey. *Journal of Human Development* 6(1): 93-117.

Salat, O. 2019. Comparative report on the right to education: An assessment of the legal framework of sic countries from the perspective of recognitive and redistributive justice, ETHOS report D3.6.

Sen, A. 1999. *Development as Freedom*. New York: Knopf.

Silver, H. 2007. The process of social exclusion: the dynamics of an evolving concept, CPRC Working Paper 95, Department of Sociology Brown University Providence, Rhode Island, USA

Theuns, T. 2019. A Comparative Study on the Right to Vote for Convicted Prisoners, Disabled Persons, Foreigners and Citizens Living Abroad, ETHOS report D3.4.

Vries, S. de and B. Safradin 2018. Impact of the Social and EU Charters in times of crisis, ETHOS report D6.3.

Walzer, M. 1983. *Spheres of Justice. A Defense of Plurality and Equality*, Basic Books

Living and Theorizing Boundaries of Justice

Paper 7.3.3. by Trudie Knijn, Jelena Belic and Miklos Zala

Executive Summary

This 7.3.3 report integrates the ETHOS empirical findings with the project's main theoretical framework founded on Fraser's 'three Rs': redistributive, recognitive, and representative justice, and further developed in the ETHOS research program. It does so by elaborating and conceptualizing the most important fault lines of justice, that is, dimensions along which boundary drawing takes place. Drawing boundaries of justice relates to the processes of inclusion in or exclusion from the 'scope of justice' – the group to which we 'owe' or within which we can legitimately claim what is our 'due'. The report shows that exclusion and inequality are present across the borders of political communities as well as within them. The empirical findings of ETHOS unravel the various boundary lines drawn on basis of (the intersection of) identities including ethnicity, religion, gender, age, physical able-ness, as well as social economic positions such as being unemployed, living on social benefits or working in undervalued sectors (e.g. care) and/or on precarious contracts.

In the first section of the report, we clarify the methodological approach of the report in two steps. As the first step, the report generalizes from the various and diverse ETHOS empirical findings in order to categorize fault lines of justice. The second step is the refinement of the preliminary ideal types of justice in the light of the identified categories of exclusion.

In the second section, the report problematizes external boundaries of justice as limited by territorially bounded political communities and manifested in national citizenship. Based on the ETHOS empirical findings, we identified three major lines of exclusion of non-citizens: 1) territorial affectedness (excluding those affected by a polity's decisions beyond its borders); 2) sedentariness (excluding those that move across borders); and 3) national belonging (excluding those that do not share a dominant ethnic identity).

The third section of the report conceptualizes internal boundaries of justice among citizens by drawing on Fraser's notion of 'institutionalized patterns of subordination and exclusion'. The report finds that formal belonging is often not sufficient to get included into 'internal' scopes of justice due to a paradigm shift in recent years from welfare society that

informed the European Social Model (collective responsibility) to ‘austerity society’ (which is based on individual responsibility for personal welfare). Namely, the newly introduced austerity policies create much stricter criteria of exclusion that affects groups that were previously protected. Institutionalized patterns of exclusion in the austerity society exclude those that deviate from ‘normalcy’ and this, in turn, creates systematic group inequalities. Austerity society rests on the ideas of deservingness and reciprocity, i.e. moving away from the idea of rights to welfare, to the idea that welfare should be ‘deserved’ and those getting it should reciprocate somehow.

In the section four, the report explains the ways in which the existing forms of categorizations lead to exclusion. The ETHOS empirical studies show that differentiation is often based on categorization of assumed and ascribed group characteristics of persons that deviate from ‘normalcy’. Such categorizations amount to misrecognition of persons that legitimately have different claims; and it also leads to maldistribution of resources thus making it impossible for the provision of (decreasing) public goods to secure participatory parity for all members of society.

In the penultimate section, the report conceptualizes categorizations along the most salient lines of age, ethnicity, ability, and gender. We also note an important role for civil society organizations in securing recognitive, representative and to a lesser extent, redistributive justice for vulnerable groups in the studied countries. Finally, the report ends by refining the preliminary ideal types of justice based on these categorizations.

Introduction

This 7.3.3 report integrates the ETHOS empirical findings with the project’s main theoretical framework founded on Fraser’s ‘three Rs’: redistributive, recognitive, and representative justice, and further developed in the ETHOS research program. It does so by elaborating and conceptualizing the most important fault lines of justice, that is, dimensions along which boundary drawing takes place. Drawing boundaries of justice relates to the processes of inclusion in or exclusion from the ‘scope of justice’ – the group to which we ‘owe’ or within which we can legitimately claim what is our ‘due’. ‘Owing’ to others and claiming one’s ‘due’ stand for the most stringent obligations as well as entitlements which can be defined as claims for redistribution, for recognition, and for representation. In the Fraserian framework, justice

ultimately requires ‘participating as peers’ in a democratic society, and the exclusion from such participation amounts to ‘a grave moral wrong’ (2007:314). The report shows that exclusion and inequality are present across the borders of political communities as well as within them in institutional settings and in discourses and social relations. The focus of this paper is on institutionalized justice principles because it is here that the formal boundary lines are drawn. In addition, the paper elaborates if and how these formal boundary lines influence and are debated in discourses and social relations. The assumption is that such boundary lines are historically dynamic and contextually contested and debated.

Starting from institutionalized (in)justice first implies analysing the boundary lines between citizens and non-citizens. Formal exclusion and unequal treatment are justified by not having a claim to the legal citizenship status. Although the dominant discourse is that formal belonging to political community is necessary to be included in the scope of justice, having citizenship status alone is not sufficient to be protected against exclusion and inequality on institutionalized as well as informal grounds. The ETHOS empirical findings unravel the various boundary lines drawn on basis of (the intersection of) identities including ethnicity, religion, gender, age, physical able-ness, as well as social economic positions such as being unemployed, living on social benefits or working in undervalued sectors (e.g. care) and/or on precarious contracts. The significance of the differentiation in exclusion from/inclusion in the scope of justice is that those excluded are ‘vulnerable’ to further injustices because they either have no right to claim what is their ‘due’ or cannot claim it effectively. Vulnerable groups are not only denied dignity, respect and recognition but also do not get equal access to what are normally taken to be important social goods and rights, including the right to a decent income, housing, education and political participation which are needed for participatory parity and living a life one values. This shows the utmost importance of paying attention at and reflecting on fault lines of justice. The report has a twofold task – it will generalize from the various empirical findings in order to categorize boundaries of justice, and then it will use these categories as the basis to refine the preliminary ideal types of justice.

The report is structured as follows. We start by clarifying our methodological approach. In the second section, we problematize external boundaries of justice as limited by territorially bounded political communities and manifested in national citizenship. In the next section, we

conceptualize internal boundaries of justice by drawing on Fraser's notion of 'institutionalized patterns of subordination and exclusion'. We then explain the ways in which the existing forms of categorisations lead to exclusion, and in the subsequent section, we conceptualize categorizations along the lines of age, ethnicity, ability, and gender. Finally, we end by refining the preliminary ideal types of justice based on these categorizations.

Methodological clarification

The question of synthesizing empirical findings calls for a methodological clarification from the outset. As summarized by Theuns et al. (2019), the formulation of building blocks for a European theory of justice takes place in three main stages. The ETHOS project began by identifying and comparing principles of justice that are explicitly discussed (Political Philosophy) or implicitly present in various academic disciplines (Law, Political Science, Sociology, Economics). The next step was to abstract away from specificities and look for commonalities among the disciplines in order to build preliminary ideal types of justice (Knijn and Lepianka 2018). The third step, which we take in the present paper is to refine the ideal types of justice based on the ETHOS empirical findings collected in empirical work packages (WP3 – WP6) by moving back and forth between the two in order to formulate a more coherent understanding of justice in Europe.

This kind of moving back and forth, however, is easier said than done since the ETHOS empirical findings are of various kinds (data on discourses, legal regulations, document analyses, ethnographies, interviews, focus groups and secondary analyses of surveys), they focus on different themes (housing, voting, education, care, work, and income) and on different vulnerable populations (ethnic minorities, fragile elderly, young women, disabled people) and as such do not lend itself to a simple aggregation. Thus, in order to juxtapose the diverse empirical findings with the preliminary ideal types of justice, we also employ the Weberian approach in order to 'identify commonalities and dissimilarities between sets of disparate empirical manifestations of an idea to arrive at concepts that, while they do not reflect empirical reality strictly speaking, nevertheless provide heuristically useful idealizations that allow one to better grasp and typologize social phenomena' (Theuns et al.

2019:13).¹ The methodological advantage of such an approach is that it can secure a bottom-up theory construction and inclusion of subjective experiences of marginalized persons, while at the same time enabling generalization from such experiences in order to identify shared values and practices. Knijn and Lepianka (2018) used the Weberian method to formulate the preliminary ideal types of justice as ‘three Rs’, and here we will use it to formulate categories of boundary drawing as revealed by the empirical findings. The aim is to make final steps in defining building blocks for an empirically informed, non-ideal European theory of justice that has taken place throughout the programme.

Boundary drawing between citizens and non-citizens

Political communities, either in ancient and mediaeval cities or in modern nation states always were inherently exclusive by intending to limit the scope of justice to ‘own citizens’ who relate to one another in ways in which they do not relate to those beyond the borders of their political community, and such a distinctive relation generates claims of justice (Walzer 1983; Miller 1997; Nagel 2005). On this view, it is a formal belonging to a territorially bounded political community manifested in the legal status of citizenship that defines the scope of justice. In Europe, and beyond, this view has become increasingly contested since it excludes those beyond borders of political communities and is also blind to various forms of exclusion that take place within political communities.

Historically speaking, the emerging idea and practice of citizenship had an inclusionary and equalizing impetus by virtue of creating the identity of an ‘imagined community’ (Anderson 1983) as well as by extending the legal status of citizens to all those belonging to a territorially bounded political community. The scope of rights as well as the scope of their holders have been gradually extended to reach its peak with the introduction of what Marshall (1950) termed as ‘social citizenship’ – citizenship which includes social rights as the main feature of the post-WWII welfare state. In Marshall’s view, social citizenship presents the

¹ It is noteworthy that there is distinction between *abstractions* and *idealizations* in a sense that the former brackets some known truths, whereas the latter makes some false assumptions about the real world (e.g. assuming that humans act solely from their self-interest). Thus, while idealizations necessarily imply abstractions, it does not hold the other way around. For the distinction between abstraction and idealization, see O’Neill, 1989: 207 – 9.

culmination of the universalist tendencies of citizenship since it accords the identical set of civil, political and social rights to all members of polity.

While the initial aims of citizenship were to bound citizens to their nation states and to secure social cohesion, it was also intended to exclude ‘the others’ – those that are seen as not belonging to European nation states even if they were subjected to their rule. The ongoing processes of growing global interdependence such as the gradual growth of transnational economic exchange, high levels of migration and the intensification of social and cultural interactions, make national citizenship even more exclusionary. Based on the ETHOS empirical findings, we identify three major lines of exclusion from the political community: territorial affectedness, sedentariness, and national belonging. Importantly, the three lines are not distinctive of national citizenship in Europe but characterize the concept of national citizenship as such.

National citizenship presupposes the existence of a *territorially bounded political community* whose members are equally affected by the community’s decisions and therefore, have the claim to participate in making these decisions as well as to rights guaranteed by citizenship. As Lepianka shows, even those political actors with a more universalist agenda, such as leftist groups, direct their agendas to citizens only. In her words, ‘[a] closer scrutiny of the Left Unity electoral programs reveals that the ‘everybody’ of the electoral slogans might in fact be limited to the ‘default’ community members [...]’ (Lepianka 2018:48). Examples as these reveal normative and empirical presuppositions of national citizenship. The normative presupposition is that all those affected by a polity’s decisions have the right to have a say in the polity’s decision-making and it is assumed that the affectedness is limited to a territorially bounded political community – only the polity’s members are affected by its decisions. However, in the light of the ongoing EU integration, growing global interdependence of economies, environment, communication, movement, affectedness by a community’s laws and decisions is not limited to members of the community but extends far beyond it (Fraser 2009:167-8).² For instance, environmental, military and economic policies have global

²Note that the affectedness itself does not suffice for the recognition of the legal status of citizens of all those outsiders affected by the polity’s decisions. To establish such a connection, further arguments are needed with regard to two issues. First, as Fraser points out, we need a normative criterion to decide which kind of affectedness is normatively relevant. In her view, such a criterion is the ‘all-subjected principle’ – all those

implications as the failure to address climate change, wars and the reiterating financial crises are painfully showing. If affectedness is the basic principle for recognizing the right to the legal status of a citizen as well as to a bundle of rights it entails, including the access to resources, then ignoring the cross-border affectedness amounts to arbitrarily drawing boundaries - excluding those who are significantly affected by the decisions of the national community. In Fraser's view, the Westphalian division of political space into bounded polities amounts to the injustice of 'misframing' since it has created the frame of the disputes about justice that wrongly excludes some from consideration (2007:314).³

Second, national citizenship rests on assuming the "*sedentariness*" of the population: the idea that citizens have long term ties to a specific territory (Anderson and Dupont 2018). The sedentarist character of national citizenship creates fault lines of justice for those who move around, be that groups or individuals. When it comes to groups that are mobile or dispersed across borders, Anderson and Dupont highlight how assuming sedentariness generates the problem of political representation of Roma – in order to be represented, they need to be included into national institutions designed according to the needs and interests of majoritarian, sedentarist population, and this amounts to the misrecognition of Roma (Anderson and Dupont 2018).

The distinction between sedentary and mobile populations became even more salient with the introduction of EU citizenship in the 1990's in order to secure the partial inclusion of EU nationals who became internal migrants in the EU countries of their new residence by recognizing them additional rights on the basis of freedom of movement. This created a fault line between mobile EU nationals and third country nationals. The latter also move but acquire additional rights in a much harder way, if at all. This is especially problematic given that many of the third country nationals belong to populations of the former European colonies and as

who are subjected to a given governance structure have a moral standing as subjects of justice in relation to it (2009:65-6). Second, we also need a substantive argument for why even a normatively relevant affectedness entails the entitlement to inclusion and rights of participation rather than something else (Miklosi, 2012). Since this is not the place to engage with these substantive issues, we will set them aside.

³ The reflection about the Westphalian constitution of political space led Fraser to revise her account of justice as redistribution and recognition established in 1994 and add the third dimension of representation (see Fraser 2007).

such contributed to the wealth of current Europe (Oomen and Timmer 2017; Anderson and Dupont 2018). Still, no matter how advantaged when compared to the third country nationals, EU mobile nationals are still disadvantaged compared to local sedentary populations. If anything, they typically do not have access to full social rights and participation in decision-making which is still reserved for the local sedentary population (Theuns 2019). In this sense, the EU citizenship creates an additional fault line between mobile EU nationals that get residence status and (sedentary) citizens. Hence, the mobile EU citizens can appear both advantaged and disadvantaged depending on which population they are compared to. This suggests that when we think about fault lines of justice, we need to identify relevant reference points since disadvantages are always positional and relative to another group or person compared. The further complication arises from the imperative to make 'mobile' migrants more 'sedentarist' by attempting to connect them to territories via residence requirements. The ETHOS empirical studies show how this can place migrants in vulnerable position since certain European countries condition issuing residence permits to migrants based on their employment. This places migrants, including migrant care workers, in a dependent position with regard to their employers and consequently, makes them vulnerable to exploitation (Anderson 2019; Meneses et al. 2018; Akkan and Serim 2019).

Finally, national citizenship presupposes *national or ethnic belonging* to the imagined community which is often considered as a pre-requisite for and a core value of national citizenship (Bellamy 2008). The national identity basis of citizenship is in tension with several ongoing trends. The first tension arises between the particularistic nature of national or ethnic belonging, and an increasing 'internationalization' of citizenship via the inclusion of international human rights law norms into national citizenship. The tension arises since the latter is based on assuming universal personhood, rather than on an inherently particularistic national identity as the basis of rights (Soysal 1994). The two then can pull in different directions – while the former implies limitations of rights to those sharing national identity, the latter is 'indefinitely extensible' (Leydet 2017). The second tension is between national identity and increasingly internally diverse nation-states. Namely, the prioritization of national belonging amounts to the imposition of the majority culture to minorities that share a different ethnic or religious identity (Leydet 2017). Moreover, the tension is not only between different national and subnational identities, but also between national (as cultural)

identification and different types of identities that persons self-identify with. Members of national minorities as well as those members of national majorities that do not identify on national grounds, are ascribed an identity that they do not share. Consequently, they lack the right to classify and define themselves, which results in an imperfect correspondence between internal and external ascriptions. Anderson and Dupont therefore conclude that a widespread self-identification as Roma is 'more of a project than a reality' (2018:7). Finally, taking national identity as the basis of citizenship assumes belonging to one community which is challenged by transnational migrations since they create overlapping memberships between territorially separated and independent polities. Persons can simultaneously belong to and have overlapping affiliations with two or more polities, which are often recognized as dual or multiple citizenships (Bauböck 2003). Besides, migrations also generate 'the mismatch between citizenship and the territorial scope of legitimate authority' (Bauböck 2008: 31). Our empirical findings illustrate this mismatch in terms of voting rights of resident non-citizens (regarding Austria and Portugal) and non-resident citizens (in Hungary and the UK) (Theuns 2019:40-49), and in terms of rights to housing and welfare benefits of resident non-citizens (Granger 2019; Anderson and Dupont 2019).

As we can see, three fundamental presuppositions of national citizenship including territoriality, sedentariness and national/subnational belonging reveal boundary drawing based on power inequalities between those who meet these criteria and thus get recognized as citizens, and those who do not meet them and hence, have no claim to the legal status, no matter how affected they are by decisions of a particular political community (beyond or within its borders).

Boundary drawing among citizens

Limiting the scope of justice to a territorially bounded political community is also problematic since it ignores various fault lines of justice that occur within the nation states. As Linda Bosniak (2006: 99) aptly points out, (national) citizenship is supposed to be 'hard on the outside and soft on the inside', i.e. it should be universalistic within the community and exclusionary on the community's 'edges', towards non-citizens. But in the real world it is frequently the case that the ideal of equal (national) citizenship remains unrealized. This

tendency has also been captured by the ETHOS empirical studies that clearly show how citizenship can be quite hard not only on the outside, but on the inside as well.

Social citizenship rights were a 'pinnacle' of a modern social democratic state that according to Marshall (1950), have undermined class differentiation and secured social cohesion and integration. This view was challenged on the grounds that the extension of citizenship rights to the previously excluded groups had not translated into equality and full integration (Young 1989; Knijn, Theuns and Zala 2019). Fraser argues that socio-economic and cultural injustices are both rooted in processes and practices that systematically disadvantage some groups of people vis-à-vis others thus creating 'a vicious circle of cultural and economic subordination' (1995:72). For instance, gender cultural norms are institutionalized in the state and the economy which leads to women's economic disadvantage, which in turn makes it more difficult for them to participate and change these norms. This shows how economic disadvantage and cultural disrespect are intertwined and justice requires tackling both through redistribution and recognition (Meneses et al. 2018; Knijn, Theuns and Zala 2019).

While the differentialist challenge was motivated by the 'struggle for recognition' taking place at the end of the 20th century, our empirical studies unravel what can be considered another paradigm shift with the emergence of 'austerity society' in Europe⁴ both at the level of the Member States and at the EU level. Namely, the EU response to the 2008 financial crisis was the introduction of various austerity measures which fundamentally redefined social and labour policies in order to make them more compatible with the new economic growth model, thus giving the new impetus to the struggles for redistribution. Importantly, the austerity measures are not limited to decreasing public spending, but amount to a complete institutional transformation including the politics of privatization of public services, labour market deregulation, fragmentation of labour relations, and erosion of the welfare state. This has devastating effects on employment and economic security such as the loss of jobs, increased precariousness, and in-work poverty (Araujo and Meneses 2018). The core feature of 'austerity society' is the increasing insistence on the 'responsibilization' of

⁴ Ferreira (2016) defines "austerity society" as characterized by the fear as a source of legitimacy (prompted by predictions of catastrophic scenarios); the emergence of a new constellation of power that combines elected and unelected power; and the destabilization of the normative structure with the use of a right of exception.

individuals for their own fate as well as the prominence of the ‘reciprocity’ condition with regard to employment and social policies. The shift from the welfarist paradigm based on the idea of collective responsibility for personal well-being of vulnerable members of a political community (which informed the European Social Model⁵), to the workfare and individual responsibility paradigm has thickened boundary lines. Austerity policies set back redistributive justice by introducing *much stricter criteria of exclusion* – previously protected groups such as elderly workers, single mothers and disabled persons, have less access to social housing, employment and welfare benefits; instead, they are increasingly expected to find their own way to the labour market and self-sustenance (Granger 2019; Anderson and Dupont 2019).

Recall that according to the ETHOS preliminary ideal types of justice, injustice is ultimately about being excluded from participating as a peer in social life. According to Fraser, such exclusion is not accidental but results from institutionalized patterns which she defines as ‘the workings of social institutions that regulate interaction according to parity-impeding cultural norms’ (Fraser 2000: 113-4). It may be helpful to think of these norms in terms of *ethos* that permeates both institutions and society. These institutionalized patterns constitute some categories of social actors as less than full members of society by them deviating from what is constituted as a dominant norm of ‘normalcy’. Thus, the patterns place persons into a vulnerable position based on their personal features and traits. Even though a marginalized position is not restricted to people of a certain age, gender, ethnicity, race, able-bodiedness or religion, the risk of marginalization is higher for ascribed categories deviating from the ‘normalcy’ – i.e. able-bodied white male. The parity-impeding values are institutionalized though disputed at various institutional sites which can range from formal ones including laws, public policies, administrative codes and professional practices, to more informal sites such as customs and social practices. Social subordination is ‘an institutionalized relation’ and as such, a serious violation of justice (Fraser 2000:113) though it is not yet taken for granted as is illustrated by the recent protests in almost all EU Member States.

⁵ The European Social Model rests on six pillars: increasing minimum working rights; universal and sustainable social protection; inclusive labour markets; strong and well-functioning social dialogue; public services; and social inclusion and social cohesion (Araujo and Meneses 2018:9)

To fully understand the nature of boundary drawing, it may be helpful to recall Tilly's idea of 'durable inequality' which aims to illuminate 'modes of social organization whereby bounded social groups are subject to systematic disadvantages in relation to dominant groups'. In their most stable form, these modes of social organization are tied to all kinds of group identities, including race, gender, ethnicity, religion, family line, and national citizenship. Tilly (2005) explains that the reason why inequalities track group boundaries is '*social closure*' – 'if a group has attained dominant control over an important good, such as land, military technology, education, or purported access to the holy or divine, it often secures this advantage by closing its ranks to outsiders' (Anderson 2010: 7).

Social closure is instantiated by two important features of the emerging 'austerity society' in Europe - the imperative of 'deservingness' and 'reciprocity'. The 'deservingness' principle presupposes the utmost importance of personal responsibility in the sense of a growing insistence on individuals being personally responsible for their circumstances. Since persons are individually responsible for their actions, they deserve consequences of their actions. The insistence on 'reciprocity', in turn, requires individuals to do something in return (e.g. economically and/or socially contribute to society) for receiving public goods. In combination, these imperatives narrow down the spectrum of needs and consequently, create rather strict boundary lines between deserving and undeserving citizens. The right to social housing, for instance, is limited to narrowly defined vulnerable groups (Granger 2019). To deserve social assistance, one has to prove that one is fully (not only partly) unable to work, or is ready to participate in public works, and is also expected to display a certain virtuous behaviour (Anderson and Dupont 2019). While access to public goods and services has always been conditional upon specific requirements, what an 'austerity society' changes is that these requirements are becoming stricter and more complex. The logic behind such further restrictions is that the public goods are decreasing which in turn necessitates decreasing the number of those who can get access to it. This is where the paradigm shift gets the most visible: the access to public goods is not following from social citizenship rights, but in 'austerity society' it has to be *deserved*. 'Deservingness' and 'reciprocity' move an 'austerity society' away from a moral imperative of collective responsibility for social cohesion, toward individual responsibility for one's own well-being (Young 2011; see also Fraser and Gordon 1995). The existence of the institutionalized patterns of subordination, however, challenges

the imperative of personal responsibility at a fundamental level by showing how actions of others ‘block’ possibilities of our actions, thus affecting their outcomes (Young 2011). In other words, under conditions of institutionalized subordination and exclusion, persons are still able to make choices, but consequences of such choices are to an important extent attributable to persons’ social and economic positions rather than to their personal actions only. Such institutionalized patterns of subordination are significant since they prevent persons from fully developing their functionings and living lives they have reason to value (Sen 1999).

Categorization and differentiation

The ETHOS empirical findings show that differentiation is operating in every aspect of social reality; it is evidential, ubiquitous, and seemingly unavoidable. If performed carefully, without prejudice and with the purpose of enhancing people’s capability and functions, differentiation can be a valuable instrument in reaching justice in the world characterized by a plurality of humans. By understanding and recognizing individual capacities and meeting these, differentiation is needed to assure that the proper means reach the people in need of them, and to avoid fraud and abuse.

Our empirical studies, however, show that too often differentiation is based on categorization of assumed and ascribed group characteristics of persons that deviate from ‘normalcy’, and as such get excluded from participatory parity. For instance, in assigning home care to elderly and disabled persons, insurance companies, governments and care providers cannot avoid differentiating between the able-bodied and the less able-bodied to determine who needs what kind of support, and given the scarce resources, who will receive how much financial compensation (see Anderson and Dupont 2019; Knijn 2019). However, in social policy design and practice at the European, national and regional level categorization tends to hamper opportunities of disabled people and vulnerable elderly to participate in productive life or to receive proper care. The case of care as a matter of justice exemplifies well the inherently complicated relationship between redistributive, recognitive and representative justice in which two major paradigms are conflicting. The paradigm of ‘independent living’ is embraced and prioritized by the EU and most of the Member States as a principle of recognitive justice meeting the claims of social movements such as *Independent Living Movement*, which mainly represent disabled populations. The same paradigm influenced

social policies concerning elderly populations as outlined in the *Active Ageing* agenda of the EU. What is overlooked in this agenda is that independent living necessitates proper facilities and conditions in support of it, which shows that it also has an important redistributive justice dimension with regard to both those in need of care and those providing it. The European Commission (2013) inspired by the social investment paradigm (i.e. the idea that the investment in human capital should foster individual and social prosperity) addressed that issue by pleading for compensation for the working time of carers, foregone alternative employment and reduced accrual of social protection entitlements (Knijn 2019). Such measures would not only benefit gender equality in care work but would also promote qualitative and appropriate Long-Term Care for which people in need of care would not depend on unwilling or burned-out - female – caregivers. In principle, both approaches could be combined by acknowledging autonomous decision making and redistributing care resources on a gender-equal basis. Though in times of scarce resources, austerity measures and the lack of acknowledgement of the implications for care giving by female family members a trade-off is most likely (Knijn 2019). Then, not only the dominant categorisation (disabled, aged) fails to differentiate among persons that legitimately have different claims but also the provision of public goods which was meant to secure participatory parity, fails to do so. As to children with disabilities, Salat (2019) signals the same kind of problems. She concludes that no educational system in the countries under study fully realizes inclusive education or even sees it possible for everyone. While all countries except Hungary maintain the possibility of sending pupils with disability into special education, the lack of finances, resources and staff, or negative effects of outsourcing special education to the market, hamper its realization.

Hence, while differentiation might be unavoidable to do redistributive justice in plural societies with diverse populations, the case of redistributing public goods to care for elderly and disabled persons, and to educate disabled children shows that drawing category based boundary lines is a complex matter due to the non-homogeneity of the categories (Bugra 2018). Moreover, it is also problematic due to the criteria for inclusion that keep changing, especially in times of austerity. In Sen's terms (1992) one could say that in the process of defining and providing the necessary means and conversion factors to enhance capabilities and functionings, boundary drawing appears as a complex normative mixture of expected identities and 'deservingness', getting shape in more concrete criteria with regard to various

social domains. Misrecognition of individual differences due to categorization may result in maldistribution. In constructing deservingness criteria of equity, needs, conditionality, sameness, attitude and/or merit/reciprocity (Miller 1999; van Oorschot 2000) are applied that define whether people will receive public support that adequately meet their needs. These criteria are identity related by reshaping the identities of mainly vulnerable populations; it happens when older and disabled people are (re-)identified as autonomous, and self-relying; when they are perceived as family members instead of individual citizens, and when efforts to contribute to society are weighted as conditional for receiving benefits, social housing and care. Therefore, categorizing vulnerable people and minorities goes beyond pure categorical thinking in terms of existing categories such as age, gender, race, ethnicity or able body-ness. Rather, it works via redefining these identities of vulnerable populations in categories of recognized deservingness by policing their needs in the context of redistributing scarce resources. Such (re)categorization of persons then makes it impossible for the provision of (decreasing) public goods to secure participatory parity.

Categorizing Fault Lines of Injustice

Recall that according to Fraser, the boundary drawing amounts to the institutionalized patterns of exclusion that can be present in different social domains including institutions, public policies and social practices. The normative significance of these patterns is that they amount to the exclusion from participatory parity and as such constitute injustice. When it comes to the EU, it is noteworthy that identity-based boundary drawing at a formal, institutional level is legally allowed only to prevent discrimination. Minorities are typically legally recognized in order to compensate for misrecognition and maldistribution. According to the art 3(3) TEU, the Union “shall combat social exclusion and discrimination, and shall promote social justice and protection [...]”. That said, and given the complex legal structure of the EU, lots of legal incentives to protect minorities and vulnerable groups get lost in the process of translating the European legal standards to concrete legal entitlements of those residing in the EU, resulting in a wide gap between the original idea of justice as an equal entitlement to various rights and the daily experience of these groups. In this section, we will capture this gap by categorizing the most salient fault lines of injustice as unravelled by our empirical findings.

We acknowledge that these necessarily interact in reality since humans have multiple identities manifesting themselves in different contexts and social spheres. In some social spheres people are positioned by one aspect of their identity and in other spheres by a completely different one. For instance, it may appear confusing and against social expectations if the hard-working entrepreneur goes bankrupt and suddenly becomes a welfare recipient with debts, or if the construction worker becomes disabled and must ask for healthcare and income support. We will set these complications aside in order to illuminate the general boundary drawing that characterizes the European ethos.

Age related categorization at the labour market excluded younger generations from participation in – permanent – jobs during the economic crisis (Meneses et al. 2018). Indirectly and partly unintendedly, young people in search for employment were confronted with ‘social closure’, though they were not the only ones. Women, ethnic minorities, disabled persons and immigrants also suffered more than average from the economic crises and job insecurity. Tilly (1999) distinguishes two aspects of social closure. The first he calls ‘opportunity hoarding’ which refers to denying access to the goods in question to outsiders, and the second is ‘exploitation’, which means allowing access but ‘only in ways that exclude out-groups from the full value added of their efforts’ (Anderson 2010: 8). Tilly assumes ‘opportunity hoarding’ not so much to be motivated by out-group antipathy because companies and organisations are antipathic to young ones, women, disabled people and migrant care workers as such but instead by in-group favouritism expressed in protecting vested interests of those already ‘in’. It is worth emphasizing that ‘opportunity hoarding’ exists not only regarding being employed, but also what kind of employment one can get. In this respect, the ETHOS empirical findings document the fundamental change taking place in the European labour market through the introduction of the concept of ‘flexicurity’. Initially, the concept combined the flexibility in the labour market with social security, but in the light of the 2008 crisis, it often omits the latter – people find themselves working in insecure, part-time jobs, while having a very limited access or no access at all, to social assistance (in Araujo and Meneses 2018). As far as exploitation is concerned, Meneses et al. highlight the precarious situation of migrant workers of Europe, who due to the ‘financial and economic crisis’ either lose their job, ‘or may remain in work facing worsening conditions and reductions in pay... For example, the recent revelations in the

UK and the Netherlands of rising numbers of ‘zero hours’ contracts are symptomatic of such deepening exploitation’ (Meneses et al. 2018: 57).

Second, *ethnicity-based categorization* is salient in most of our empirical studies. Because of the legally prohibited discrimination by European Conventions and Treaties as well as the case law of the European Court of Justice, we purposefully have searched for discourses and institutionalized practices that cast injustice. According to the diverse ETHOS studies the categorization of ethnic, religious, racial or national minorities takes multiple shapes due to national, cultural and institutionalized path-dependency. For instance, the concept of national minorities is understood as ethnic or religious entities once belonging to and still present in the previous continental empires of Austria and Turkey. In both countries the rights of recognized ethnic or religious minorities to preserve and foster their ethnicity and language is guaranteed, protected and provided for (Meier and Vivona 2018; Bugra and Ertan 2018). Interestingly, in these countries migrants who arrive from territories beyond the borders of the former empire are not included in the concept of ‘minorities’; instead, they are migrants with a much weaker citizenship status than the recognized minorities. The former overseas empires such as the Netherlands, Portugal and the UK have much more complicated categorizations of minorities. In addition to religious and subnational minorities, each of these countries harbours previously colonized overseas ethnic minorities that are seen and defined as differentiating from natives as in the UK and the Netherlands, or whose difference is denied as in Portugal despite obvious reasons for recognizing categorization (Araújo and Brito 2018; Anderson et al. 2018; Hiah and Knijn 2018). Categorization of minorities, whether it be by recognition of ethnic, religious or racial difference from the majority population puts a pressure on members of minorities to constantly prove that they deserve membership in the political community (Lepianka 2018). This raises substantive justice dilemmas, which is illustrated in our studies on historical memorization (Akkan and Hiah 2019), educational discourses, law and practices (Lepianka 2019; Salat 2019), welfare regimes (Anderson and Dupont 2019) and voting rights (Theuns 2019), and is addressed by Anderson and Dupont (2018) in their analysis of the minority group par excellence - Roma. Despite the EU regulations and because of the multi-interpretability of minorities’ rights, none of the studied Member States has been able to develop policies to include Roma as national citizens with minority rights that fit in with cultural and institutional regimes. Each of these studies show the

conflictual relationship between recognitive, redistributive and representative justice at all governmental levels, institutionalized and social practices that are reflected in individual dilemmas of categorized versus preferred identities, and related capabilities. This goes both ways: we see educational systems systematically undervaluing the capacities and cultural heritage of minority group children, welfare professionals expressing distrust in Roma applicant for benefits, exploitation of migrant care workers or denial of the colonial past and suppression of overseas populations by European nation states offending fellow citizens descending from slavery. All three justice principles are at stake here: redistributive justice because of the reciprocity principle that demands that contributing and receipt should go together while in practice individuals are accounted and judged according to the social perception of group behaviour, and resources for maintaining minority cultural practice are scarce; recognition because majority as well as minority cultures have problems with meeting universal human rights by denying diversity and pluralism or claiming exception from human rights; and representative justice because potential spoke persons fear to identify with their minority group because it might result in ostracism (Anderson and Dupont 2018).

Avoiding *gender-based* categorizations has been and still is one of the major aims of the European Union which indeed helped in overcoming gender-inequality to some extent. For instance, equal pay for equal work, equal pensions and equal contracts were all initiated by the EU and accepted by Member States to various degrees. We found, nonetheless, that gendered injustice still prevails. On basis of our empirical studies (Anderson 2019; Knijn 2019) we identified five obstacles that have prevented gender-identity based justice: 1) The EU paradigm of the free market of autonomous individuals who move for employment, buy resources on the market and get paid according to their efforts and capacities, 2) the mainly soft law instruments applicable to social rights that are conditional upon free movement and equal payment, such as care facilities for family members (children, frail elderly and disabled kin), 3) the undervaluation of formal regulated care work as part of public service work, 4) the distinction between legally regulated public sector employment and mainly unregulated family care work, and 5) the dependency paradigm stating that autonomy implies independency from the state which goes at the cost of family dependency. Hence, for understanding the enduring gender injustice it is not enough to look at institutionalized EU gender-equality regulations stating that women should get equal pay for equal work. Nor does

‘deservingness’ fully explains gendered injustice. Just like in age and disability related injustice, it is the concept of ‘dependency’ as elaborated in Anderson, Hartman and Knijn (2017) that redefines women’s identity as the criterion for social closure. The gender-equality principle recognizes women as active and autonomous agents being capable of running their own life. This contributes to human dignity and is a major step forward in women’s capability to live the life they value. The effect of austerity policies, however, is the reduction of public support and structural conditions for participatory parity. By ignoring interdependency as a cornerstone of human relations and in times of austerity, re-familialisation of care dependency and flexibilisation of the labour market undermines gendered justice (Meneses, Araújo and Ferreira 2018; Anderson 2019; Knijn 2019).

All these categorisations show that the European ethos is still characterized by the imperative of exclusion which is being reinforced by the emergence of ‘austerity society’ and as such, permeates both formal and informal institutions in the EU and the Member states. Despite these negative developments, there are also positive initiatives of the civil society actors taking place across the EU with regard to all three dimensions of justice. When it comes to recognition, Knijn (2019) emphasizes an important role the ‘independent living’ movement has played in securing the conditions for life a disabled person has a reason to value in the EU. With regard to representative justice, civil society organizations play an important role in political representation of Roma. Anderson and Dupont point out that stigmatized identities can hamper institutionalized forms of political participation but also stimulate CSOs as non-electoral forms of representation (Anderson and Dupont 2018). While such representation cannot fully replace the electoral one, it is still one positive step toward the recognition and representation of Roma in the EU Member States. The situation is the most peril regarding redistributive (in)justice. Despite the injustice awareness, it is very difficult to mobilize people to fight against it. For instance, young people became ‘a very vulnerable working mass’ (Meneses et al. 2018:64), while the third country nationals are afraid to openly oppose the working conditions since the loss of employment would lead to losing their residency too. What is also making mobilization with regard to socio-economic injustice difficult is the ongoing trend of ‘individualizing’ relations between employees and employers by limiting unionizing and decentralizing collective bargaining mechanisms, as well as attempts to antagonize deprived individuals one against another with regard to social benefits (e.g. needy

vs working poor). Despite these obstacles, our findings report the significant mobilization against austerity measures taking place across Europe. Protestors were and are still asking for a new model of democracy including the restoration of the European Social Model based on equality and solidarity. While these are justifiable demands, the report also shows the inadequacy of national levels of resistance to what is by now a global problem – the subordination of individual and collective rights to economic growth, which in turn benefits a very tiny minority of the world's population (Meneses et al. 2018).

Concluding remarks: Refining the preliminary ideal types

We have defined the preliminary ideal types of justice based on the Fraserian framework as recognitive, representative and redistributive justice. The redistributive justice demands providing sufficient material and immaterial resources to live a decent life according to the prevailing standards of one's society in order to use one's functionings. The recognitive justice concerns the acknowledgment of identities of one's choice. Finally, representative justice demands ensuring that people have an equal say in decision-making. All three dimensions of justice are necessary to secure 'participatory parity' – participating as a full member in social and political life of one's society (Fraser and Honneth 2003; Knijn and Lepianka 2018). These ideal types represent a more theoretical component of formulating a non-ideal European theory of justice. The other component is the empirical part informed by the institutional regulations and practices, social relations and lived experiences of members of vulnerable groups which we tried to capture by formulating categories of boundary drawing within the EU. Here we argued that these categories take place along the lines of age, ethnicity, citizenship, gender and able-ness – some of these are taken to constitute a dominant 'normalcy' in the studied societies, whereas all those that depart from such a norm along any of these lines are taken to be deviant in some sense, and as such, justifiably excluded from a particular 'inner' scope of justice. We also noted that these categories interact with what we take to be the core norms of the emerging 'austerity society' in the EU – the norm of 'deservingness' and 'reciprocity'. Persons are defined as 'deserving' or 'undeserving' by virtue of sharing an identity or having particular personal traits, and by whether and what they contribute to society. This shows the fundamental contradiction in the emerging 'austerity' society – a growing insistence on personal responsibility for one's circumstances while at the same there are many fault lines of justice that block persons' opportunities and actions. To

wit, there is an imperative that people are personally responsible for the way they live and what kind of opportunities they have at the time when there is so little that actually depends on their actions and beliefs. This fundamental contradiction then serves as the basis for refining our preliminary ideal types.

Within the Fraserian framework, the ideal types draw attention to the existence of boundary drawing as institutionalized patterns of subordination. Based on our empirical findings we could add to the framework that these patterns, which are especially salient for the 'austerity society', come as a result of institutionalized and social practices in name of those embodying the 'normalcy' and deciding what recognitive, redistributive, and representative justice for everyone else is. This is further complicated by the fact of the multi-layered structure of justice in the EU. While the Fraserian ideal types of justice do not clearly distinguish between different sites of an institutionalized exclusion, our findings show that it is the EU with other supranational levels that are the most important site for recognitive justice by strongly promoting minority rights and ant-discrimination policies. At the lower level governments, however, we see processes of boundary drawing either by fault or default in which recognitive justice principles fragment or are even fading away. As to redistributive justice there is no such clear downgrading of principles. The EU as supranational entity has competences in economic and monetary policies, while redistributive policies are reserved for the national level. Importantly, such division of competences is determined by the national governments of the Member States. Both the EU and the national governments of the Member States created a perfect 'vacuum of irresponsibility; in which they can blame each other for most of perils those residing in the EU face. This suggests that Europe is characterized by justice *at default*. Justice values and norms remain holding principles in abstraction, less so in practice. Given that the EU is a dynamic *sui generis* organization that constantly keeps changing, there is a room for optimism that principles of justice may be actualized in practice too.⁶

⁶ It is noteworthy that recently there have been some positive steps with regard to reviving the European Social Model at the EU level, but it remains to be seen whether they will have any actual effect. At the time of writing, it is difficult to anticipate any outcome given that the new European Commission has just been inaugurated.

References (All ETHOS reports are available at <https://ethos-europe.eu/>)

Akkan, B. and J. Hiah, 2019. Historical memory and the practice of commemoration in public space – mapping moral sentiments of opinion leaders. ETHOS deliverable 4.5.

Akkan, B. and S. Serim, 2019. Commodified care relations: Elderly people with disabilities and migrant care workers in Turkey. ETHOS deliverable 5.3.

Anderson, Benedict, 1983. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London: Verso

Anderson, Bridget, 2018. Justice, care and personal assistance. ETHOS deliverable 5.3.

Anderson, B. and P-L. Dupont, 2018. ‘How does it feel to be a problem?’ What we can learn about justice as political representation from empirical case studies. ETHOS deliverable 5.2.

Anderson, B. and P-L. Dupont, 2019. Just Deserts? Justice, deservingness & social assistance. ETHOS deliverable 5.5.

Anderson, B., D. Vicol, P-L. Dupont and J. Morris, 2018. Political representation and experienced recognition among Roma in the UK. Country report prepared for ETHOS deliverable 5.2.

Anderson, B., C. Hartman and T. Knijn, 2017. Report on the conceptualisation and articulation of justice: Justice in social theory. ETHOS deliverable 5.1.

Anderson, Elizabeth. 2010. *The Imperative of Integration*. Princeton, NJ: Princeton University Press.

Araújo, S. and M.P. Meneses, 2018. The effectiveness of social dialog as an instrument to promote labour and social justice. ETHOS deliverable 6.4.

Araújo, S. and L. Brito, 2018. Tensions between institutionalised political justice and experienced (mis)recognition: Portuguese case study on the experiences of Roma communities. Country report prepared for ETHOS deliverable 5.2.

Bauböck, R. 2003. Towards a Political theory of Migrant Transnationalism, *International Migration Review*, Vol 37:3.

Bauböck, R. 2008. Stakeholder Citizenship: An Idea Whose Time Has Come? In *Delivering Citizenship. The Transatlantic Council on Migration*, Gütersloh: Verlag Bertelsmann Stiftung.

Bellamy, R. 2008. *Citizenship: A Very Short Introduction*. Oxford: Oxford University Press.

Bosniak, L., 2006, *The Citizen and the Alien. Dilemmas of Contemporary Membership*, Princeton, Oxford: Princeton University Press.

Buğra, A. and M. Ertan, 2018. Discursive Construction of Justice in Politics. The Turkish case. Country Report prepared for ETHOS Deliverable 4.2.

European Commission, 2013 Long-term care in ageing societies - Challenges and policy options. Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014-2020. Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions. Social Fund 2014-2020. Brussels, 20.2.2013, SWD (2013) 41 final.

Ferreira, A. 2016. The Politics of Austerity as Politics of Law. *Oñati Socio-Legal Series*, 6 (3): 496-519.

Fraser, N. 1995. From Redistribution to Recognition. *New Left Review* I (212): 68-93.

_____ 2000. Rethinking Recognition, *New Left Review* 3: 107-120.

_____ 2007. Identity, Exclusion, and Critique: A Response to Four Critics. *European Journal of Political Theory* 6 (3): 305-338.

_____ 2009. *Scales of Justice: Reimagining Political Space in a Globalizing World*. New York: Columbia University Press.

Fraser, N. and L. Gordon, 1995. A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State, *Signs* 19 (2): 309-336.

Fraser, N. and A. Honneth, 2003. *Redistribution of Recognition? A Political-Philosophical Exchange*. London-New York: Verso.

Granger, M.P. 2019. Coming 'Home': the right to housing, between redistributive and recognitive justice. ETHOS deliverable 3.5.

Hiah, J and T. Knijn, 2018. Country report on the current and historical minoritization of Roma minorities in the Netherlands. ETHOS deliverable 5.2.

Knijn, T. 2019. Boundary lines between private and public care; Living independently at home or in a home. ETHOS deliverable 5.4.

Knijn, T. and D. Lepianka, D. 2018. Report containing a conceptual framework for integration of findings. ETHOS deliverable 7.1.

Knijn, T., T. Theuns and M. Zala, 2019. A Multidisciplinary Perspective on Justice in Europe. ETHOS deliverable 2.3.

Lepianka, D. 2019. Mapping the construction of justice and justice related tensions in Europe – A comparative report. ETHOS deliverable 4.4.

Lepianka, D. 2018. Justice in European Political Discourse – comparative report of six country cases. ETHOS deliverable 4.2.

Leydet, D. 2017. Citizenship, *The Stanford Encyclopedia of Philosophy* (Fall 2017 Edition), Edward N. Zalta (ed.). Available at: <https://plato.stanford.edu/archives/fall2017/entries/citizenship/>

Marshall, T.H. 1950. *Citizenship and Social Class*. Cambridge: Cambridge University Press.

Meier, I and M. Vivona, 2018. The tension between institutionalised political justice in Austria and Roma's experienced (mis)recognition. ETHOS deliverable 5.2.

Meneses, M.P., S. Araújo, S. Ferreira and B. Safradin, 2018. Comparative report on the types of distributive claims, interests and capabilities of various groups of the population evoked in the political and economic debates at the EU and at the nation state level. ETHOS deliverable 6.2.

Miklosi, Z. 2012. Against the Principle of All-Affected Interests, *Social Theory and Practice* 38 (3), 483-503

Miller, D. 1995. *On Nationality*. Oxford: Oxford University Press.

- Miller, D. 1999. *Principles of Social Justice*. Cambridge, MA: Harvard University Press.
- Nagel, T. 2005. The problem of global justice. *Philosophy & Public Affairs* 33 (2): 113–47.
- O'Neill, O. 1989. *Constructions of Reason: Exploration of Kant's Practical Philosophy*, Cambridge: Cambridge University Press.
- Oomen, B. and A. Timmer, 2017. Report on Four of Fewer Freedoms: Contested conceptions of justice in Europe between 1941 and 1957. ETHOS deliverable 3.2.
- Oorschot, W. van 2000. Who should get what, and why? On deservingness criteria and the conditionality of solidarity among the public. *Policy & Politics*, 28(1): 33-48.
- Salát, O. 2019 A comparative report on the right to education: An assessment of the legal framework of six countries from the perspective of recognitive and redistributive justice. ETHOS Deliverable 3.6.
- Sen, A. 1992. *Inequality Reexamined*. Cambridge, MA: Harvard University Press.
- Sen, A. 1999. *Development as Freedom*. New York: Alfred E. Knopf.
- Soysal, Y. 1994. *Limits of Citizenship*. Chicago University Press.
- Theuns, T. 2019. A comparative report on the legal rules and practices regulating the exercise of the right to vote (eligibility and representation) in local, national and EU elections of marginalised groups. ETHOS deliverable 3.4.
- Theuns, T., S. de Maagt and T. Knijn, 2019. Framework paper on the methodological tool for reflecting and reviewing empirical findings of ETHOS. ETHOS deliverable 7.2.
- Tilly, C. 1999. *Durable Inequality*. Berkeley and Los Angeles: Univ. of California Press.
- Tilly, Ch. 2005. *Identities, Boundaries, and Social Ties*. Boulder, CO.: Paradigm.
- Walzer, M. 1983. *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books.
- Young, I. M. 2011. *Responsibility for Justice*, Oxford: Oxford University Press.