



Multidisciplinary Perspective on Justice in Europe

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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 coordinate 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

Content

Introduction	5
1. Fraser's Theory: The Redistribution-Recognition Dilemma	6
2. Multi-Disciplinary Perspectives on Redistribution	9
3. Multidisciplinary Perspectives on Recognition	14
4. Multidisciplinary Perspectives on Representation	18
5. Other Justice Conceptions Reported in ETHOS Research	22
6. Conclusions	25
Afterword: Justice and European Citizenship	26

Introduction

The first reports of the ETHOS project aimed to provide a picture of different understanding and conceptualization of justice by several disciplines. Thus, ETHOS deliverable X.1s examined the notion of justice through the lens of political philosophy (D2.1 – Rippon, Theuns, de Maagt, and van den Brink 2018), legal theory (D3.1 – Salát 2018), political theory (D4.1 – Bugra 2018), social theory (D5.1 – Anderson, Hartman and Knijn 2017), and economic theory (D6.1 – Castro Caldas 2017).

The aim of this report (D2.3) is to provide an integrative paper on the conceptualization and articulation of justice within the above-mentioned disciplines. The paper will do this by incorporating the findings of the ETHOS DX.1 deliverables by looking at the question of justice in Europe through the lens of the Nancy Fraser-inspired categories of redistribution, recognition and representation. By doing this, this deliverable sheds light on the different understandings of these components of justice among these disciplines, the different types of problems they emphasize, and the different types of recommendations they put forward.

It is important to reflect on the limitations of the methodology of this study. The different X.1 deliverables are all, in an important and unavoidable way, *perspectives* on their respective disciplines. They neither can, nor intend to be exhaustive in their review of the disciplinary theorization of justice. Consequently, this report, a synthesis of those deliverables, is similarly delimited, which is both a strength and a limitation. By synthesis is thus meant the constructive process of comparing and contrasting texts on certain themes. This juxtaposition can and does result in insights that go beyond the content of the original texts, in that we both highlight the tensions and complementarities, and examine whether and to what degree the different texts may build on one another, or develop insights that, though contrasting, are analogous or show shared spheres of concern. Yet, as a synthesis, the disciplinary shape and scope of the various X.1 reports also mark the boundaries of the present study. The authors of this report do not claim expertise in the rich variety of disciplinary and subdisciplinary – let alone interdisciplinary – debates engaged by the authors of the previous reports.

It is not surprising that redistribution, recognition and representation are the three basic justice-related considerations in the main focus of ETHOS: as far as real-world politics is concerned, in the twentieth century and especially after WWII, these three considerations became fundamental for European democratic states. That is, in the post WWII era it is a generally accepted demand vis-à-vis any state that it must be a welfare state where members of relevant social groups are both adequately represented and recognized. As far as philosophy is concerned, the work of John Rawls (1971) brought distributive justice back into the main focus of philosophizing about justice (for the history of the idea of distributive justice, see Fleischacker 2004). Rawls' work produced an unprecedented following and philosophical reaction (for a few major contributions, see Nozick 1974; Ackerman 1980; Sen 1985; Pogge 1989; Barry 1995; Dworkin 2002). The paradigm of distributive justice, however, came under attack, initially from communitarian scholars in the 1980s (Rippon et al. 2018, 11) and then, from the early 1990s, on the grounds that it fails to take into account another important aspect of justice, the injustices that stem from the misrecognition of certain social groups (see Young 1990). In parallel, there was also no shortage in important works about representation and democratic theory (see Pitkin 1967; Mansbridge 1980; Dahl 1989). Before we move on to examine the theorization of justice in various

social scientific disciplines through the lenses of these three aspects of justice, as reported in the first deliverables of the ETHOS work packages, we start by reflecting on Nancy Fraser, whose work on the interrelatedness of these three aspects became an instant classic (see Fraser 1990; 1995; 2005; 2007).

The report proceeds in six substantive sections. Section 1 traces the genesis and development of Nancy Fraser's tripartite conception of justice, the controversies it has raised, and the relevance of Fraser's work for ETHOS. Section 2 analyses and assesses the conceptualization of justice in legal, economic, political and social theory through the lens of redistribution. Section 3 looks at these disciplines through the lens of recognition. Section 4, in turn, focuses on the conception of justice as representation. Subsequently, section 5 probes for justice conceptions in the aforementioned disciplines that are not well captured through the tripartite framing of justice as redistribution, recognition, and representation. In section 6 some conclusions are drawn, and finally the report concludes with an afterword on the relation between justice and citizenship.

1. Fraser's Theory: The Redistribution-Recognition Dilemma

From the 1990s onwards, we have seen much renewed interest in the theory of recognition. With roots in the work of Rousseau and Hegel, such theories study the influence of intersubjective patterns of expectation and evaluation on identity-formation and relations to self and others. The work of German philosopher Axel Honneth, *The Struggle for Recognition* (1996) is the most systematic study to date. Paul Ricoeur and Charles Taylor have published influential accounts. In social theory, with particular relevance to theories of justice, Nancy Fraser's critical appraisal of the theory of recognition is very influential.

As it is noted in deliverable 2.2, Nancy Fraser puts forward a 'non-ideal' theoretical approach to political philosophy that does not aim to 'provide a comprehensive account of the overall goodness or badness of society', but rather focuses on the question: "how fair or unfair are the terms of interaction that are institutionalized in the society?" (Fraser et al. 2004, 367; quoted in van den Brink et al. 2018, 10). This non-ideal theoretical approach is focused to a much larger extent than 'ideal' philosophical theorizing on the instances of justice and injustice observable in the 'real world'. However, it does not follow that non-ideal theory cannot or does not have a goal to be realized: Fraser develops such a principle with her idea that democratic societies must satisfy 'participatory parity' (Fraser 1990; 1995). This principle holds that 'social arrangements that institutionalize obstacles to participation are unjust' (Fraser 2007, 315). Thus, for Fraser, both maldistribution and misrecognition are problematic in virtue of violating the principle of participatory parity, i.e., in both cases the problem that these injustices entail is that they hinder or exclude individuals (or certain social groups) to 'participate as peers' in a democratic society (Fraser 2007, 315).

For this we can see that, for Fraser, what really matters from the point of view of justice is inclusion, and types of marginalization and exclusion can be considered as the main problems that either maldistribution or misrecognition cause. In her 1995 paper 'From Redistribution to Recognition? Dilemmas of Justice in a 'Post-Socialist' Age', Fraser focuses on maldistribution and misrecognition not only as the two obvious hurdles to participatory parity, but also as one-dimensionally and thus inadequately-theorized injustices (Fraser 1995). In Fraser's view, both recognition and (re)distribution are important justice concerns, but monolithic theories that emphasize one of these only are

inadequate – we need both and we have to examine their interconnectedness in creating unjust states of affairs (Fraser 1995). To give an example: Fraser considers a possible candidate for ‘pure’ redistribution to be the orthodox Marxist conception of the exploited classes (1995, 75). Here, what seems to be required by justice is economic redistribution which would entail abolishing the whole group category of the exploited classes (1995, 76). By contrast, misrecognition-based injustices call for symbolic re-affirmation of the group in question (1995, 74). Fraser provides the example of sexual orientation/homosexuality as a possible ‘pure’ case of misrecognition; here, all that justice seems to require is the cultural affirmation of the group (1995, 76-7). If Fraser is correct that these ‘ideal-typical’ cases of distributive and recognitive injustice require different approaches to justice, then she has secured the conclusion that ‘monolithic’ theories of justice that focus on redistribution or recognition alone are inadequate’.

Fraser’s main concern is that both struggles for recognition and (re)distribution can work at cross-purposes: redistribution can harm the goals of recognition and not every recognition claim can foster socio-economic justice at the same time (1995, 74). This is what Fraser calls the redistribution-recognition dilemma (1995, 70-4). The reason for this is that, in her view, socio-economic injustices require redistribution, which entails socio-economic restructuring that “often call[s] for abolishing economic arrangements that underpin group specificity” (1995, 74). Fraser acknowledges that in the real world, many, if not most injustices are a combination of maldistribution and misrecognition, or as she puts it, most groups regarding these two categorical injustices are ‘bivalent’ (1995, 74-82). For example, both gender and racial inequalities can be considered as injustices that are mixtures of maldistribution and misrecognition. But then, we are faced with the redistribution-recognition dilemma:

Insofar as women suffer at least two analytically distinct kinds of injustice, they necessarily require at least two analytically distinct kinds of remedy— both redistribution and recognition. The two remedies pull in opposite directions, however. They are not easily pursued simultaneously. Whereas the logic of redistribution is to put gender out of business as such, the logic of recognition is to valorize gender specificity. Here, then, is the feminist version of the redistribution–recognition dilemma: how can feminists fight simultaneously to abolish gender differentiation and to valorize gender specificity? (1995, 78-9, citation omitted).

How can this dilemma be solved? Fraser considers two possibilities to counteract injustices: an ‘affirmative’ remedy and a ‘transformative’ one (1995, 82). Affirmative remedies aim to keep group categories intact because they ‘[aim] at correcting inequitable outcomes of social arrangements without disturbing the underlying framework that generates them’ (1995, 82). Transformative remedies, on the other hand, ‘[aim] at correcting inequitable outcomes precisely by restructuring the underlying generative framework’ thus changing – or abolishing – group categories (1995, 82).

Because analytically both remedies can be given to problems of maldistribution and misrecognition, Fraser offers a four-celled matrix that has four interventions addressing injustice: redistribution-affirmation; redistribution-transformation; recognition-affirmation, and recognition-transformation. Redistribution-affirmation is the position that characterizes the liberal welfare state in Fraser’s view, the logic of the liberal welfare state being to make ‘surface reallocations of existing goods to existing groups’ (1995, 87). The liberal welfare state also ‘supports group differentiation’ and it ‘can generate misrecognition’ as well, in Fraser’s view (1995, 87). The combination of redistribution and

transformation Fraser labels socialism, which entails the 'deep restructuring of relations of production' (1995, 87). Contra the liberal welfare state, it 'blurs group differentiation' and 'can help remedy some forms of misrecognition' (1995, 87).

As far as misrecognition is concerned, the affirmative form of cognitive justice is mainstream multiculturalism that operates with the 'surface reallocations of respect to existing identities of existing groups', which supports group differentiation (1995, 87). Transformative recognition is labeled deconstruction by Fraser and entails the 'deep reconstructing of relations of recognition' that 'blurs group differentiation' (1995, 87). Fraser maintains that combining socialism (distribution-transformation) and deconstruction (recognition-transformation) will often be the best combination for correcting real-world injustices (1995, 91). However, she also admits: 'The redistribution–recognition dilemma is real. There is no neat theoretical move by which it can be wholly dissolved or resolved. The best we can do is try to soften the dilemma by finding approaches that minimize conflicts between redistribution and recognition in cases where both must be pursued simultaneously (Fraser 1995, 92)

The position we have examined so far is Fraser's original, two-dimensional view. As authors of D2.2 note, however, she amended her view with a further dimension that of representation (van den Brink et al. 2018, 15-6). The need for the third dimension of political participation stems from the fact of globalization: within the 'Keynesian-Westphalian' system of nation states based on 'the social-democratic paradigm' following World War II, the redistribution-recognition model was an adequate way to analyze claims-making about justice (Fraser 2007, 313). But Fraser came to think that political claims-making is no longer only about relations among fellow citizens in a bounded nation state (ibid.). As she puts it, focusing 'on the 'what' of justice (redistribution or recognition?)' it was taken for granted 'that the 'who' of justice was the national citizenry' (ibid.). But today, this Westphalian model of nation state social democracy is no longer taken for granted:

[w]hether the issue is immigration or indigenous land claims, global warming or the 'war on terror', Muslim headscarves or the terms of trade, disputes about what is owed as a matter of justice to community members now turn quickly into disputes about who should count as a member and which is the relevant community (ibid., author's emphases).

Thus, justice requires a different, new frame, and participation promises to provide the required additional dimension for this new justice framework. 'Henceforth', Fraser claims:

...redistribution and recognition must be related to representation, which allows us to problematize both the division of political space into bounded polities and the decision rules operating within them. Understood this way, representation furnishes the stage on which struggles over distribution and recognition are played out (ibid.).

This updated framework enables the analysis of (in)justice to identify who is included/excluded from the 'circle of those entitled to a just distribution and reciprocal recognition' (ibid., 313-4). By drawing the attention to boundary-making as a facilitator of excluding certain subjects from the purview of redistribution/recognition, the new third dimension points to a further justice concern: 'neither economic, nor cultural, but political' (ibid., 314). That is, representation as the third dimension of justice is political vis-à-vis recognition which is predominantly cultural and redistribution which centrally concerns the economic dimension.

The new, three-dimensional framework enables Fraser to locate different forms of social exclusion (Fraser *ibid.*, 315-6). In the first scenario of Fraser's original two-dimensional framework, social exclusion is rooted in the political economical structure of society, e.g. when certain individuals do not even have the minimal resources to be able to take part in the socio-economical interaction of the society (*ibid.*, 315). (Fraser believes this is the group that 'Hegel had in mind when he wrote of 'the rabble'' (*ibid.*). According to the second scenario, the source of exclusion is not the political economy, but the status order; this is the case when some ethnic groups are relegated to a pariah status (*ibid.*, 316). The third scenario is when exclusion is the result of both political-economic and cultural causes - Fraser raises the case of Romani people in Central/Eastern Europe as a possible example to this kind of twofold exclusion (*ibid.*).

Amending her framework with the dimension of representation enables Fraser to identify two further types of social exclusion, the first is a type of exclusion when 'political space' is structured in a way that completely excludes certain people from having a say; the group of undocumented migrants is a case in point for this type of social exclusion, according to Fraser (*ibid.*). Finally, yet another further possible scenario is the situation of the global poor, in this case, where exclusion is a result of 'all three dimensions of social ordering', that is, when the interaction of economic, cultural, and political structures excludes groups from participation (*ibid.*).

With these in mind, we can see more clearly the precise role and importance of Fraser's work to the ETHOS project. The success of ETHOS does not depend on the acceptance of Fraser's theory as a whole; we believe that Fraser's framework for theorizing justice is important for ETHOS because it highlights the importance of a context specific analysis and it also directs the attention of researchers to the fact that a given individual or group can suffer different kinds of injustices, and the analysis should not examine these injustices in isolation. Finally, and relatedly, it is crucial to realize that the various possible remedies to these forms of injustice may be incompatible or can lead to other problems.

To give a concrete example, the authors of deliverable 2.2 examine the phenomenon of disability and its attendant justice-concerns, focusing on both the redistributive and recognitive aspects of the issue. They stipulate that, in certain cases, something like the Fraserian idea of transformation is needed, while in other cases affirmation is more appropriate to address the specific injustices that can arise. Keeping these in mind, in the remainder of this deliverable we examine the X.1 deliverables of ETHOS work packages through the lens of redistribution, recognition and representation, before examining which justice-conceptions arise in ETHOS research that may in part fall by the wayside when approached exclusively with the Fraser's framework.

Fraser thus inspires ETHOS to conduct research that stands on firm empirical grounds, starting from policy analyses and the injustices vulnerable groups face and analyzing these injustices through the lens of redistribution, recognition and representation and their interaction, trying also to find remedies to them. In doing so, ETHOS aims to move beyond Fraser's ideal-theoretical framework by applying it to real world situations deciding the desirability of affirmative and transformative action on a case-by-case basis.

2. Multi-Disciplinary Perspectives on Redistribution

We have seen how Fraser resisted 'monolithic' perspectives on justice in the previous section. The main targets were theorists who consider redistribution foundational to justice and fairness – the

bottom-line for recognition and representation. Despite Fraser's objections, this view remains common in justice-theorizing. The principles and assumptions of just and fair redistribution varies between justice-conceptions, ranging from the absence of constraints, barriers or interference by others to welfare and/or primary goods, to the demand that individuals have real opportunities to do and be what they have reason to value (the 'capabilities' approach). ETHOS research so far shows that economists, legal, political and social scientists and political philosophers could not reach agreement about the conceptualization of redistribution, and its principles, constructs and mechanisms. Neither can be scientifically decided what 'optimal redistribution' would be or how it should be reached. In the meantime, economic inequality is soaring in all EU Member States taken individually, as well as in the EU at large (Piketty, 2014). Neo-liberal politics, economic and financial crises, global tax evasion, oligopolies and global competition undermine the once celebrated 'European Social Model' (European Parliament, 2000) resulting in aversion to the four freedoms of the European market and the rise of the popularity of 'opting-out' of European integration in political debates undermining the Union (Seubert et al., 2018)

In this section, the concept of redistributive justice, a core concept of ETHOS, is explored by reviewing how it is conceptualized in various disciplines, taking into account that some disciplines pretend to be fully 'value-free' rather than (at least partially) normative, descriptive instead of prescriptive.

2.1 Redistribution; domains, needs and participatory parity

Since Marx proclaimed his economic and political philosophy by turning upside down the triggers of social change and explaining hegemonic ideology as founded in production forces and class-interests, debates on what comes first, 'ideas' or 'material resources', are ongoing. As seen in section 1, Fraser, on whose ideas ETHOS has built its interwoven but analytically distinct facets of justice, as a self-defined cultural Marxist, obviously struggles with defining the relationship between redistribution and the second core concept of ETHOS; recognition. In her original analyses of dependency (with Linda Gordon, 1994) and needs (1989) she accentuates these terms not as predefined categories but as subject to struggle and interpretation, concluding that inequalities among the struggling parties are structured simultaneously by access to material resources and discursive resources: 'However, in welfare-state societies, needs-talk has been institutionalized as a major vocabulary of political discourse.' (1989, 291). Here, redistribution is not a matter of economic classifications only but embedded in the discursive political domain: '[...] needs-talk appears as a site of struggle where groups with unequal discursive (and non-discursive) resources compete to establish as hegemonic their respective interpretations of legitimate social needs.' (ibid., 296).

As is discussed above, and in the ETHOS paper D2.1 (Rippon et al. 2018), Fraser later on tends in contrast to assume a more straightforward conceptual distinction between justice as recognition and justice as redistribution (Fraser 1996). In her influential Tanner lecture on Human Values, she critiques scholars of justice-as-recognition (Taylor and Honneth) and of justice-as-redistribution (Gitlin and Rorty). In reaction to 'identity politics an sich' she envisions the cultural and the economic domains as interrelated though distinctive. Nevertheless, she states: 'virtually all real-world oppressed collectivities... suffer both maldistribution and misrecognition in forms where each of those injustices has some independent weight, whatever its ultimate roots' (ibid, 22, in Rippon et al. 2018, see also

Young, 1990). Evolving her argument, she states that redistribution and recognition interact causally but do not mirror each other. Each has some autonomy vis-à-vis the other. Today, she argues that the Keynesian-Westphalian model of redistributive and recognitive justice no longer holds in a global world with fluid migrant populations. Belonging, in- and exclusion, and having a say are crucial for making claims on recognition and redistribution with the ultimate goal of 'participatory parity', that is, the possibility to partake in the social and the political on an equal footing with others (rather than the obligation to do so). Following this line of argument, we will analyze arguments and principles of economic, law, and social disciplines as well as of political philosophy from the point of view of (re)distributive justice. In doing so, particular (in)justices of redistribution will be accentuated.

2.2 Redistribution principles

As outlined in the ETHOS paper D2.1, controversies on justice concern its principles, shape, scope and site (Rippon et al., 2018). While that report demonstrates that the grounds of redistributive justice principles are multifold in the theoretical literature, ranging and varying for example from bare power relations to enlightened self-interest, human development, and independence (ibid.), this rich variety is only minimally reflected in economic theory as José Castro Caldas explores in ETHOS deliverable 6.1. In commenting on the (disastrous) effects of neo-classical economic theory for legitimizing soaring inequality, Castro Caldas sketches the typical hegemonic economic theory in the 20th century as indifferent if not aversive towards principles of just redistribution. Indeed self-interest, utilitarianism and 'rational choice' have dominated the redistributive approach of economists resulting in what Castro Caldas (2017) calls 'the economization of justice', an economic theory that claims to be 'independent of any particular ethical position or normative judgments' (Friedman, 1953, 4, in Castro Caldas, 2017). The 'neutral' proscription of certain economic policies, often paired with resistance to redistributive policies, seems, however, to often belie the claim to value-neutrality.

In reaction to this impoverished view of justice, Castro Caldas draws attention to alternative and dissenting views. Central are Sen's ideas of sympathy and commitment (developed in part as a development of Adam Smith's lesser known work *The Theory of Moral Sentiments*) as moral capabilities that, understood properly, can shift how game-theoretic social dilemmas involving the possibility of free-riding, like public goods provision, teamwork and work motivation in general, are understood. Stiglitz (2016, in Castro Caldas 2017) goes a step further by not only taking into consideration the principles of dividing welfare goods but focusing on the principles of the underlying productive and financial systems. He analyses inequities presently experienced in developed capitalist societies, Rent-seeking behaviour, for example, results in savings being channeled to speculation in real estate and financial markets, while gross inequalities of outcomes and opportunity depletes the potential of those at the bottom and hinders not only present economic demand but also future growth. Finally, according to Stiglitz's analysis, unequal societies are less likely to make public investments which enhance productivity (Stiglitz, 2016, 146 in Castro Caldas, 2017). From this perspective, reducing maldistribution requires 'more investment in public goods; better corporate governance; anti-trust and anti-discrimination laws; a better regulated financial system; stronger worker's rights; and more progressive tax and transfers policies' (Stiglitz, 2016, 149 in Castro Caldas, 2017).

While Stiglitz' analysis respond to the transformative politics that Fraser accentuates are necessary to overcome maldistribution (1995), Sen's alternative redistributive perspective substitutes 'utility' as the

main criterion for individual and social optimal performance by functionings, a multidimensional consideration of values that brings to the fore functionings (states and activities constitutive of a person's being such as being healthy, being safe, being happy, and enjoying self-respect) and capabilities (the alternative combinations of functionings which a person can achieve). He challenges economists to go beyond claims that 'justice is not a matter of reasoning at all' to engage in 'reasoned diagnoses of injustice, and from there to the analysis of ways of advancing justice'. (Sen 2009, 4-5 in Castro Caldas, 2017).

In this respect, the articulation of principles of (re)distributive justice in social theory more or less follow the same path as those in economic theory in the 20th century, as ETHOS deliverable D5.1 (Anderson et al. 2017) shows. By separating the economic analysis of the causes of inequality from the social analysis of inequality — both as domains of life and as academic disciplines — mainstream sociology succeeded in becoming a 'real positive science' and left behind normative justice reflections on the relationship between injustice, structural inequalities and capitalism (Streeck 2016, in Anderson et al. 2017). That said, social theorists have theorized social phenomena that are crucial for understanding justice and injustice, such as those power mechanisms driving maldistribution, the effect on maldistribution on generating poverty, and the effects of inequality on social cohesion.

Anderson et al. report that sociologists have challenged social and institutional power mechanisms causing maldistribution such as discursive disciplines (sociology, pedagogics and psychology) that appeal to social cohesion, common sense and – middle-class – values. Such mechanisms, like the school system, prisons, hospitals and therapeutic practices all encourage individuals to adapt by setting standards for the 'right behaviour' (Foucault 1976, in Anderson et al. 2017). It is by a discourse of bonding, connectedness and convictions that people adjust to the social order, and social science disciplines often contribute to that process. Bourdieu in his turn unraveled the transfer of economic, social and cultural capital from one generation to another and showed how this was supported by networks of the elite, state institutes, schools (1979, in Anderson et al. 2017). As a cause of poverty, sociologists have shown that maldistribution is a cumulative indicator for lack of money, housing, education, health, (political) voice and culture (Deleek 2001 in Anderson et al. 2017). Finally, regarding the effects of inequality for social cohesion and individual well-being, Wilkinson and Pickett (2009) for instance indicate that redistributive injustice goes at the cost of individuals at the upper end of the social ladder, in addition to undermining social cohesion, social well-being, health, safety and prosperity. In conclusion, while social theorists are committed to a just and fair society in diverse ways, the dogma of 'value free' science binds them to mainly pragmatic arguments; explicit moral reasoning is avoided.

D5.1 also reports on the intersect between gender relations and justice, a major commitment of Fraser from her earliest writings on. From a distributive perspective, Fraser defines gender as a basic organizing principle of the economic structure of societies that are divided into paid 'productive' labour and unpaid 'familial' or 'reproductive' labour. Moreover, gender principles organize paid labour in a gender-divided and hierarchical order with well-paid 'male' and lower-paid 'female' jobs (Fraser 1998). The underlying premise though is that 'gender injustices of distribution and recognition are so complexly intertwined that neither can be redressed entirely independently of the other' (ibid., 10). In line with Fraser and Gordon's (1994) original analysis of dependency, scholars in the debate on care, gender and citizenship critique the concept of dependency as a negatively-connoted term in the context of industrial capitalism, at least for those who were not able or permitted to participate fully

in that market: women, minorities, the old and the disabled. Knijn and Kremer (1997, 352, in Anderson 2017) define care relations as interdependent by arguing that ‘every citizen is dependent on someone else in one way or another’. They suggest using an alternative perspective: ‘all citizens are interdependent, but not always in an equal way’. This allows for the recognition and redistribution of reproductive work during the life course for both genders. Kittay adds to this that ‘having dependents to care for means that without additional support, one cannot -given the structure of our contemporary industrial life and its economy- simultaneously provide the means to take care of them and do the caring for them’ (Kittay 1998, 35, in Anderson 2017). Indeed, it is by analysing care work – unpaid in the familial sphere and underpaid on the labour market – and its systematic gendered distribution, that feminist scholars question the dominant assumption of many social theorists, economists, and philosophers that a society is composed of equal and autonomous persons.

Critical social theory comes to the same conclusion by combining the critical analysis of persons’ contextual and structural constraints, challenges and opportunities with agents’ reflection on their situation. Agents’ reflection on their situation finds expression in what D5.1 calls ‘standpoint theory’ – which provides insights in everyday experiences of (in)justice by exploring marginalized standpoints. The process, sites and experiences of ‘marginality’ provide a different lens through which to understand social citizenship and issues of justice (Turner 2016, in Anderson et al. 2017). Interestingly, standpoint theory has the potential to draw attention to class as well as other attributes that are more commonly associated with identity politics. In that way, it reflects Fraser’s attention to needs seen as an unequal discursive arena in which categories of the population compete to generate those interpretations of legitimate social needs that will become hegemonic. Standpoint theory today brings attention back to the physical body by reflecting on the materialized aspects of identity – able-bodiedness, race and ethnic-bodiedness, and gendered bodies – as categories of exclusion in the redistributive process. Stigmatization in this sense co-creates categories of undeservingness, as does exclusion from belonging in the cases of migration and mobility (Anderson et al. 2017, 14-18).

From the economic and social theory disciplines, as reported in ETHOS reports 6.1 and 5.1, it might be concluded that redistribution is about the interpretation of needs, a central domain of welfare states, about the organizational principles of the labour market and its relationship to the domestic arena, about the functioning of global financial markets and the tendency towards rent-seeking instead of investing in public goods, and about redistribution principles that have outcomes that promote or undermine assumptions of a ‘good society’, although social theorists like economic theorists are reluctant to take an explicitly normative stance.

Legal theory, as explored in ETHOS report 3.1, tends to conceive of redistributive justice in a rather formal (perhaps even formalistic) way. Actually, it seems that a substantive legal theory of (re)distributive justice is missing, and a legal vocabulary of needs-interpretation is not translated into law (Salát 2018). The only conclusions drawn on the place of redistributive concerns in the European legal context are that social rights regarding property are not central in EU law, and social protection as well as labour law largely is left to national regulation.

Political theory, as reported in ETHOS report 4.1 by Bugra (2018), does better in identifying the relationship between representation of marginalized groups and their resources. Bugra insists on relating recognition and representation to the ‘freedom to pursue one’s valued ends of life’ as ‘an important concern in different conceptualizations of justice’ in political theory scholarship (2018, 8),

thus tackling the question of possible trade-offs between the representative, recognitive and (re)distributive dimensions of justice head on. However, she challenges what freedom means and how this relates to the proper setting of socioeconomic and political relations where people could be considered to be equally free (ibid). Even a 'fair' distribution of resources available to people to pursue their valued ends (as proclaimed by John Rawls in his *A Theory of Justice*) has to take into account the differences in the ability to use these resources in a way that allows different types of instrumental freedoms, which contribute to the general capability of a person to live more freely (following Sen).

Of the four disciplines under study, economic and social theory – as reported in ETHOS deliverables 6.1 and 5.1 – have the most to say on the question of redistributive justice (Castro Caldas 2017; Anderson et al. 2017), although both deliverables claim that mainstream approaches in their disciplines are largely indifferent to (re)distributive justice, in the sense that mainstream theorists do not explicitly take a normative stance. Fraser's ideas on need-interpretation, the construction of dependency, organizational and systemic principles of the gendered division of the public and the familial spheres, and the gendered and racialized labour market have not become part of economic theory and are only integrated in social theory as descriptive elements. In legal theory, theoretical reflections on (re)distributive justice are almost absent, while in political theory it seems (re)distributive justice theory is mainly a servant of the freedom to express and having a voice. These disciplinary orientations can be explained, historically, through 'influence of positivism' in economic and social theory, also by celebrating the homo economicus, which has come under pressure in the wake of recent economic crises, though not to such an extent that the paradigm has shifted. The dominant economic conceptualization of homo economicus – man conceived as 'a 'rational' and self-interested entity, an abstract molecule that responds only to economic incentives' (McLure, 2002 in Castro Caldas 2018, 3) has found its way in other disciplines precisely through the lack of problematizing the relationship between maldistribution, misrecognition and representative injustice. People's needs are judged to be reflections of their own (irresponsible) behaviour, dependence in the labour market is seen as a new form of independency, redistribution of goods and services by welfare states is increasingly understood as creating dependent citizens, and market failure creating and constructing marginalized populations is taken for granted. However, a critical analysis of redistributive justice going beyond a fair distribution of welfare state resources is under way. From one side, more engaged scholarship on the principles of the capitalist production and its maldistributive effects is emerging (Piketty, 2014; Stiglitz, 2015; Sen, 1977), while from the other side, engaged scholars are reporting on the daily experiences of maldistribution by marginalized and vulnerable populations (Lamont 2012, Lamont and Molnar 2002, Gorashi 2010a, 2010b, and Anderson 2013).

3. Multidisciplinary Perspectives on Recognition

Recognition is mainly a relational principle based on hierarchies in identities and social roles (see Rippon et al. 2018, 15-16). That is, recognitive justice can be best understood when contrasted with distributive justice: justice as recognition being concerned not with 'how many goods a person should have but rather with what kind of standing vis-à-vis other persons she deserves' (Iser 2013). The ETHOS projects emphasize, along with Fraser, Sen, Honneth and many others, that justice is not only about 'having', but also about 'doing', 'being', 'being seen' and/or about the relative standing of a person vis-à-vis others. Certain forms of injustice, such as sexual harassment, demeaning stereotypical depictions in the media, disparagement in everyday life, or marginalization in public spheres and deliberative bodies, cannot be overcome by redistribution alone but require independent remedies of recognition.

Refusal of recognition can damage the identity of those to whom it is denied and, as such, constitutes a form of oppression. Since identity does not develop in isolation but in 'dialogical relations with others', justice entails that individuals are provided with care, respect and esteem. In other words, there must be adequate social appreciation of the value of one's contribution to the social division of labour (Honneth 1996). Thus, it is not surprising that recognitive theories are tightly related to and can be better understood through the claims of certain social movements. As Mattias Iser points out:

[Recognitive theories] promise to illuminate a variety of new social movements – be it the struggles of ethnic or religious minorities, of gays and lesbians or of people with disabilities. None of these groups primarily fight for a more favorable distribution of goods. Rather, they struggle for an affirmation of their particular identity and are thus thought to be engaged in a new form of politics, sometimes labeled "politics of difference" or "identity politics." However, many accounts want to ascribe a much more fundamental role to the concept of recognition – covering the morality of human relationships in its entirety. From this more general perspective, also earlier campaigns for equal rights—be it by workers, women or African Americans – should be understood as "struggles for recognition" (Iser 2013).

Recognition can be categorized according to 'the kind of features a person is recognized for' (Iser 2013). Charles Taylor differentiates between three forms of recognition: universal recognition that recognizes equal dignity of all human beings, the recognition of difference that 'emphasizes the uniqueness of specific (and especially cultural) features', and the recognition of 'concrete individuality in contexts of loving care that are of utmost importance to subjects' (Iser 2013, our emphasis; Taylor 1992, 37). The first two types of recognition will be of crucial importance to understand the ways the different ETHOS deliverables involve the notion of recognition (according to Taylor, the third type is the characteristic of personal, not political ethics).

We start the overview with legal theory. In report D3.1, Orsolya Salát points out that the idea of human rights law 'is based on the idea that every human being has certain universal, inalienable and indivisible rights, regardless of the political community to which (s)he does (not) belong' (Salát 2017, 15). But since many find grounding human rights in 'a certain conception of human nature' as a case of 'unwarranted essentialism', the solution is usually a compromise that 'universal human rights apply equally to everyone, but their actual interpretation might be culturally varied, to some – allegedly 'limited' – extent' (ibid.). The report by Salát is highly informative on the recognition of identities in EU law. In this regard, she notes an important clause on 'national constitutional identity' in the Treaty on the European Union, which grants certain exceptions from the baseline supremacy of EU law 'in important (constitutional) cases, allowing for some variation among the member states' (ibid., 33). This entails differential treatment on citizenship within the European Union, which is a problem from the point of view of justice, as Salát notes. She concludes that 'issues of supremacy and national identity remain a contested field because it is a formal structure of deciding which particular conception of justice is to prevail, framed in the language of national identity' (ibid.). The report further recognizes that national, European and international law shows concerns for 'specific justice' claims such as human or fundamental rights. Quoting the 1993 Vienna Declaration on human rights, Salát highlights that the international community is obliged, formally, to treat human rights globally 'in a fair and equal manner', and:

[w]hile the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms (VDPA, section 1; *ibid.*, 33-4).

Furthermore, international law recognizes the equal dignity of every person. The Universal Declaration of Human Rights states that, 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world' (Preamble, UDHR; *ibid.*, 45). This implies, *inter alia*, a right to legal personhood and a right to equal treatment. Salát points out that in addition to these 'specific rights', recognition concerns are also present in the sphere of 'status-rights' (*ibid.*). These are 'rights of the person to be recognized as member of the community, first of all citizenship, but also other statuses as refugee and protected person' (*ibid.*). The consequence is that recognition of someone always comes with the exclusion of others who do not satisfy the criteria of the given status (*ibid.*). On a related note, Salát also draws attention to the issue of whether a given state recognizes (ethnic) minorities by giving 'special status like cultural and language rights (education, and so on)', which includes special rights of self-governance and even territorial autonomy (*ibid.*). Salát aptly points out that in that case, justice claims of recognition and representation merge (*ibid.*). Finally, human rights law also recognizes the equal dignity of the members of several minority groups (*ibid.*). This 'includes first of all equal treatment, but also positive measures with regard to racial, ethnic and religious minorities, LGBTQ+ persons, persons with disabilities, and women' (*ibid.*). This aspect of justice also includes the claims of certain minority groups to rectify historical injustices they suffered (*ibid.*). Whereas from 3.1 it could be concluded that legal theory subsumes recognition to the right to have rights, which is an impoverished understanding of recognition, in other disciplines the interpretation of recognition stretches much broader.

It is not surprising that recognition is emphasized by political theory (D 4.1) as well. In report 4.1, Ayse Bugra highlights the Janus-faced character of recognition aspects of the concept of recognition. On the one hand, recognizing some individuals or groups is an indispensable requirement of justice. During the discussion of Philip Pettit's republicanism, she stresses the importance of the republican freedom of non-domination and Pettit's 'eyeball test', according to which members of a society should be able to 'look one another in the eye without reason for fear or deference' (Bugra 2017, 11). Thus, state actions that violate the eyeball test are unjust and they are so in virtue of violating the idea of equal citizenship. This kind of misrecognition can happen in the form of discrimination, usually against some vulnerable group(s), or in some other ways. Bugra emphasizes the problem of vulnerable minorities being dominated, which can happen in several ways (*ibid.*). First, domination can be expressive, that is, authorities can use discriminatory language against these groups (such as ethnic groups, women or LGBT people), but a further injustice related to this problem is the lack of their adequate representation (*ibid.*). This consideration is very close to Fraser's idea of participatory parity. The importance of the recognition of difference regarding minority groups is also mentioned by D4.1: 'The affirmation of diversity is therefore a characteristic of a just society where it is acknowledged that group differences inform different experiences and shape different aspirations and demands concerning participation in society' (*ibid.*, 13-14). But one characteristic of the political-theoretical perspective of recognition is the possible negative side of justice as recognition. This is related to the idea of intersectionality, according to which groups are not homogeneous and people have intersecting identities, which means that an individual being 'grouped' in terms of ethnicity, gender,

age, sexual orientation or class might place them in a disadvantaged position. There is, therefore, a tension between group rights and the rights of individuals within the group (ibid., 14). For instance, the recognition of a cultural minority can lead to the oppression of the female members within the group (ibid., 13; cf. Okin 1999). It is crucial for ETHOS to keep in mind the possible problems related to intersectionality.

Perhaps a possible solution to the problem of intersectionality can also be found in the work of Fraser. First, Fraser emphasizes that no acceptable recognition claim can violate basic rights and liberties (Fraser 1995, n3). Second, Fraser herself – motivated by the idea of participatory parity – understands acceptable recognition claims as claims for recognizing the equal status of individuals or groups, and not the recognition of identities (Fraser 2001). Fraser holds that the problem with the ‘identity model’ of recognition that understands misrecognition as the majority culture’s putting down the identity of a minority culture thus damaging the latter’s ‘sense of self’ is that it puts pressure on group members to conform to group culture (ibid., 23-24). This is problematic, according to Fraser, because it results in a ‘drastically oversimplified group identity,’ overlooking the ‘complexity of people’s lives’, and the ‘multiplicity of their identifications’ (ibid., 24). She offers the ‘status model’ of recognition as an alternative, which understands misrecognition as the lack of equal status of minority group members (ibid.). The politics of recognition in this status sense thus requires not identity politics, but the redressing of injustices that hinders minority group members to participate as equals in social life (ibid.). That is, perhaps the solution to the problem of intersectionality requires us to take group/cultural membership into account only in cases where not giving recognition endangers the equal standing of the given individuals, or groups.

The report on justice-theorizing in social theory (D5.1) by Bridget Anderson, Claudia Hartman and Trudie Knijn discusses several issues that involve the question of recognition and problems related to misrecognition. The authors discuss the question of inequality, not only from a distributive perspective, but also as a relation-egalitarian problem:

[Paul] Willis showed how ‘lads’ opposing and obstructing middle-class schools norms ended up in low-skilled jobs, Bourdieu explained the mechanisms that mean that the privileged reproduce better-off offspring not only by the transference of economic capital, but also through providing a useful social network (social capital) and high-standard (cultural) education (cultural capital) (Anderson et al. 2018, 4).

The authors of D5.1 also analyze social exclusion as an injustice; as they put it, ‘[s]ocial exclusion is based on ascribed categorization of individuals on basis of gender, race, religion, ethnicity and the effect of supremacist attitudes of majority populations’ (ibid., 5). Then, they examine the relationship between redistribution and recognition, directly referring to the debate between Axel Honneth and Nancy Fraser (ibid., 9). The authors of D5.1 emphasize a further aspect that becomes important for recognition: embodiment, that is, the material aspect of identity, which is important because ‘[t]he visibly marked body informs the ways in which others are perceived and experienced’ (ibid., 14). Such an approach might help us understand issues of justice from particular standpoints that shed light on previously unrecognized problems, complications, or injustices. The idea is that knowledge of the (marginalized) experiences of ethnic and religious minorities, LGBTQI people, and people with disabilities provide a different lens through which to understand issues of justice, which can otherwise reflect the majority’s experiences.

We can see why ‘standpoint theory’ might be important from the point of view of recognition if we take a look at disability and disability scholarship. First, the slogan nothing about us without us ‘has often been invoked to demand the inclusion of people with disabilities in policy making and research concerning disability’ (Wasserman et al. 2016). As Wasserman et al. point out, disabled individuals can transfer information based on their own experience regarding both the experience of different functional limitations and how it is to live with a stigmatized trait (ibid.). Not giving due attention to these first-hand experiences of individuals with certain disabilities in designing public arrangements is a sign of misrecognition, because it is disrespectful to disregard the first-hand experiences of either the victims of injustice (in case of stigmatization) or the future users of the given arrangements (ibid.). Thus, standpoint theory might be indispensable for any theory of justice that aims to eliminate the injustice from discrimination and stigmatization, because these personal reports can provide a first-hand experience how it feels like to suffer a particular injustice. Finally, the discipline of economics (D6.1) only tangentially discusses recognition-related issues. One is the discussion on Adam Smith:

Smith’s human being is endowed naturally with multiple and contradictory propensities. Among them is the desire for approbation. But since that desire alone would not render him fit for society, nature has endowed him also “with a desire of being what ought to be approved of; or of being what he himself approves in other men” (TMS, III.I.14). He thus “naturally desires, not only to be loved, but to be lovely ... [; he] naturally dreads, not only to be hated, but to be hateful ... [; he] desires, not only praise, but praiseworthiness ... [; he] dreads, not only blame, but blame-worthiness” (TMS, III.I.8)” (Caldas 2017, 4).

This idea from Smith is related to the relational character of recognition, namely that someone must be recognized by others in a community. A related idea of Smith is that individuals must be able to appear in public without shame. This consideration is somewhere in the neighbourhood of Pettit’s eyeball test, and motivated Amartya Sen’s (1992) capability view. Sen argued that ‘the ability to go about without shame’ is a relevant basic capability which should figure in the ‘absolutist core’ of notions of absolute poverty (Sen 1983, 1993) Also, a similar idea can be found in Rawls regarding his contention that ‘self-respect is perhaps the most important primary good’ (Rawls 1999, 386). That is, Rawls holds that if a person has no confidence in her ability to pursue her life plan, then those life plans are in danger; it is essential that citizens regard one another as free and equal in order to be able to pursue their life plans (Freeman 2016). Thus, Rawls highlights the intersubjective, public nature of the value of self-respect.

4. Multidisciplinary Perspectives on Representation

Recognition and redistribution are deeply connected to representation, the latter in its turn takes a lot of shapes in various constitutional settlements. The variation ranks from representative to direct democracy, electoral thresholds, referenda and forms of deliberative democracy at local levels or with regard to specific social issues. As explored in earlier ETHOS research, democratic theorists and political philosophers are in broad disagreement about what theory of representation is conceptually convincing, and what conceptualization of representation is normatively defensible (Rippon et al.

2018)¹. EU institutions have been frequently diagnosed with a ‘democratic deficit’, often ascribed to a lack of sufficient democratic control over EU policies and regulations, and insufficient citizen participation in EU politics (*ibid.*, Kosti and Levi-Faur 2018).

As developed in the first section of this report, and from a theoretical starting point elaborated over the course of a decade or so by Nancy Fraser, representation is conceived by ETHOS to be one of several interwoven but analytically distinct aspects of justice. In this sense, we hold the view that, even where a law, polity or policy meets other demands of justice such as redistributive and recognitive concerns, there may be particular injustices of misrepresentation. Fraser first focuses on ‘ordinary-political’ misrepresentation, where certain voices within a polity are unjustly excluded or muted. As reported in ETHOS deliverable 4.1, Pettit nuances this ordinary-political approach, drawing attention to two distinct dangers of such misrepresentation: the ‘false negative danger’, which ‘involves the missing out or ignoring certain public interests’, and the ‘false positive danger’, consisting of inaccurately ‘misrepresenting common interests and falsely identifying other interests as common interest’ (Pettit 2004 in Bugra 2018, 22). Next Fraser turns to what she labels misrepresentation as ‘misframing’; here certain persons are unjustly excluded from a political community in general because of the way that the boundaries of that community have been (unjustly) drawn (2009, 18-19). These ‘levels’ of misrepresentation interact with the key analytical tools developed to evaluate the different aspects of justice in the ETHOS project, especially the boundaries and fault-lines of justice (concerned centrally with ‘misframing’) and the question of how to justly acknowledge a plurality of different claims of justice (concerned, in the context of representation with ‘ordinary-political’ misrepresentation).

The disciplines given central stage in ETHOS’ interdisciplinary research on justice in Europe have traditionally approached issues of representation and misrepresentation quite differently, although interesting comparisons and synergies can be identified. Legal theory, as explored in ETHOS report 3.1, tends to conceive of representative justice in a somewhat formal way, along the lines of Fraser’s concern with ‘ordinary-political’ misrepresentation (Salát 2018). Political theory, as reported in ETHOS report 4.1, is more attuned to identifying the political mechanisms by which marginalized groups and individuals in a polity have a hard job in being heard, and also extends the discussion to consider the political theoretical engagement with Fraser’s representative ‘misframing’, or the boundaries of representative justice (Bugra 2018). Social theory, in turn, has tended to put aside the question of formal political processes when considering issues relevant to representative justice, focusing instead on how the construction of certain identities (‘othering’) has the effect, empirically, of excluding marginalized and vulnerable (groups of) persons from positions of power and influence (Anderson et al. 2017). Finally, economic theory is marked mainly by the absence of considerations of representative justice, which is one effect of the search for a ‘value-free’ social science that we find echoed in social theory (Castro Caldas 2017, Anderson et al. 2017); ETHOS report 6.1 does enable us to reflect on the

¹ Here and elsewhere we follow the distinction between ‘concept’ and ‘conception’ proposed by Gallie and picked up by Rawls whereby a concept is defined in broad lines and a conception concerns the particular working out of a concept. Disagreement over a concept is thus more ‘fundamental’ (and theoretically problematic) than disagreement over a conception (W. B. Gallie 1955, Rawls 2001).

ways that assumptions in economic theory about human nature being fundamentally self-interested challenge a normative conception of just representation (Castro Caldas 2017).

Especially in the ETHOS report on justice in political theory (Bugra 2018), underrepresentation has been approached an urgent justice issue. As reported there, the Critical Social Theory approach of the Frankfurt School led the normative debate on this issue, bringing together critical understanding and transformative action towards an emancipatory purpose. From its early days this School was engaged in exploring the socio-political determinants that lie behind philosophical analyses, asserting – in contrast with other schools and traditions of political theory – that the object of knowledge and the knower are embedded in historical and social processes. Bugra outlines how Seyla Benhabib developed this mainly Habermasian approach that made the reflective assessment of communicative rationality and intersubjectivity central to human emancipation (Benhabib 2004 in Bugra 2018, 18-19). Theories of communicative rationality suppose that discourses of moral justification are necessarily open-ended and that the ‘dialectic’ of rights and identities they involve introduces a different dimension to the way we think about transformative remedies against injustices (ibid., 19). Different to ‘affirmative’ remedies of injustice, which seek to diagnose ‘objective’ injustices and propose fitting remedies, critical-discursive theories do not ‘consider the existing structure of institutions and social relations as given’, nor ‘regard identities as fixed and unchanging’ (ibid. and Fraser 2014, Phillips 2013, 90-96). This enables the theorist to think about convergence as a possible outcome of processes of democratic negotiation where norms of just representation prevail (ibid.).

Unsurprisingly, the report on political theory also highlights some more traditional politico-theoretical concerns with representative justice, including engagement with the question of formal versus civic participation, and the challenges to representative government from pluralism and autonomy. Formal democratic processes have long raised difficult puzzles of representative justice. As also elaborated in the report on legal theory (Salát 2018), one traditional concern is with ‘electoral proportionality’ (Bugra 2018, 24, citing Lijphart 2004 and Bird 2004), which might be related to Fraser’s idea of participatory parity (Fraser 2001) at the level of ordinary-political representation; certain electoral systems better translate votes into seats, in other words, although there may be trade-offs with regard to minority representation (Bugra 2018, 23-24, citing Bird 2004, Horowitz 2003, and Hughes 2011). On the other hand, Bugra notes that outside of formal processes, issue-specific interest groups, petitions and referenda ‘have an increasing appeal’ to those engaging in ‘unconventional types of political action’ (Bugra 2018, 25-26). With regard to pluralism and autonomy, the puzzle recognizes the apparent paradox that democratic representative politics emphasizes and claims to solve the ‘plurality of reasons’² (ibid., 20, citing Sen 2009) – that democratic polities are confronted with intractably divergent views of the good life. Solving such conflicts democratically requires giving an equal chance to people to ‘represent their grievances and claims’ in the context of ‘public reasoning’ (Bugra 2018), allowing them to ‘live under a government in such a way that we do not think of it as an alien will in our lives’ (Pettit 2014, cited in Bugra 2018, 18), or, in other words, allowing people to be autonomous

² A central notion in political theory, public reasoning requires the exchange of reasons that are publicly acceptable – in other words generally not particularly formulated – and is often considered a central demand of reasonableness, often considered a demand (and thus a limit) of democratic and deliberative politics (Rippon et al. 2018, 6 referencing Forst 2011).

in that they 'consider themselves as the authors of the system of laws that are subjected to as private persons' (ibid. citing Habermas 1994).

After political theory, legal theory has been most centrally engaged with the question of representative justice, as reported in ETHOS deliverable 3.1 (Salát 2018). Legal theory treats mainly the formal aspects of representation – what Fraser calls the 'ordinary-political' level – such as 'the right to vote, and the fairness of elections, including the voter districts' (ibid., 43). This dovetails with the mainstream politico-theoretic concern with the proportionality of voting, as discussed above (Bugra 2018, 24), and indeed, Salát reports that a key demand of representative justice in legal theory is that 'every voice gets potentially heard and has an equal weight' (Salát 2018, 43). However, although different electoral systems, including in Europe, are 'rather grossly disproportionate in varying ways, not only by application, but by design', (ibid.) the international and human rights law frameworks have only a very moderate impact on the regulation of electoral proportionality, given that '[e]lectoral laws are... considered to belong to the core of national sovereignty' (ibid.) and any interference in this domain is consequently resisted by national states. Even where, for instance, human rights law does intervene in voting rights, such as in the jurisprudence of the European Court of Human Rights (which is binding on all 47 states of the Council of Europe), the focus is on the voting rights of individuals and courts 'cannot, for lack of competence – comprehensively correct disproportionalities in the system as a whole' (ibid.).

While the idea of representative justice as the equitable representation of peoples' interests is a common theme in political theory (Bugra 2018, 20, 22), legal theory does not engage this notion, considering it 'too vague or contested... [to be] substantively legalised' (Salát 2018, 44). Therefore, whereas there is a legal 'right to vote and participate in election, referenda and so on', 'there is no right to interest representation' (ibid.). This has a significant impact on the assessment of legal representative justice, particularly if we consider the perspective of vulnerable minorities, a key focus of ETHOS research. Law, on its own, cannot explicitly claim that representation (and representative justice) is 'about representing minority interests' since voters 'are free to vote against their own or anybody else's interest' (ibid.). In other words, legal theory considers that is it 'a political presupposition, but not an actual legal obligation, that representatives represent the interests of the represented' (ibid.). This may blunt the impact that a legal-theoretical perspective can yield on the assessment of representative justice but is generally in keeping with the law's bias towards procedural over substantive conceptions of justice. As Salát sums up, '[g]enerally speaking, in the case of collision between procedural and substantive justice, law will side with the former' (ibid., 26). In stark contrast to the way that legal theory approaches questions of representative justice, social theory has generally marginalized the question of formal political processes to focus on the sociological processes whereby certain individuals or groups are denied an equal stake of political influence. Of course, this is equally an attempt to theorize what Fraser labels the 'ordinary-political' level, but the focus is on de facto exclusion and marginalization rather than de jure or 'numerical' marginalization. As such, this approach is more in sync with the critical theory approaches in political theory rather than the more traditional concerns also reported in ETHOS deliverable 4.1 (Bugra 2018).

In keeping with this critical approach, social theorists have been sceptical of what they take to be a core tenet of liberal-democratic theory, the idea that 'political rights are based on what people are deemed to have in common and grounded in a universal inherent value of human life' (Anderson et al. 2017, 14). This 'universalist' perspective is challenged in two main ways. Firstly, from the normative

perspective, social theorists sometimes worry that it papers over relevant differences in people's identity, deeming them 'irrelevant to issues of justice', or even considering that these differences undermine justice by 'emphasizing difference rather than commonalities' (ibid.). Critical approaches, for instance to the marginalization of racial minorities, therefore challenge the supposed 'objectivity, neutrality, and colour blindness' of liberal politics (ibid., 15). From the empirical perspective, social theory has challenged universalist and formalist approaches to issues of representation through emphasizing that, empirically, identity is comprised of 'a multiplicity of fluid, unstable, and dispersed identities' (ibid., 14, referencing Alcoff and Mendieta 2003). A theory of representative justice that takes the stability of shared identity to be central is thus normatively suspect and empirically dubious. Such a view can also raise a critical perspective to the question of citizenship, which Anderson et al. highlight is 'an exclusive and legal relation that does not straightforwardly map on to senses of identity, belonging, or indeed deservingness' (2017, 17).

Of the four disciplines under study, economic theory – as reported in ETHOS deliverable 6.1 – has had the least to say on the question of representative justice (Castro Caldas 2017), focused on distributional questions (although mainstream approaches are largely indifferent to (re)distributive justice, as noted in section 2). Neither Fraser's idea of ordinary-political (mis)representation nor the notion of (mis)representation through framing have extensive treatment from the economic perspective. Identifying this justice lacuna in economic theorizing has become a central theme in this comparative report. It can be explained, historically, through 'influence of positivism' which, in economics, resulted in 'a process of transformation aimed at removing from the discipline premises which supposedly precluded it to fulfil the requirements of 'positive science' (ibid., 1). This concern with social science and positivism has been central too to other disciplines, including social theory, as reported by Anderson et al. (2017, 4), although recently social theorists have resisted this development (ibid. referencing Lamont 2012, Lamont and Molnar 2002, Gorashi 2010a, 2010b, and Anderson 2013). As in the case of redistributive justice, economic theory's conceptualization of homo economicus (Castro Caldas 2017, 3 referencing McLure 2002) influences how economic theory is able to perceive interest, noted by Salát and Anderson et al. to be central to legal and social theories' engagement with representative justice (albeit in very different ways). Interest, in mainstream economics, must be equated with self-interest: 'self-centered motives for action – self-interest or self-love – are the only relevant or operative ones' (Castro Caldas 2017, 1), although this assumption has come under pressure from heterodox economists (for instance Thorstein Veblen and Amartya Sen, as reported in Castro Caldas 2017, 14-16).

5. Other Justice Conceptions Reported in ETHOS Research

The previous three sections of this report have focused on the three justice conceptions elaborated by Nancy Fraser in her framework developed over a decade of theorizing justice (see section 1). However, the ETHOS project uses Fraser's taxonomy of justice as a starting point for an empirically-informed conceptualization of justice in Europe over different disciplines. This report plays a key part in that project by synthesizing insights from four different academic disciplines: legal theory, political theory, social theory and economic theory. Unsurprisingly, the reports on these disciplines' conceptualizations of justice do not perfectly fit Fraser's mould. This section consequently presents and evaluates in a comparative and synthetic manner the 'alternative' justice conceptions developed in the aforementioned disciplines. The structure follows the previous three sections in generally considering

the deliverables and the respective disciplines consecutively, while integrating comparative and contrastive evaluations.

One preliminary remark is on order related to the use of (and departure from) Nancy Fraser's tripartite conception of justice as (re)distribution, recognition and representation in this section. It may seem that the content of this section functions as a veiled critique of Fraser's account of the facets of justice and their interrelation. Fraser, recall (see section one of this report and ETHOS deliverable 2.1 by Rippon et al. 2018, 17-18), defends the position that, while these different conceptions of justice and injustice are interrelated in the 'real world', they are conceptually distinct and mutually exhaustive of the conceptual terrain of justice. It therefore seems that highlighting, as this section does, alternative conceptions of justice such as, for instance, the notion of restorative justice, serves as an implicit rejection of Fraser's view. This is misguided. The ETHOS uses Fraser's framework as a useful heuristic tool for analyzing different claims of justice, the fault-lines and boundaries of justice, and the mechanisms that inhibit the realization of justice in Europe (ibid., 17). Further, ETHOS uses this framework as a starting point for theorizing justice in Europe in an interdisciplinary and empirically-informed fashion. We take no position on the cogency or validity of the particular philosophical claims Fraser has made in various publications about the ontological status of these elements of justice and their interrelation. Therefore, to take the earlier example, we do not insist by highlighting the notion of restorative justice that it is necessarily conceptually independent of the Fraser's tripartite conception. Nor do we deny this possibility however. Such claims belong to the terrain of political philosophy and (meta) ethics, whereas the object here is to identify, analyze and synthesize the conceptions of justice that can be found in the disciplines in question as presented in their disciplinary literatures (and as identified in the ETHOS reports 3.1-6.1, Salát 2018, Bugra 2018, Anderson et. al 2017 and Castro Caldas 2017).

The disciplines under study in this report and in ETHOS deliverables 3.1-6.1 frequently develop disciplinary justice conceptions in their own unique register, which, although overlaps and similarities can be identified, often departs from the terms Fraser has developed which the ETHOS takes as a starting point for theorizing justice. In the report on the conceptualization of justice in legal theory, Salát develops two justice perspectives especially that deserve further attention: procedural justice, which is opposed to substantive conceptions of justice, and community justice, which is closely associated to the related notion of restorative justice (2018). Looking at political theory, Bugra analyses in detail the focus in that discipline on the importance of freedom, which cuts across Fraser's tripartite conception of justice and may transcend it, for instance with the idea of justice as non-domination – a 'neo-republican' justice conception (2018). Bugra also draws attention to a particular type of 'procedural justice' (to use the term common in legal theory), that focuses on the acceptability of certain idealized deliberative procedures to generate authoritative norms; while closely linked to Fraser's 'representative justice' these deliberative concerns warrant special attention given their centrality to the discipline of political theory, as reported in deliverable 4.1 (ibid.). As disciplines often wary of explicitly normative assessment and theorization (as reported in Anderson et al. 2017 and Castro Caldas 2017), social and economic theory offer more difficult terrain for the articulation of alternative paradigms of justice. Nevertheless, a particular justice concern with resisting the hegemonic social construction of dominant identities is central to social theory, as reported by Anderson et al., who also draw attention to particular justice concerns such as mobility justice in their report (2017). Casto Caldas, in turn, theorizes an original concept economizing on justice to articulate

the finding that mainstream economic theory is very reticent to acknowledge justice concerns or develop critical or normative perspectives.

The notion of procedural justice in legal theory, as articulated by Salát in deliverable 3.1, is a particularly important alternative frame of justice theorizing. It does not, of course, contradict the tripartite view of justice but rather cuts across and beyond the three dimensions proposing a different perspective of justice. It is unsurprising that the jurists have a developed literature on procedural dimensions given their attachment to the (procedural) value of the rule of law and the associated, if elusive, notion of legal order and certainly (2018, 20, 31). As Salát writes: 'Procedure is considered to lead to justice in a fundamental sense by lawyers. Procedural justice is the rule of law itself in as much as it is the opposite of arbitrary decision-making, i.e. rule of man' (ibid., 21). This is particularly the case in criminal law, where procedural rules grouped under the notion of the 'right to a fair trial' have largely replaced substantive ideas of justice (ibid., 23-25).

This priority to procedural approaches to conceptualizing justice have not totally displaced the idea of substantive justice in law however. For instance, Salát reports that the notion of 'equity', which has its roots in Roman law, introduces a substantive dimension. Human rights may also be a domain where one can see substantive elements of justice in the law. Generally, where human rights are approached in a substantively thick manner they are either framed in terms of or understood through the lens of human dignity (ibid., 15-16). However, human rights also concurrently reinforce the procedural dimension of legal justice in, for instance, a focus on electoral proportionality (ibid., 21), which ought to be understood in the ETHOS context through Fraser's notion of representative justice, and in the right to a fair trial (ibid., 23).

Another major alternative framework of justice theorizing in legal theory is captured variously by the concepts 'restorative', 'community' and 'relational' justice. The heterogeneity and richness of these aspects cannot be neatly summarized, but a shared orientation of these perspectives is that they are 'practically oriented' and focus on 'bottom up initiatives with the goal of improving the life of the community' (ibid., 26). Restorative justice, in particular, seeks to frame justice in terms of the reparation of a certain harm, most standardly (though not exclusively) understood in terms of a criminal offender repairing the harm of their crime (ibid.). Though clearly distinct from Fraser's terminology, Salát notes an interesting interaction between restorative justice and recognitive justice in that the former also 'aims at recognition of full membership in the community of persons who suffered harm' (ibid., 27).

In the discipline of political theory, Bugra reports two particular orientations to theorizing justice that deserve note in ETHOS deliverable 4.1 (2018). The first is the general importance given to freedom in politico-theoretical literature. This extends from concerns with the just distribution of material resources "available to people to pursue their valued ends" (ibid., 10), closely associated with Fraser's idea of justice as redistribution, to alternative approaches to the redistributive dimension framed through the pursuit of freedom such as Amartya Sen's approach, commonly known as the 'capabilities approach', which is sensitive to 'differences in the ability to use... resources... to have different types of instrumental freedoms, which contribute to the general capability of a person to live more freely' (ibid., 10-11). Bugra also reports on a different tradition of theorizing the relation of justice and freedom that focuses centrally on relationships of power and domination between persons rather than the distribution of certain goods (or capabilities). This 'neo-republican' theory has been developed in

detail by Pettit, who argues that justice requires the absence of relations of domination both in context of the 'vertical relations between people and the government' and 'concerning the horizontal relations between people' (Pettit 2014 in Bugra 2018, 11).

A second alternative to theorizing justice Bugra develops is related to, but distinct from, both Fraser's idea of justice as representation and the notion of procedural justice as reported by Salát and reported above. Discourse ethics in political theory posits, like procedural justice, a justice-norm that is input- rather than output-oriented. Bugra reports political theorist Seyla Benhabib's theory that holds that those approaches ought to be considered as authoritative which could in principle be agreed to under ideal conditions (ibid., 18). This is considered a 'metanorm which presupposes the principle of universal moral respect, meaning that all beings capable of speech and action are to be included in the moral conversation, and the principle of egalitarian reciprocity, according to which in discourses each should have the same rights to various speech acts to initiate new topics and as for justification of the presuppositions of the conversations' (ibid., 18-19). One of the core insights of this approach is that moral justification is 'necessarily open-ended' and, for that reason, their resolution and negotiation is unavoidably political (ibid., 19). Given the close overlap of certain traditions of political philosophy and normative political theory, it is unsurprising that this approach to theorizing justice is also broached in some detail in ETHOS deliverable 2.1 (Rippon et al. 2018, 5-6).

As mentioned in the introduction to this section and reported in detail in ETHOS deliverable 5.1, the discipline of social theory has had a touchy relation to normative theorizing, with general skepticism of the validity and value of normative approaches despite growing resistance to this norm (Anderson et al. 2017, 3-5, 9, cf. Lamont and Molnar 2002, Anderson 2013). Despite this, Anderson, Hartman and Knijn draw attention to approaches to thinking through (and problematizing) justice issues that are particular to social theory and that cannot be adequately captured by the tripartite conception that ETHOS has taken as its theoretical starting point. A similarity between several such approaches departs from the insight that social identity is constructed and that, thus, the hegemonic construction and manipulation of identities as tools of domination can be resisted even at the level of ontology; as they write: 'Critical social theory combines critical analysis of contextual and structural constraints, challenges and opportunities with agents' reflection on their situation... In the end, the purpose of applying critical theory is to analyze the significance of dominant understandings generated in European societies in historical context, examining how vulnerable categories of people occur and are represented in the real world, and how such representations function to justify and legitimate their domination' (ibid., 21). Such approaches raise important questions about the salience of identities for justice that resonate also in the sphere of politics (see Bugra 2018, 12-21)

A second important theme that arises in ETHOS deliverable 5.1 concerns borders and mobility. It is clearly related to the notion of social construction, in that one angle with which to critically view and challenge borders is the recognition that they are constructs that, inter alia, control certain persons for the benefit of others. Anderson et al. use the notion of 'mobility capital' (related to Bourdieu's idea of 'social capital') to capture the differential between the 'mobility aspirations and capabilities', particularly for 'low-skilled workers' and 'refugees' in comparison to tourists and economically powerful and skilled migrants (ibid., 17-18). Referencing Sheller (2014) they conclude that in a period defined by growing 'globalization, urbanization and migration' attention to 'mobility justice' will become ever more important (ibid., 18). It will come as no surprise at this point in the report that economics, and economic theory, offers a paucity of justice-theorizing beyond (and indeed within)

Fraser's tripartite framework. Castro Caldas even lent this feature to the title of ETHOS report 6.1, coining the term 'economizing on justice'. That said, it ought to be acknowledged that certain heterodox economists' thinking on justice does feature in report 6.1, and indeed enters into other reports, for instance through the Nobel-prize winning economist Amartya Sen (see Bugra 2018, 9-13, Rippon et al. 2018, 13, Anderson et al. 2017, 2). Further, although maligned in contemporary mainstream economic theory, Castro Caldas demonstrates the historical dependence of economic theory on moral philosophy, taking as prime examples Adam Smith and John Stuart Mill. Nevertheless, as emphasized also elsewhere in this report, the lacuna of justice-theorizing and 'justice sensitivity' in contemporary economic literature is an important finding in its own right, and one that warrants particular attention for the ETHOS research programme seeking, as it does, to develop an empirically sensitive and multidisciplinary perspective on justice and fairness in Europe.

6. Conclusions

This report evaluates the different understandings of redistributive, recognitive and representative justice among several academic disciplines, the different types of problems they emphasize, and the different types of recommendations they put forward. It leads us to some conclusions with repercussions – or challenges – for the tasks to come. A first conclusion is that taking the framework of Nancy Fraser as a starting point for the ETHOS research programme highlights the importance of a context-specific analysis and that the analysis should not examine injustices in isolation. It also makes clear that the various possible remedies to these forms of injustice may be incompatible or can lead to other problems. Second, remedies for injustice are in theory and practice can't be easily formulated because of a) the redistribution-recognition dilemma, and b) the radical split Fraser proposes between affirmative and transformative remedies. The latter is not yet fully explored in this report but will maintain on the ETHOS agenda in the period to come. Thirdly, this report concludes that an interdisciplinary approach to justice is a fruitful exercise to explore the tripartite conception of justice from various perspectives, and to integrate multiple theoretical approaches. This results in enriching the concepts, even when the concepts are unevenly grounded in selective academic disciplines due to the fact that some disciplines are hardly equipped to theorize on any aspect of justice – by preference or object – while others focus almost entirely on a single aspect of justice. Moreover, the report shows that some aspects of justice that go beyond the three aspects of justice outlined in the ETHOS framework, such as restorative and procedural justice, are nevertheless highly relevant to the research programme and ought therefore to be integrated in this framework. A fourth conclusion is that building blocks of a 'European' theory of justice are still in the making, traces of it are present in the various disciplines, such as in 'the historical dependence of economic theory on moral philosophy economic theory' (Castro Caldas 2017), in the 'notion of 'equity', with its roots in Roman law (Salát 2018), in the accentuation of 'plurality and autonomy' in political theory (Bugra 2018), and in the way 'citizenship' is challenged in social theory (Anderson et al, 2017). Therefore and as a source of inspiration for further exploring the boundary lines of a European theory of justice this report is extended with an afterword on Justice and European citizenship.

AFTERWORD: Justice and European Citizenship, by Trudie Knijn

During the 'Glorious Thirty' (1945-1975) and the decades following it, social policy scholars, political scientists and many scholars in applied philosophy and economics mostly took an inward perspective

to the challenge of the relationship between the EU and its Member States. An overall and common conclusion was that European welfare states might not yet be perfect but at least followed the pivotal idea of T.H. Marshall of guaranteeing social citizenship rights in addition to the previously installed civil and political rights in order to assure citizens to: 'share the full in social heritage and to live the life of a civilized being according to the standards prevailing in society' (1963, 74). Indeed, most Member States could and still can satisfy its citizens' needs by having increased welfare in all domains of life; housing, education, healthcare, employment or a substitute income. Beyond this veneer of agreement, scholars disagree on whether the European Union has contributed to maintaining and developing or has undermined the "Keynesian-Westphalian" system of nation states based on the 'social-democratic paradigm' that was supported by Christian-democratic and even liberal parties following World War II. In addition, there is much contestation on the resources this welfare was based upon and how these have been gained, and further on who was recognized as contributing to these resources (see ETHOS deliverable 3.2 by Oomen and Timmer on the lack of recognition of the rights of colonial populations). The inward-looking perspective, the satisfaction with the promise of an equal society and its democratic values, and the celebration of protected individual freedoms has obscured, for several decades, troubling foundations to European integration: the exploitation of low wage countries by European companies, unequal trade, corruption and pollution as common practice, and the harmful protection of European industrial production and trade have, for a long time, been taken for granted.

For decades 'justice' has been only applied as a criterion within the EU; between the EU and its Member States, among, and within the Member States. So far, within European countries the two-dimensional redistribution-recognition model has seemed adequate to analyze justice claims (Fraser 2007, 313). This inward-looking perspective no longer holds; the globalization of financial markets following the globalization of industrial production and services, migration as a consequence of wars – partly initiated by Western countries –, decolonization, and the demands of European citizens and companies for cheap labour at home undermine the idea that claims-making is exclusively about relations among fellow citizens in a bounded nation state (Fraser 2007, 313). As Fraser puts it, in focusing 'on the "what" of justice (redistribution or recognition?) for a long time it was taken for granted that the 'who' of justice was the national citizenry' (Fraser 2007, 313). While Fraser might be right that the 'who' in European countries in the post-war decades has been the national citizenry, it should be specified that, since the European Union's declaration of the 'four freedoms' (of finance, trade, services and people), the citizenry of European countries has been extended beyond national borders towards all citizens of EU Member States. In the Treaty of the European Union (Council of the European Communities, 1992), the EU officially established Union citizenship by stating that 'every person holding the nationality of a Member State is a citizen of the Union' (Council of the European Community, 1992, p. 15). This extension, however, has not resulted in the harmonization of fundamental citizenship rights, as formulated by Marshall (1950), to every EU citizen.

In what follows we outline these citizenship rights, compare these to the central concepts of ETHOS and focus on barriers to justice due to the limitations of EU citizenship. It should be noted that concentrating on EU citizenship largely ignores the external resources contributing to the prosperity of most European citizens and their welfare states. Moreover, as Oomen and Timmer state in ETHOS Deliverable D3.2 '[...] European justice was – though less explicitly – formulated against the claims to universality and self-determination that many people in the colonies, under European rule, stood for.

[...] Finally, the largest challenge facing Europe today can be argued to be global inequality. Here too, the lack of attention for universal justice in the early days of European formation casts its shadow over current affairs. But also within Europe itself, the lack of attention for equality, and for the needs of minorities – as two sides of the same coin – remains one of the most prominent justice concerns.’ (Oomen and Timmer 2018, 21-22, emphasis added). For the current paper it implies that in outlining the relationship between EU citizenship and justice at least the articulation of minority needs within the EU will be included, while aspects of universal justice get less attention.

EU citizenship and justice principles

At first glance, the theoretical assumptions of the Marshallian categorization of citizens’ rights (at the national level) meets the philosophical basis of the ETHOS programme based on Fraser and Honneth’s outline for ‘participatory parity’ as a criterion for justice well. Civil citizenship rights mean that every individual human being should be regarded as an autonomous individual, free to sell their own labour, to have individual relationships, live their own life free from arbitrary state intervention and, finally, to own possessions. Recognition fits to that principle, assuming participation in society without restrictions grounded on gender, class, able-bodiedness or descent. The same goes for the second aspect of citizenship; political citizenship means the right to vote and to be elected, to organize politically and be represented. Representation in philosophical terms means exactly that and in a democratic society it also means that the majority should respect and give voice to minorities that did not reach power. Social citizenship, in turn, implies for Marshall that the state should compensate for the capitalist stratification in order stabilize the nation state by creating a sense of belonging by guaranteeing (national) citizens a decent life. This meets the principle of redistribution; the well-off should pay enough taxes and collective arrangements should guarantee at least a sufficient quality of housing, education, health-care, income and work to keep everyone on board. Which results in the following scheme:

Citizenship	Justice
Social	Redistribution
Civil	Recognition
Political	Representation

It is clearly a complex task to attempt to overcome national boundaries of citizenship and justice and rethink EU citizenship and justice from a global perspective. The bEUcitizen research program (FP7, 320294), based on the Marshallian approach to civil, political and social rights within European Member States and the EU is a useful resource as it engaged these and similar questions.

Redistribution and Social Citizenship

One of the primary conclusions of the bEUcitizen research programme was that redistributive justice-claims and EU-citizenship do not go along very well because in the end it is the Member State and not the EU that has the final say on social citizenship and distributive justice. Concerning the Marshallian

social rights to income, work, housing, education and health, nation states determine whether and in what ways principles of utilitarianism, liberalism or egalitarianism are applied and what the boundary lines of social citizenship are (see also ETHOS deliverable D3.3, Granger, Oomen, Salát, Theuns and Timmer 2018). It may not come as a surprise that bEUcitizen concluded that there is a lot of variation among EU Member States in justice principles: principles of redistribution are much more accentuated as nation-based in Scandinavian Member States, and more family-based in Southern Member States, while they are still recovering from Soviet dominance in Eastern Member States. Moreover, it is not only justice principles embedded in social-economic and demographic contexts that determine redistributive outcomes; path dependent welfare state institutions (such as the state, the market, the third sector and the family) and their interrelationships play a major role in redistributive outcomes and their reforms.

Moreover, at the EU level, redistribution is the site of an ongoing debate regarding the (lack of) solidarity between the Member States in which the North-Western ones are not very willing to support the Southern ones. ETHOS deliverable 3.3 reports that there is also no EU-mechanism of hard law that generally protects social rights within Member States (Granger et al. 2018). Seeleib-Kaiser (2018) concludes that, so far, the lack of comprehensive redistributive mechanisms within the EMU and the absence of enforceable social rights in the recently introduced Social Rights Pillar (2017) contribute to inequality within and among Member States' citizens.

As a major mechanism of redistribution, which is institutionalized in EU policy, the free market of goods, persons and services has had severe though complex consequences for distributive justice. The downgrading of – mainly low – wages and a race to the bottom in terms of job protections in some Member States happened consecutively to enlarged earning possibilities for mobile workers. This was not only a process in which some lost and others gained but more importantly resulted a structural reform of the labour market. Workers from low-wage countries became competitors mainly in the low-wage sectors of construction, care work and ICT, a phenomenon big companies and states profit from but that undermines public confidence in the redistributive principles of the EU. Moreover, and in spite of different redistribution principles in operation in different Member States, current migration policies indicate that within Europe some persons can get easy access to national citizenship of Member States on basis of their assets, while poor foreigners residing in Member States are systematically excluded from citizenship, for instance migrant care workers, and the low-waged, homeless and unemployed EU citizens, who struggle to get their social rights realized (Anderson et al. 2018).

The bEUcitizen programme also put attention on gender and age-related redistribution principles, showing how some categories of citizens of Member States are more at risk of injustice than others are. Gender inequality has for decades, been high on the EU agenda, with mixed consequences. In earlier periods (1980s) the EU had been rather successful in addressing the gender wage gap, the inclusion of women in social security systems and equal working conditions, using compulsory directives that had to be followed up by member states effectively. However, guaranteeing the conditions for gender-equality at the labour market by way of arranging care provisions the EU had shown its Achilles heel; here Member States claim national sovereignty, leaving the EU with only soft law mechanisms (such as the Open Method of Coordination, OMC) and, consequently, less redistributive power. Soft law mechanisms are also predominant in the field of youth unemployment

(mainly European Social Fund, ESF) and elderly care, neither of which have direct and substantial effects on redistribute justice between generations (Knijn and Naldini 2018).

All in all, the bEUcitizen programme concludes that: 'In the European context, the national 'Westphalian' framing of justice is particularly problematic. It is mirrored in the substantial division of labour between economic regulatory policies as European issues on the one hand, and social, redistributive issues as national issues on the other hand' (van Waarden and Seubert 2018, 21).

Recognition and Civil Citizenship

Concerning the relationship between civil citizenship and recognition in the bEUcitizen project, Van Waarden and Seubert state:

'a major point was to distinguish between two categories of differences: variations that are valuable as expressions of human diversity – this might be language, and a specific cultural heritage – and differences that are an effect of power asymmetries and oppression – such as class, race, ethnicity and gender. With regard to egalitarian ideals of democracy, the first category of differences can be affirmed for the sake of pluralism, while the second category should be eliminated for the sake of justice.' (2018, 21)

Recognition is a major issue, both in the acknowledgement of cultural differences within the EU and with regard to ethnic and religious minorities within its Member States. First, EU law, including the EU Charter of Fundamental Rights and a number of Treaty provisions, guarantees a range of civil rights to all EU citizens which go beyond what the Treaty calls 'EU citizens' rights', and which comprise an alternative vision of EU citizenship. These civil rights concern free movement and equal treatment, irrespective of nationality, the protection from discrimination, the right to the protection of personal data, and due process guarantees. They also include, enhance and redefine the right to family life and matrimonial and reproductive rights for EU citizens 'on the move' and their close family members (Granger 2018). In that sense, Granger states: EU membership provides the basis for a more attractive notion of supranational citizenship.' (ibid, 191). Secondly, important civil rights are not just guaranteed to the nationals of Member States and intra-EU migrants, but also to Third Country Nationals (TCNs) who fall under the jurisdiction of EU law, thereby offering a much more inclusive notion of citizenship. Finally, EU civil rights compensate for the deficiencies of national systems where these systems fail to sufficiently respect and protect the civil rights of those who live in their territory, including their own citizens (Granger 2018). Nevertheless, implementation problems, fragmented legal status, a failing legal framework and institutional practices are hindering the EU itself in respecting the civil rights and liberties of its citizens in all its endeavours. So, while the EU is expanding civil rights, say recognitive justice, counter-movements are around the corner, or even have passed the doorstep.

A first challenge for recognition is populist narratives in Europe. Interestingly, these narratives reconstruct historical identities to create a sense of belonging. In that sense, mechanisms of recognition – albeit limited in scope – are important elements of the populist project to recreate citizenry as a homogeneous category in reaction to the (unidentified) EU or global threats. In addition, populist parties lay claim to the notion of welfare nationalism (the redistributive issue), though strongly disagree on issues of identity politics such as sexual identity and gender equality, which prove to be ambiguous and conditional. Kriszan and Siim (2018) show that, regarding gender, intersectionality is understood by right-wing populist parties in exclusive ways, defined by the sub-

group to which women belong, whether the native majority or migrant minorities. Along these lines, interventions aimed at protecting gender equality are subordinated to exclusionary nativist citizenship targets such as the 'survival of the nation', and a version of the welfare system targeting exclusively 'native' citizens. The intersection of inequality that creates categories such as gender, ethnicity/race, nationality and religion is used to exclude and set boundaries among groups of women, thus challenging gender equality as a universal principle on behalf of exclusionary citizenship.

Moreover, Anderson et al. (2018) challenge the boundary lines of citizenship and recognitive citizenship by critically analyzing the position of insiders and outsiders. They demonstrate that the activities of national citizens can also be criminalized via immigration controls if they unlawfully facilitate the entry of or deliberately employ an 'illegal immigrant', especially when governments – like the Hungarian – declare a national state of emergency in response to migration (in the Hungarian case building a fence along its borders using prison labour and unemployed people who were told that their social benefits would be stopped if they did not report for duty). Anderson and colleagues show that migration reveals how the instability of 'the migrant' exposes the instability of citizenship itself and of those who constitute 'the people', and conclude that what is bad for outsiders is not necessarily good for insiders: 'Immigration and citizenship laws do not simply control the movement of 'migrants', but they are critical to production of migrants and of citizenship as a social field' (Anderson et al. 2018, 256). Recognitive citizenship is constantly under construction, not only in the social imagination but also in law and political practice. According to Anderson et al. (2018) citizenship is made at its margins, in the delineations of who is not a citizen, why they are not, and what this means for their rights.

Representation and Political Citizenship

From an EU perspective, representation as political citizenship requires a different, new frame in which 'participatory parity' is extended from national to supranational citizenship, challenging both the division of 'political space' into bounded polities and the decision rules operating within them. As reviewed in the first section of this report, according to Fraser, representation, meaning whose voice can be heard, furnishes the stage on which struggles over distribution and recognition are played out (2007, 313). The framework of political citizenship enables the analysis to identify who is included/excluded from the 'circle of those entitled to a just distribution and reciprocal recognition' (Fraser 2007, 313-4). By drawing attention to boundary-making as a facilitator of excluding certain subjects from the purview of redistribution/recognition, the new third dimension points to a further justice concern: 'neither economic, nor cultural, but political' (Fraser 2007, 314). That is, representation as the third dimension of justice is political vis-à-vis recognition as cultural and redistribution as economic dimensions.

Representative justice and political citizenship from a European perspective is, per definition, a multi-level issue that, above all, suffers from a lack of democratic legitimacy of the EU itself. Paradoxically, this can be explained by the inefficiency of existing traditional forms of participation. The existing political dimension of EU citizenship is a right to vote for a second-order European Parliament, organized along election procedures that favour national cleavages, whose agenda is largely ignored in national debates or, when engaged, viewed through the prisms of Euroscepticism. To speak of citizenship-rights while ignoring the comprehensive democratic promise of active (participative) citizenship undermines EU legitimacy and EU policy-making. Nir Kostin and David Levy-Faur (2018) show that the EU has invested more efforts than any of its Member States in developing new forms of

participation. The EU has introduced participatory decision-making policy processes as well as deliberative forms of political participation. Nevertheless, Kostli and Levi-Faur remain sceptical on the possibility of such new citizens' initiatives truly bridging the gap between citizens and the EU because citizens' initiatives challenge the traditional both national political systems and the intergovernmental, centralized EU politics. In addition, political reforms are submitted to the dominance of the market system and the reliance on experts and efficiency criteria. Yet, deliberative initiatives have redefined EU citizens' political rights and have been directed to enhance EU legitimacy by drawing ties among European citizens and between European citizens and EU officials.

In sum and to conclude

A unified European citizenship might be somewhere at the horizon, though conclusions on its consequences for an empirically founded European theory of justice are far from clear. What the bEUcitizen study can tell us is that, aside from the distinction between justice principles in the abstract and the institutionalization of these principles by the EU and its Member States, at least three analytical dimensions of institutionalized citizenship and their consequences for justice have to be taken into account. The first is the separation of economic citizenship rights as a new dimension added to the original citizenship rights – as distinguished by T.H. Marshall – related to justice. The European Union has explicitly guaranteed such economic rights, which lie at the crossroads of civil and social rights, in the four freedoms. Prioritizing economic rights above social rights has complicated redistributive justice mechanisms among and within Member States. This secondly, illustrates the dimension of multi-level citizenship rights; in a transnational context, citizenship and the institutionalization of justice principles needs to be studied at various governance levels, and with attention to their interaction. European governance covers various citizenship rights and with-it various aspects of justice but leaves other aspects and/or the implementation of justice principles to Member States. The result is a fragmentation whereby justice principles are variously institutionalized by actors at various levels of governance in sometimes contradictory ways, leading to the maldistribution of the social, political and civil rights of EU citizens. Thirdly, and although EU citizenship explicitly relates to, underlines and even enforces the recognition of gender equality, minority groups, disabled persons, refugees, and regional populations as vulnerable categories (by the EU Charter of Fundamental Rights and implemented by the European Court of Human Rights), its impact is still unfolding (Granger 2018, 181). A final conclusion is the fierce interrelationship between various citizenship rights, and with that a deep interconnection between various forms of justice. The unique historical setting of the EU, in which some rights have transcended the national level while others are still locked up at the national level or even have been decentralized to the regional and local level shows that, despite the notion of 'EU citizenship', the rights of EU citizens are fragmented and disconnected.

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