



# Framework paper on the methodological tool for reflecting and reviewing empirical findings of ETHOS

Tom Theuns, Sem de Maagt & Trudie Knijn

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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

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## **Executive Summary**

This 7.2 paper aims to offer a methodological tool for reflecting and reviewing the findings of WP3 to 6 on basis of the interdisciplinary foundations and the building blocks for the analysis of distributive, recognitive and representative justice. The paper elaborates on the “back-and-forth” method envisaged in the project – the constant comparison of theoretical frameworks and empirical results that allows (1) the revision of theoretical assumptions in light of (new) empirical findings as well as (2) the re-interpretation of empirical results in light of the changing theoretical frameworks. It also elaborates on how the “back-and-forth” method can be used to compare and possibly reinterpret different empirical findings of various WPs. The paper can be read as an extension of paper 7.1 (Knijn and Lepianka 2018) that outlines the methodological framework of the Weberian ideal type analysis and develops and presents ideal types of each of the specific justice claims used and applied in ETHOS. In addition, paper 7.1 critically discusses the outlines along which the integration of findings may take place, in particular: (1) dimensions of justice that extend beyond Fraser’s tripartite taxonomy; (2) relevant tensions between various claims to justice; (3) mechanisms that (might) impede justice; and (4) fault lines, or boundaries of justice, i.e. dimensions of inclusion and exclusion that delimit the ‘scope of justice’ (see D2.1, van den Brink et al. 2018). This paper adds to this analytical framework a methodological approach inspired by the philosophical method of reflective equilibrium; going ‘back and forth’ between the theoretical, philosophical and empirical research as a way to refine the ideal types of justice that can feed into provisory policy-recommendations. Paper 7.2 concludes with three modest suggestions for bridging the gap between refined ideal types of justice, which provide a heuristic framework to better understand how justice is understood in Europe, and normative approaches to justice and fairness that seek to be action-guiding.

## Introduction

In ETHOS three methodological challenges must be faced and overcome. A first challenge is to bridge the gap between academic disciplines that are assumed to be essentially non-normative and normative philosophical theorizing whose *raison d'être* is defined by normativity. This is a key challenge because the theoretical insights and empirical research of the social-scientific disciplines feed into ideal types of justice that serve as a heuristic framework for better understanding how justice is understood in Europe, whereas the eventual goal is to provide building blocks for a non-ideal, action-guiding theory of justice for Europe.<sup>1</sup> Secondly, and given the various kinds of empirical data collected in ETHOS, such as data on discourses, legal regulations, document analyses, ethnographies, interviews, focus groups and secondary analyses of surveys, a challenge is to outline in a systematic manner these types of empirical findings and how they can feed the refinement of the ideal types of justice, initially developed in paper 7.1 and based, there, largely on the disciplinary theoretical reflections reported on in the first deliverables of each substantive work package (Knijn and Lepianka 2018). Thirdly and because the ideal-typical justice principles only intend to be methodological tools – as heuristic frameworks – the final challenge is to formulate building blocks of an empirically-founded, non-ideal, action-guiding, European theory of justice. This ultimate aim of the ETHOS project will be conducted by three integrative analyses of justice principles that crosscut the tripartite conceptions of justice principles as defined in the refined ETHOS ideal types. By a vertical instead of a horizontal analysis of the three justice principles (redistribution, recognition and representation) these integrated papers will formulate respectively the interplay and tensions between justice claims, the mechanisms that seem to impede the realization of justice, and boundary lines or 'scope' of justice principles.

This current paper (7.2) addresses these three methodological challenges and furthers the integrative work of the previous ETHOS paper (7.1, Knijn and Lepianka 2018) that took as

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<sup>1</sup> Deliverable 2.2 goes into further detail on the nature of the 'non-ideal' vs. 'ideal' distinction in normative theory (Rippon et. al. 2018). The main difference between these approaches is that ideal theory seeks to articulate a vision of 'perfect' justice under idealized conditions whereas non-ideal theory tries to identify how to reduce instances of injustice and unfairness in the 'real world'. The latter is thus a more appropriate theoretical approach when seeking to develop empirically-sensitive and action-guiding normative theory that is responsive to the particularities of European politics and society.

its main input the disciplinary theoretical analyses of the first reports of each academic work package in the ETHOS project, WP2 'Justice and Fairness – Philosophical Foundations, WP3 'Law as or Against Justice for All?', WP4 'Discourses of Justice and Fairness', WP5 'Justice as Lived Experience' and WP6 'Struggles for Justice'. These reports looked at how justice was conceptualized and theorized in different academic disciplines, respectively Political Philosophy, Legal Theory, Political Theory, Social Theory and Economic Theory. This research was synthesized in ETHOS report D2.3 (Knijn, Theuns and Zala 2018). It is therefore recommended to read these papers in advance, especially since the 7.1 and 2.3 reports concluded that justice principles in various disciplines except political philosophy are often hidden behind so-called 'value-free' assumptions rather than explicitly recognized. A first methodological challenge therefore is establishing the relationship between academic disciplines that are assumed to be essentially non-normative and philosophical theorizing whose *raison d'être* is often defined by normativity.<sup>2</sup>

### Reconnecting academic disciplines; interdisciplinarity by revealing normative justice principles

To explore the interdisciplinary approaches of philosophical, legal, economic, sociological, and political theories, Deliverables X.1 have outlined justice principles in law, political science, economics, sociology and political philosophy. A main difference between philosophy and the other academic disciplines is that the first is often explicitly normative, especially in work on ethics and political philosophy, which often reflects directly on what 'ought to be', while the latter often claim, on the contrary, that they are explicitly non-normative in that they limit themselves to 'purely' analysing and explaining 'what is'. By starting the ETHOS research with an analysis of the justice principles in political, economic, legal, sociological and political theory, as well as political philosophy (Deliverables X.1) we have methodologically taken distance from that the 'neutrality assumption' in certain traditions of empirical social sciences, analysing the occasionally explicit but often underlying, and even sometimes 'covered', justice principles within the theoretical traditions of these disciplines. The deliverables concluded

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<sup>2</sup> Of course, not all philosophical work is explicitly or implicitly normative. However, much of the work in ethics and political philosophy that concerns justice and fairness – be that of the 'ideal' or the 'non-ideal' type, does explicitly seek to guide action and is thus different in type to theoretical work that seeks, primarily, understanding or explaining empirical phenomena.

that, with the exception of political philosophy, indeed each discipline's dominant theories purport to be normatively neutral, explanatory and value-free but that these pretensions mask inherent implicit, diffuse and contested normativity. Economic, political, sociological and legal theories were shown to be irrefutably set in and by the period of time in which they were written, socially and culturally contextual, politically sensitive (even sometimes reactive) and therefore often unavoidably normative. Furthermore, these reports found that the inescapably normative choices of focus ('why study X?'), perspective, and assumptions, as well as the justifications of the selection of samples, cases and methods fluctuate and define the outcomes of academic research in these disciplines.

Moreover, these first ETHOS deliverables show that the dominant theories in these disciplines form an arena of implicit somewhat uncritical reflections of ideological assumptions, agendas and hegemonic narratives that are constantly challenged by critical and polemic analyses of these assumptions and narratives. Examples presented in X.1 deliverables are political economy as a counterpoint to the dominant neo-liberal economics (D6.1 by Castro Caldas), standpoint theory as a reaction to the generally assumed 'universal and generic man' in social theory (D5.1 by Anderson, Hartman and Knijn) and the capability approach as an alternative to the prerogative of rationality, citizenship and equality central to moral and political theory (D4.1 by Bugra). In other words, dominant legal, economic, political and sociological theories and their oppositions reflect the historical, ideological and spatial context in which they were written. That normativity defines the ambiguity of these academic disciplines; on the one hand they are interesting objects of critical study in an effort to uncover and reveal their implicit justice assumptions, and on the other hand their normativity forms a barrier to analyse and interpret real world experiences of injustice and unfairness.

In this way, careful attention to the manner in which justice and fairness are conceptualized in these social scientific disciplines is both necessary and necessarily incomplete for developing a holistic view of how justice is understood in a given context. Unlike ETHOS research on justice and fairness, few dominant theories in these disciplines take the perspective of minorities, women, disabled or poor people as their starting point. Even in political philosophy, where normativity and 'action-guidingness' are explicitly accepted and theorized, the questions arise as to the temporality and historic spatiality of theories of justice and the degree to which dominant theories depend upon and reflect hegemonic narratives.

The main difference is that political philosophy explicitly focuses on these norms, debates the legitimation and justification of these principles, and outlines criteria for their evaluation, while in the other disciplines such a debate is hidden, or at most is articulated and debated in their margins.

If the ETHOS research would accept the assumption of non-normativity of law, economics, political and sociological science - and agree with it, and if it would agree with the claim of some theories of political philosophy that argue that justice and fairness standards are universalistic and insensitive to any empirical and contextual circumstances, the appropriate methodology for understanding justice principles from an interdisciplinary perspective would be a strict task-division in which the fore-mentioned academic disciplines would investigate and explain what justice principles exist in reality – in law and politics, in institutional practices, discourses, opinion and daily experience – while political philosophy would evaluate if and how these findings on justice ‘in reality’ aligns with the demands of justice. In a keynote lecture on this methodology of justice theorizing at the ETHOS conference held in Coimbra, Portugal, in February 2018, Professor Jonathan Wolff criticized this method as starting with theoretical assumptions of what justice requires philosophically and then testing the degree to which it is realized empirically (see Rippon et al. 2018, 9-10). A more relevant, non-ideal, ‘real-world’ approach to theorizing justice is, in contrast, the only way to develop the building blocks of an empirically informed theory of justice in Europe.

Keeping with this orientation to addressing injustice and unfairness in a given context (non-ideal theory) rather than attempting a universalistic theory of perfect justice (ideal theory), the X.1 deliverables offered more than a critical analysis of hidden and underlying normativity and a reflection on current historical, spatial and ideological norms. Rather, these deliverables show that in the margins of these academic disciplines awareness of heterodox realities is present and critical stances are taken and studied; in other words, normative struggles on justice are as present in academic disciplines as they are in the real world. Methodological consequences for the interdisciplinary approach of ETHOS therefore present themselves as a double and complicated relationship between the explicitly articulated ideal justice principles of political philosophy that might be consistent within certain philosophical streams or schools, but are in no way univocal in its assumptions (see D2.1) and the hidden normative assumptions of the other disciplines that mainly come to the fore in the way these

covered assumptions are revealed by their peripheries challenging the dominant theoretical and methodological approaches.

What can be concluded is that, in the end, none of the academic disciplines that have fed into the ETHOS research program can be said to have the definite and final perspective on justice – either in its social or normative senses. It is for this reason that ETHOS takes an initially critical and reflective stance towards each of the academic disciplines, conceptualizations of justice – not least because their dominant narratives often will cover as well as reveal certain perspectives on justice claims and principles. This is not to say that all academic disciplines and their mainstream theories inspire the evaluation of justice principles in the same way, or even in similar ways – the X.1 reports show that there is wide disciplinary variation between, for instance, legal theory’s focus on procedural justice (see D3.1 by Salat 2018) and economic theory’s aversion to explicit engagement with questions of justice (See 6.1 by Castro Caldas 2017). Rather, the methodological lesson is that a first step in formulating justice principles has to be to compare various explicit notions of justice in political philosophy with the variously hidden, dominant, hegemonic, outspoken or marginalized justice principles in the other academic disciplines. More specifically, ETHOS has started with a critical evaluation of the academic disciplines to uncover both their hidden and underlying justice principles and the explicit assumptions of normative justice ideals regarding outcomes (redistribution, recognition and representation), boundary lines (the scope) and mechanisms that impede, or are taken to impede, the realization of justice ideals. ETHOS therefore does not take legal, economic, political, social nor philosophical theories for granted but sees these disciplines as objects of investigation for understanding if and how they incorporate various conceptions of justice, with a view both to multidisciplinary comparison and the interdisciplinary dialogue that emerges from comparing and contrasting various principles of justice. It is from the integration of such articulated and unarticulated justice principles that ideal-typical dimensions of justice were initially developed in paper 7.1 (Knijn and Lepianka 2018), using the language and taxonomy of Nancy Fraser’s tripartite theory of justice as redistribution, recognition and representation as a starting point of analysis.

The preliminary ideal types in 7.1 thus find their theoretical basis in abstractions of the ways in which the disciplines of Law, Political Science, Sociology and Economics understand justice. The analysis in paper 7.1 also identifies some alternative notions of justice which may

or may not be discipline-specific, that do not well fit the mould of Fraser's taxonomy. These alternatives, further elaborated in paper 2.3, also discuss the mechanisms that generate injustice and the scope conditions (or 'fault lines' of justice) in light of some initial empirical findings. However, and as said in paper 7.1, constructing ideal types in this way is only the beginning of the process of understanding the principles and mechanisms of a social phenomenon, and this also goes for justice and fairness as social phenomena. Ideal types that are meant to contribute to a theoretical understanding of complex and contested social concepts can only be the result of continuous going back and forth between the abstractions of theory and empirical findings.

This complex process of articulating and then refining ideal types of justice is further complicated by the fact that the ETHOS empirical findings are of various kinds – including data on discourses, legal regulations, political documents, ethnographies, interviews, focus groups and secondary analysis of surveys. These cannot simply be added up to one aggregate empirical finding that juxtaposes the ideal-typical construction of one or more conceptions of justice. Therefore, the second challenge is to outline in a systematic manner these diverse types of empirical findings and how they can feed the further elaboration – the refinement – of the ideal types of justice. In what follows we first will explain the process of going back and forth between the socio-theoretical and the empirical research on justice in ETHOS, after which the specificity of the ETHOS data are considered in relation to how these feed the further elaboration of the justice principles and, eventually, the building blocks of an action-guiding non-ideal theory of justice in Europe.

### Refining the preliminary ideal types of justice in the light of empirical research.

As said above, the theoretical 'input' into the further elaboration of the preliminary and heuristic ideal types formulated in paper 7.1 is the critical analysis of disciplinary perspectives synthesized in paper 2.3. The empirical 'input' into this method is the host of empirical data – of widely varying natures – from the empirical work packages (WP3 – WP6). Inspired by the method of 'reflective equilibrium' in normative political philosophy, the aim is to take these two strands of research – the theoretical and the empirical strands – and to bring them together in an integrated perspective of justice in Europe. In other words, we seek to explore what ideas of justice circulate in Europe, in law, politics, economy, social policy, the media and

among vulnerable populations, in order to refine and further develop the preliminary ideal-theoretical conceptions of justice articulated in paper 7.1 in light of ETHOS' empirical findings.

This process of refinement and development is not, it is important to emphasize, intended to produce ideal types of justice that are (more) empirically 'accurate' in a straightforward way. This usage of reflective equilibrium is also different from the standard usage of reflective equilibrium in political philosophy where the goal is to arrive at normative conclusions through reflective equilibrium. Rather, recalling both the Weberian ideal-typical methodology and the process of reflective equilibrium, the aim is to go from the preliminary ideal types to the empirical data in a back and forth process of seeking a more coherent overall understanding of ideal types of justice. The goal is understanding and not prescription. The resulting, refined, ideal types, we posit, then will be the foundation of step three in the process of analysing how Europe understands justice; the integrative analysis of buildings blocks for an action guiding, normative theory on justice and fairness in Europe.

The process of refining ideal types in this way requires, we have said, going 'back and forth' between the theoretical, philosophical and empirical research. But what standards are used to systematize these disparate types of data? Inspiration here is taken from the philosophical method of reflective equilibrium and the Weberian approach to empirical idealization. In the usage of reflective equilibrium in philosophy the 'inputs' to this process are considered judgements about justice on the one hand and background principles and theories of justice on the other – a task usually performed by of philosophers. The goal of reflective equilibrium in philosophy is to provide a method through which a philosopher can come to rationally justified normative beliefs about justice, where a belief is justified if, on due reflection, it is shown to cohere with all considerations that are relevant to the issue at hand (see paper 2.4: de Maagt et al. 2019, 7-9).

The approach here is to take inspiration from this philosophical method but to open up to the wider public, to praxis, and to other academic disciplines the task of identifying both considered judgements and the various principles that seem to underlie how justice is institutionalized in European politics and society. Also, the emphasis on rational justification in the employment of reflective equilibrium in political philosophy is replaced by an emphasis on understanding European conceptions of justice. Contradictions and tensions between, on

the one hand, the understanding and conceptualization of justice and fairness ideals apparent in the theoretical debates of disparate scientific disciplines reported in paper 2.3 (Knijn, Theuns and Zala 2018) and paper 7.1 (Knijn and Lepianka 2018) and, on the other, how justice and fairness considerations can be 'manifested' in empirical realities can then be worked out into heuristic 'refined ideal types' of justice. The standard that is applied is an undogmatic coherentist approach whereby on the one hand tensions and contradictions between these various poles are minimized through trade-offs between them and abstractions away from them in order to identify justice standards that, largely, are internally consistent. On the other hand, the heuristically refined idea-types will expose tensions and contradictions that are determinant for understanding core clashes in how Europe understands justice. The Weberian approach, likewise, seeks to identify commonalities and dissimilarities between sets of disparate empirical manifestations of an idea to arrive at concepts that, while they do not reflect empirical reality strictly-speaking, nevertheless provide heuristically useful idealizations that allow one to better grasp and typologize social phenomena (in this case, conceptions of justice and fairness). Again, the result here is descriptive and not normative.

Having outlined the aim and intention of the process of reflective equilibrium, the question raises how methodologically such an effort will look like given the character and multitude of empirical data gathered in ETHOS. Inspirational for that process is ETHOS paper 2.4 (de Maagt et al. 2019), which reports on a Philosopher's Workshop on 'Justice and Beliefs on Justice in Europe' explores in further detail the various philosophical views in the vivid debate on the proper role of empirical data in normative theory.

Rippon (in paper 2.4) argues that empirical evidence such as investigated by public opinions research can inform normative philosophical ideals. He gives four arguments; 1) knowing that others think differently about justice might provide a reason to reconsider normative approaches to justice; 2) a philosophical theory about justice can only be action guiding in practice if it is not too distant from the 'real world'; 3) every-day evidence could play a role in the justification of principles of justice; 4) experiences of marginalized groups and the institutional settings of justice offer a unique insight in the specific forms of (in)justice, experiences and practices which might be overlooked if we do not incorporate these insights into our normative theorizing about justice. Two amendments must be made here. The first one is that public opinion research is not the only and not even the best method to understand

real world justice principles. Public opinion most of all reflects average societal norms, are de-contextualized (qua hypothetical) and do not well perform in comprehending justice principles that trigger relations between constitutional settings such as for example the political, legal, economic, religious, familial and educational arenas that are path dependent and define public opinion. Moreover, public opinion does not show the outliers that represent the marginalized populations and reflect societal norms by lacking a critical perspective based on real life experiences, stories and narratives. In order to understand the mechanisms and boundaries of justice these contextual settings as drivers of public opinion on justice ideals need to be analysed.

In ETHOS, in contrast, we have chosen not to follow the path of testing public opinion but have chosen an alternative approach that is to conduct in-depth research on selective cases that give evidence as to where and when, and for which categories of the population, justice principles are (not) admitted or applied. Our assumption here is that all who belong to the European administration, all who fall under the jurisdiction of European law, and all who reside in Europe could make a claim to European justice principles. By studying in-depth discourses, legal regulations, political documents, ethnographies, institutional practices and lived experiences, as well as actual forms of representation, educational and vocational divides, and social rights to housing, income and care, we attempt in ETHOS to get grip on what drives and triggers justice principles in Europe. The richness of this data, at the same time, complicates the process of testing them against the initial ideal types of justice as formulated in the theoretical stage of ETHOS (paper 7.1); each kind of datum reveals its own view and scope and can't be easily transmitted into a coherent configuration of test cases of the ideal type. Also, not all empirical data focus on the same themes (housing, voting, education, work, income and care) nor on the same vulnerable populations (ethnic minorities, fragile elderly, young women, disabled people). Nevertheless, we extrapolate from these in-depth studies to the generalized conclusions on justice in Europe because taking the perspective of the marginalized populations in selected cases, in dominant and historic discourse on minorities, and in legal and social-economic practice puts the finger on patterns of (in)justice that conform or deviate from the ideal-typical justice principles.

The above does not mean that all empirical studies conducted in the ETHOS program do so in the same way; studies of legal practice inform ideal-typical justice principles in a

different way than ethnographic studies do. Below we outline these various types of empirical data and their specific input for the refinement of our ideal types. In reading this overview, it is important to be aware of the non-congruency of disciplinary foci and types of data. While the empirical Work Packages 3 to 6 are more or less distinctive to particular disciplines – WP3 having a legal focus, WP4 a political science focus, WP5 a social theory focus, and WP6 an economic focus – this does not restrict the Work Packages to one single research method or dataset. In each Work Package, multiple research methods are combined to explore real world justice principles, for instance the legal studies of WP3 make use of discourse analysis as well as of a comparative analysis of legal orders at the European and national level and their implementation in legal practices. WP5, in its turn, conducts social policy analysis as well as ethnographic studies and in-depth interviews. In what follows however, we evaluate the contributions of the empirical studies to the refinement of the ideal types along disciplinary lines in order to avoid confusion between the domains of justice (law, politics, lived experiences and economy) and the research methods.

#### Empirical data as input for refinement of ideal type of justice

The *legal studies* of ETHOS as conducted by WP3 evaluate, from the perspective of vulnerable populations (ethnic minorities, disabled people, low-income groups, etc), the laws in the countries involved by on the one hand, comparing these with relevant international (human) rights treaties and conventions applicable in Europe, as well as key European legal instruments such as the European Convention on Human Rights, and with particular attention on European Union law. However, as the authors of paper 3.3 (Granger et al. 2018) already state, there is no direct connection between rights and justice, although prominent positions in normative legal and political thought claim at least a link between the two concepts, and their content. Assuming it ‘an open question to what extent justice even ought conceptually to be perfectly captured by legal rights’ (ibid p.6), ETHOS legal scholars nevertheless claim that, though justice regarding rights-protections of vulnerable minorities can’t be easily established, ‘the European legal order is structured in terms of rights claims and – in what is certainly an attempt to mitigate injustice – vulnerable minorities are protected in terms of their legal rights.’ (Granger et al., 2018: 6). The ETHOS legal studies thus examine the way the legal order in different jurisdictions contributes to or diminish redistributive, recognitive and representative outcomes defined as legal guarantees to justice. This approach is applied to

the right to vote (D3.4), to housing (D3.5) and to education (D3.6). Given the legal, constitutional and institutionalised justice claims analysed in Work Package 3, this empirical work feeds the ideal types of justice by identifying patterns of redistributive, recognitive and representative justice principles in the legal order at multi-governmental levels (European, national and regional), with regard to various vulnerable populations (disabled people, ethnic minorities and low-income groups) on three issues (voting, housing and education).

However, there are restrictions too. While the legal studies may reveal particular conceptions of justice, and their evolution over time, they do not result in one-dimensional conclusions on how justice principles are applied in real life or affect vulnerable groups or individuals. The plurality of the legal order, its complexity and inherent tensions and conflicts as well as contextualized interpretations of legal rights and obligations prevent one from drawing simplistic generalizable conclusions on the effects of 'law in practice'. Methodologically, the ETHOS legal studies mainly contribute to feeding the ideal types of justice by two kinds of input; first they offer empirical data that offer alternative approaches to current legal norms and judicial systems, in particular when substantive justice ideals are at stake (see papers 3.4, 3.5 and 3.6: Theuns 2019, Salat 2019 and Granger 2019). Secondly, the legal studies give input on the most evident trends, interpretations, inherent conflicts and most likely also multiple interpretations of justice in law.

The *political research* performed in WP4 aims to unravel justice principles as communicated by politicians and opinion leaders in public debates and media, and also seeks to understand the effects on vulnerable populations. It is in the public arena, and by prominent signifiers, that policies are legitimated, debated and contested, and public opinion is created and directed. In public discourse, abstract justice principles are expressed in opinions, transformed in concrete policies and applied to real life events. In these processes, boundary lines are drawn between, for instance, 'us' and 'them', between the deserving and the undeserving, between high-priority and minor social problems, and between fair and unfair treatment. ETHOS' analysis of political discourse shows that no straightforward justice principles can be derived from the analyses of media, commemoration of historical events or political discourse on minorities and their education. Moreover, the public discourse analyses reveal struggle on, eclecticism in and fierce debates regarding justice claims in terms of redistribution, recognition and representation but also on procedural and substantive justice

principles. Such debates and conflicts do not *per se* follow formal statuses, group identities or social positions, although some path-dependency can be traced.

Restrictions to the political analyses as ‘food’ for the refined ideal types of justice are that they mainly address *communicated* justice principles giving shape to the public debate and from there it is a huge step towards the *application* of justice principles in European and national social policies and their implementation. Whether social relations and social practice are affected by the pluralistic, sometimes contradictory, and eclectic public discourse remains to be seen, but trends in debates touch upon some fundamental principles such as moral dilemmas on guilt and shame, and on equality versus difference. Methodologically, the political analyses contribute to ETHOS ideal-typical research by showing on the one hand the relevance of public discourse analysis for understanding the complicated process of policy making and the underlying justice principles in political theory. It does so by revealing tensions, different understandings of justice claims, and principles and moral grounds for the realisation of justice as applied to and claimed by different groups (see paper 4.6, Lepianka 2019). Secondly, the input of the political studies offers in-depth knowledge on how prominent signifiers legitimate the ranking of justice principles, of justice domains, and of vulnerable populations in the public arena as well as its inherent tensions, contradictions and multi-layered character.

The *social theory studies* as applied in WP5 focus on ‘lived experiences’ of vulnerable populations by combining historical analyses of ‘*minorisation*’ with an in-depth study on ‘lived experience’ of one minority group (Roma) and also combines social policy research on actual redistributive and recognitive systems of cash and care with in-depth studies on how these systems are experienced by target populations and stakeholders. What can be taken from these studies is first of all that minorisation has different path-dependent and contextualized meanings related to the historical experiences of nations and their specific minorities. Overseas imperia (the Netherlands, Portugal and the UK) envision minorities differently than continental imperia (Austria, Hungary and Turkey), affecting today’s redistribution and recognitive justice principles. Path-dependency also influences the representation of ethnic minorities as invited and acknowledged participants in the political arena or as stigmatized individuals who do not want to be associated with their group identity. Concerning cash and care systems, the social theory approach touches upon the overall trend to self-sufficiency (in

care policies) and to sanctioning (in cash policies), both of which are exemplary for a rigid neo-liberal approach. However, the narratives of people depending on support for cash and care, as well as stakeholders in the field, show justice principles that go beyond that current discourse by valuing integrity, human dignity, reciprocity and interdependency.

Methodologically, the social theory analysis falls short in its contribution to the ETHOS ideal type research because it does not systematically and comparatively research majority populations' opinions on redistributive, recognitive and representative justice principles, instead selecting and analysing counter values and arguments. The empirical studies performed by the social theorists methodological contribute instead to the ETHOS ideal-typical research by amending dominant justice principles such as (in)dependency and agency (see paper 5.6 by Knijn 2019) as well as dominant approaches in social theory, such a methodological nationalism (see paper 5.2 by Anderson and Dupont 2018) from the perspective of vulnerable populations. In addition, the empirical social science papers offer input to the ideal types of ETHOS by including 'lived experiences' in which core justice claims of people depending on public services and familial resources appear to be embedded in diverse national institutional and discursive settings. These settings limit or facilitate the capabilities of people to live the life they prefer but also the imagination of what is possible. In addition, the empirical studies highlight the existence of plural interpretations of categorization, boundary drawing and deservingness each contributing to the understanding of redistributive, recognitive and representative principles of justice at the European level and the nation states.

The *economic studies* in the ETHOS program as conducted in WP6 focus on if and how austerity measures and economic policies (EU and national) during the recent economic and financial crises have affected the labour market and income position of vulnerable categories of the population such as women, older and young persons, disabled people and ethnic minorities. They also focus on potential remedies such as social dialogue, the Social Charter and Labour, and alternative dispute resolution (ADR). What these studies learn is that the EU's alignment with supranational governing institutions has enforced the liberal market-based economic politics and policies and undermined the social protectionist EU spirit of the past. Inequality has increased between and within the member states, particularly hitting the most vulnerable populations. Despite counterbalancing mechanisms in some countries and

regarding some labour rights, such as the social dialogue and ADR , it is in a combination of paralyzing fear (expressed in the populist vote) and spontaneously organized protests (Occupy and Yellow Vests) that dissatisfaction is presented, and alternatives are considered.

Methodologically, the economic studies of ETHOS are limited due to the absence of macro-economic analyses of intertwined relationships between the development of financial and economic markets (financialization) versus political decisions affecting redistributive justice principles. However, the empirical economic studies show clear evidence of austerity measures and – equally importantly – flexible and precarious labour markets in all countries involved, and the influence these have on increasing inequality and increasing vulnerability of the already fragile citizens (see 6.2 by Meneses, et al. 2018). This is the first input the empirical economic studies offer to the ideal types of justice. Secondly, the studies have explored the counter movements and counter balancing instruments that could be considered to improve justice in the field of work and income (see 6.3 by De Vries and Safradin 2018, 6.4 by Araújo 2018, and 6.5 by Araújo and Meneses 2018). Finally, the economists contribute to the ideal types of justice in addressing the ‘economizing of justice’ by not recognizing the discipline of economics as a value-free science, indifferent to or even adverse to redistributive justice claims.

### Substantiating the refined ideal types

From the above we conclude that, in the context of the Weberian ideal-typical methodology, the aim of the disciplinary inspired empirical data is to go from the preliminary ideal types to the empirical data in a back and forth process of seeking a more coherent overall understanding of justice in Europe (which we have labelled ‘refined ideal types of justice’). The task is to identify the various principles that underlie how justice is institutionalized in European politics and society. Our heuristic ‘refined ideal types’ of justice are, therefore, constructed by comparing contradictions and tensions between the understanding and conceptualization of justice and fairness ideals apparent in the theoretical debates of disparate scientific disciplines with manifest justice and fairness considerations in empirical realities. Given that both in theory and in practice there is at least minimal coherence, we can abstract from tensions and contradictions between these various conceptualizations and realities to identify justice standards that, largely, are internally consistent. However, the

heuristically refined ideal types will also, to some degree expose tensions and contradictions that are determinant for understanding core clashes in how Europe understands justice. The Weberian approach, likewise, seeks to identify commonalities as well as dissimilarities between sets of disparate empirical manifestations of an idea to arrive at concepts that, while they do not reflect empirical reality strictly-speaking, nevertheless provide heuristically useful idealizations that allow one to better grasp and typologize social phenomena. Weber developed this method most prominently with a typology of 'authority', in which he distinguished three ideal types of legitimate authority, each with its inherent fragilities and tensions; the charismatic, the traditional and the rational-legal authority. ETHOS, in turn, does this through integrated and multidisciplinary perspectives on conceptions of justice and fairness.

We take the input of the empirical work of each of the academic disciplines to feed the ideal types of redistributive, recognitive and representative justice, in order to bring our original ideal types to a higher level of understanding. For instance, if we formulated redistributive justice in D7.1 as 'Freedom of fear and being secured to have access to resources in order to be capable of using one's functionings and resources for making real opportunities to do what individuals have reason to value' (Knijn and Lepianka 2018: 22), we know can, on basis of the empirical studies, refine that raw ideal type by elaborating that redistributive justice is understood as being secured of interdependency (reciprocity of resources) and agency (the right to do what one has reason to value). We also find that this conception is sensitive to economic justice principles that, especially in times of austerity, challenge that principle - especially because counterbalancing legal mechanisms are less powerful in accessing major social rights, while political pluralism governs moral dilemmas with respect to it.

From the multi-disciplinary empirical studies ETHOS could conclude that the current redistributive European Theory of Justice falls short in freeing vulnerable populations who live in the jurisdiction of Europe from fear and does not provide the security to have access to resources that allows them to what they (have a reason to) value. Instead, the current European conception of redistributive justice and fairness is one in which agency as self-responsibility and independency is celebrated, but its preconditions in access to resources are neglected, and in which dependency is situated in the private domain. Hence and at first sight,

the refined redistributive justice ideal type seems to contain several subtypes that are formulated here as indications and preliminary examples and need to be carefully scrutinized in the follow-up of ETHOS research. A first subtype is ‘defaulting redistribution’ wherein securing interdependency and agency is intended but cannot be realised due to scarce resources. A second subtype is ‘procedural redistribution’ wherein legal and political bureaucratic rules and regulations instead of substantial redistributive principles govern redistribution, with implications for the most vulnerable populations. A third subtype is ‘familial redistribution’, implying that private resource networks are prioritized over collective and public arrangements. Finally, we can distinguish ‘solidaristic redistribution’ in which interdependency regarding resources and agency regarding rights are collectively secured.

A next step is to further substantiate this refined ideal type of redistributive justice by the back and forth comparison of the empirical data and the academic conceptions of justice, and to go through the same evaluative process for the refined ideal types of recognitive and representative justice. This task is part of the integrative papers (D7.3), as is the analysis of the integration of the three justice principles, their inherent tensions and the mechanisms and boundary lines that drive them. From there on we will leave Weber and his value-free analysis behind to turn also to the political-philosophical thinking that allows for making judgements on what might be fair and just. Since the European Commission asked for a vision of what justice and fairness means in today’s Europe, a descriptive, theoretical and empirically-based ideal type analysis is a crucial output but does not suffice as, in themselves, ideal types have no straightforward link to action guiding normative theory (see paper 7.1, Knijn and Lepianka 2018).

### A constructive perspective: building blocks for a European theory of justice

The third and final challenge methodological challenge of the ETHOS project is to formulate building blocks of an empirically founded, non-ideal, action-guiding, European theory of justice. This question – of the relation of the empirical data to normative theory – is a specific philosophical question and the ETHOS project assumes that it is possible to develop, on the basis of the ETHOS research, building blocks for a constructive empirically informed, normative theory of justice in Europe. In other words, ETHOS methodological research on the

relation of normative theorizing to empirical social scientific research opens interesting new avenues for exploring a constructive perspective for empirical justice research.

This constructive perspective builds in particular on paper 2.4, which reports on a Philosopher's Workshop on 'Justice and Beliefs on Justice in Europe' which explores in detail the various philosophical views in the vivid debate on the proper role of empirical data in normative theory (de Maagt et al. 2019). Paper 2.4 explores different constructive roles for empirical research in theorizing about justice, in particular public opinions about justice. Given that the ETHOS research program does not conduct public opinion research but instead conducts a range of qualitative research based on ethnographic studies, content-analysis, document-reviews and legal practice studies, the question is if and how such studies can inform normative theory building. The first role is that daily experiences of vulnerable populations, historically grown and current institutional practices and legal arrangements might provide 'food for thought' in the sense that knowing that others think differently about justice might provide a reason to reconsider normative approaches to justice. A second role has to do with feasibility. Even if the correctness of a philosophical theory about justice might be established independent of an empirically based understanding of justice, this theory can only be action guiding in practice if it is not too distant from the 'real world'. A third role is that every-day evidence could play a stronger or weaker role in the justification of principles of justice. A final role is that experiences of marginalized groups and the institutional settings of justice may be essential for normative theorizing about justice because they offer a unique insight in the specific forms of (in)justice, experiences and practices which might be overlooked if we do not incorporate these insights into our normative theorizing about justice.

The ETHOS project moves beyond these possible constructive roles in providing actual building blocks for an empirically-founded, non-ideal, action-guiding, European theory of justice in the form of the ideal types of justice developed in paper 7.1 which are constructed, on the basis of the ETHOS research, along the three theoretical dimensions of justice that are inspired by the scholarly work of Fraser and Honneth (redistributive, recognitive and representative justice) (Knijn and Lepianka 2018). For instance, Sangiovanni's practice dependence approach to justice, as described in paper 2.4 (de Maagt et al. 2019) states that normative standards of justice are constituted by the point and purpose of the practice and/or institution to which they apply. In his Budapest keynote, Sangiovanni identified the guarantee

of public order, the provision of social justice and the provision of essential public goods as the point and purpose of the state. This point and purpose was consequently used to evaluate the question as to the right to exclude. The ideal types can function as building blocks in this specific constructive approach by providing an empirically informed idealization of the point and purpose of several European practices in relation to justice. Whereas Sangiovanni only provides an abstract definition of social justice as part of the point of purpose of the state (and of the European Union), the ideal types of redistributive, recognitive and representative justice provide a much more sophisticated picture of how Europe understands justice which can feed into a constructive practice dependent approach to justice. It can do so in two ways 1) by testing the philosophical claims that e.g. Sangiovanni makes about the point and purpose of European institutions 2) by elaborating the interpretation of the point and purpose of European institutions on the basis of empirical information. In this way, the ETHOS project improves already existing philosophical constructive methodologies by making them thoroughly empirically informed and non-ideal.

Further linking ETHOS ideal-typical, empirical, theoretical and philosophical work: three modest proposals.

In the previous section we have described the way in which the ETHOS project provides building blocks for a non-ideal, normative (i.e. action guiding) theory of justice for Europe. In addition to this, the project also develops several other bridges between the empirical work described above, and the normative ETHOS work, notably the inescapably normative policy recommendations arising from the work of each of the empirical Work Packages (WP3, WP4, WP5 and WP6) in the form of policy briefs, and some of the research of Work Package 2, on the philosophical foundations of justice and fairness, particularly papers 2.2 (van den Brink et al. 2018) and 2.4 (de Maagt et al. 2019). Noting the fraught philosophical difficulties of such 'bridging' proposals, explored in deliverable 2.1 (Rippon et al. 2018) and, especially, paper 2.2, we present three modest suggestions for bridging the empirically informed refined ideal types of justice and normative approaches to justice and fairness. None of the below defines an exclusive role for either empirical research or normative philosophy in the articulation of an integrated Theory of Justice and Fairness itself.

First, ETHOS ideal-typical research on justice and fairness in Europe can feed into provisory normative claims on the basis of the implicit and explicit normative ETHOS research. Such normative claims preserve a primary place for politics in weighing and deliberating on various justice ideals, while still allowing proposals to be sensitive to how European citizens and stakeholders themselves understand the demands and scope of justice. Second, ETHOS builds on the work of paper 2.2, and especially the methodological approach of real world political philosophy grounded on empirical analyses of manifest injustice to address the most urgent instances where justice ideals are flaunted in European politics and society (van den Brink et al. 2018, esp. pp. 6-10). Third, the ideal-typical theorization of how Europe understands justice and fairness empirically can be taken as an object of normative theorizing in formulating a critical perspective on justice in Europe. These three building blocks thus provide three ways of bridging the empirical and the normative with varying degrees of *critical* normative potential.

### *Provisory normative claims*

In line with a democratic and public ethos, the ETHOS project works from the refined ideal types of justice that ETHOS has identified and explores how justice could be furthered were one to adopt such ideal types as political ideals. That then preserves in the political arena what belongs there – the negotiation, deliberation and arbitration between disparate justice ideals; while conflicts between and within justice ideals can sometimes be resolved by further and more careful attention to the empirical circumstances of social and political life, but sometimes reveal themselves to be incommensurable differences between peoples' ideals or interests.

The resulting recommendations therefore do not take the absolute form 'justice requires reform X' but the provisory 'reform X would further the ideal type of justice-as-representation' (or, conversely, 'reform Y would take us further from, say, the ideal type of justice-as-recognition'). This may appear like a simplification of political conflict, but there are two ways in which ETHOS research can truly innovate despite the 'modest' nature of this proposal. First, the justice ideals applied in the context of such provisory normative claims are complex idealizations that take into consideration a vast body of theoretical research (synthesized in ETHOS paper 2.3 by Knijn, Theuns and Zala 2018) and wide-ranging empirical

research from a range of disciplines. Second, the empirical research that feeds into identifying lacuna in the realization of certain justice ideals is innovative and original, often incorporating inter- and multi-disciplinary contributions to the study of justice and injustice as experienced by people in Europe. The obvious limit of this bridging proposal is that it simply takes for granted the ideas of justice within a certain discipline, which, as mentioned above, might well be ideological. Nevertheless, this analysis is important because it articulates the normative implications of accepting certain ideas of justice in the European context.

### *Real world political philosophy and 'manifest injustice'*

A second bridge that can be made between the empirical work of the ETHOS project and normative perspectives on justice and fairness in Europe follows the methodology of identifying areas of urgent concern – in other words, using the language of Wolff and Sen (reported on in paper 2.2 by Rippon et al. 2018) manifest injustices. Much of the difficulty with prescribing particular courses of action justified on the grounds of their furthering justice-ends is that there is deep-seated and pervasive disagreement over the standards of perfect justice. Yet, the approach of identifying manifest injustices, as ETHOS paper 2.2 reports, is an alternative that can nevertheless bridge the gap between empirical observations and normative analysis.

The methodological claim this approach is based on is that, while there are pervasive and perhaps incommensurable differences in how ideally perfect justice and fairness are understood by different people, the same is not true when it comes to abject manifestations of injustice. There is, the claim goes, an epistemic asymmetry. In political philosophy, these two approaches can be understood, respectively as 'ideal theoretic' and 'non-ideal' (see van den Brink et al. 2018 for discussion). The 'non-ideal' approach of real-world political philosophy insists that in many instances, incremental improvements in alleviating manifest injustice converge on particular reform objectives and are not held hostage by disagreements at the level of more fully specified normative theories of 'ideal' justice. It is thus a worthwhile task for empirical research on justice and fairness in Europe to try to identify instances that seem manifestly characterized by injustice and unfairness, and to think about the types of practical reforms that would alleviate these, even in the absence of any consensus on how justice ought to be understood if fully worked out. One advantage of this approach, when

successful, is that those pushing for reform can build broad alliances of people all concerned by the injustice of a particular social or political practice without agreeing (in fact, despite likely deep disagreement about what the best possible society would look like). There are, however, limits to this approach given that even a consensus on manifest injustices could be ideological, in the sense described above.

### *A critical perspective*

The integrative perspective on justice and fairness in Europe offered by the refined ideal types are not ideal in the normative sense, they are ideal in the heuristic sense of helping us explore what Europe understands by justice. The normative analyses developed in ETHOS Work Package 2, and particularly explored in the workshop on ‘Justice and Beliefs about Justice in Europe’, however, nevertheless allow us to get a critical distance from this integrated perspective to ask to what extent how Europe understands justice in fact corresponds to the demands of justice, normatively speaking. The ideal types may, after all, reflect European prejudices and exclusions just as much as they reflect European aspirations. The critical perspective thus analyses to what extent the opinions of Europeans about justice can be justified.

For instance, one of the ideal types identified in paper 7.1 is recognitive justice which is defined as follows: “The aim of recognition is to be acknowledged in one’s dignified and respectable identity, being it individual or group identities” (Knijn and Lepianka 2018). This ideal type can be critically analysed by, for instance, raising the question whether justice indeed requires the recognition of group identities, and if and how consistency can be reached between individual and group identity. There is no consensus in the philosophical literature on this question (for a recent overview see Heyes 2016), and it is therefore important to not uncritically take these ideal types as a basis for unconditional normative proposals, but instead to also reflect on the normative reasons for or against the normative proposals following from these ideal types. The issue of the recognition of group identities is one example, but the same line of reasoning could be applied to other ideal types identified in paper 7.1.

### **Conclusions**

In this 7.2 paper we have gradually and consistently unfolded the methodological tool for developing an empirically founded European Theory of Justice and Fairness for which deliverable 2.1 and the papers 7.1 and 2.3 have been the major input. The paper starts off with pointing at three methodological challenges in the ETHOS program; 1) to bridge the gap between academic disciplines that are assumed to be essentially non-normative and normative philosophical theorizing whose *raison d'être* is defined by normativity, 2) to outline in a systematic manner the variety of empirical findings and how they can feed the refinement of the ideal types of justice, and 3) is to formulate building blocks of an empirically-founded, non-ideal, action-guiding, European theory of justice and fairness.

Regarding the first challenge it concludes that the methodological lesson to be taken from the ETHOS X.1 Deliverables is that a first step in formulating justice principles has to be to compare various explicit notions of justice in political philosophy with the variously hidden, dominant, hegemonic, outspoken or marginalized justice principles in the other academic disciplines regarding outcomes (redistribution, recognition and representation), boundary lines (the scope) and mechanisms that impede, or are taken to impede, the realization of justice ideals. ETHOS therefore sees these disciplines as objects of investigation for understanding if and how they incorporate various conceptions of justice, with a view both to multidisciplinary comparison and the interdisciplinary dialogue that emerges from comparing and contrasting various principles of justice.

Regarding the second challenge this paper it is evident that the empirical data are gathered with a wide variety of methods, are inspired by various academic disciplines and focus on several categories of vulnerable populations. Nonetheless and given that both in theory and in practice there is at least minimal coherence, the paper shows that it is possible to some degree to abstract from tensions and contradictions between these various realities to identify justice standards that, largely, are internally consistent. At the same time the empirical data demonstrate plural conceptualizations of justice in law, politics, media and among the vulnerable populations themselves as well as among their stakeholders. Therefore, the heuristically refined ideal types will also expose tensions and contradictions that are determinant for understanding core clashes in how Europe understands justice. In that sense, the ETHOS methodology follows the Weberian approach that seeks to identify commonalities as well as dissimilarities between sets of disparate empirical manifestations of an idea to arrive

at concepts that, while they do not reflect empirical reality strictly-speaking, nevertheless provide heuristically useful idealizations that allow one to better grasp and typologize social phenomena.

Regarding the third challenge the paper concludes with three modest suggestions for bridging the gap between refined ideal types of justice, which provide a heuristic framework to better understand how justice is understood in Europe, and normative approaches to justice and fairness that seek to be action-guiding; 1) ETHOS ideal-typical research on justice and fairness in Europe can feed into provisory normative claims on the basis of the implicit and explicit normative ETHOS research, 2) ETHOS builds on the methodological approach of real world political philosophy grounded on empirical analyses of manifest injustice to address the most urgent instances where justice ideals are flaunted in European politics and society, and 3) the ideal-typical theorization of how Europe understands justice and fairness empirically can be taken as an object of normative theorizing in formulating a critical perspective on justice in Europe. These three building blocks thus provide three ways of bridging the empirical and the normative with varying degrees of critical normative potential.

Finally, the ultimate aim of the ETHOS project will be conducted by three integrative analyses of justice principles (task 7.3) that crosscut the tripartite conceptions of justice principles as defined in the refined ETHOS ideal types. By a vertical instead of a horizontal analysis of the three justice principles (redistribution, recognition and representation) these integrated papers will formulate respectively the interplay and tensions between justice claims, the mechanisms that seem to impede the realization of justice, and boundary lines or 'scope' of justice principles.

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