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4. Redistribution, recognition and representation: understanding justice across academic disciplines

Trudie Knijn, Tom Theuns and Miklós Zala

4.1 INTRODUCTION

The ETHOS project adopts Nancy Fraser's tripartite theory of justice as a framework for analysing justice-related problems in Europe, as outlined in the introduction of this book. There are at least two reasons why taking Fraser's framework, which consists of the normative dimensions of redistribution, recognition and representation (see Fraser 1990, 1995, 2005, 2007; Fraser and Honneth 2003), was useful as a theoretical starting point for the project. The first reason is historical: in the twentieth century and especially after World War II it became a generally accepted demand in Europe that states must be welfare states where individuals and relevant social groups are both adequately represented and recognized. The second one is the need for ecumenical justice-desiderata that can be applied by several disciplines; the Fraserian framework has the potential to provide a common denominator for an interdisciplinary project. This chapter evaluates the contribution of several academic disciplines – economics, political and social science and law – to the different premises of redistributive, recognitive and representative justice conceptions. Although most of these academic disciplines eschew explicit normative judgements, they nonetheless implicitly express normative assumptions about justice.

We show that these various assumptions and remedies to forms of injustice that emerge from it may be incompatible. Not only because of the various assumptions of the academic disciplines, but also because of possible tensions and trade-offs between justice conceptions themselves, such as Fraser's own redistribution–recognition dilemma. In this context, a multidisciplinary approach to justice results in enriching the three core concepts, even when the concepts are unevenly grounded in the respective academic disciplines. The chapter also argues that theorization of justice goes beyond the three aspects

highlighted in the Fraserian model, for instance including considerations of restorative and procedural justice, which can be highly relevant (see also Chapter 12 in this volume).

Before we move on to examine the theorization of justice in various academic disciplines through the lenses of these three aspects of justice, we start by shortly reflecting on the redistribution–recognition dilemma as a central aspect of Fraser’s non-ideal justice theory (see Chapter 1) and the controversies it has raised. Section 4.2 analyses and assesses the conceptualization of justice in legal, economic, political and social theory through the lens of redistribution. Section 4.3 looks at these disciplines through the lens of recognition. Section 4.4, in turn, focuses on the conception of justice as representation. Subsequently, Section 4.5 probes for justice conceptions in the discussed disciplines that are not well captured through the tripartite framing of justice as redistribution, recognition and representation. Finally, in the conclusion the various remedies to injustice as brought forward by the academic disciplines are evaluated.

4.2 THE REDISTRIBUTION–RECOGNITION DILEMMA

Fraser’s ‘non-ideal’ theoretical approach to political philosophy focuses on the instances of (in)justice observable in the real world by asking: ‘how fair or unfair are the terms of interaction that are institutionalized in the society?’ (Fraser et al. 2004, p. 367). She develops a justice principle with the idea that democratic societies must satisfy ‘participatory parity’ (Fraser 1990, 1995) holding that ‘social arrangements that institutionalize obstacles to participation are unjust’ (Fraser 2007, p. 315). Both maldistribution and misrecognition are problematic in virtue of violating the principle of participatory parity because both hinder or exclude individuals or social groups to ‘participate as peers’ in a democratic society (Fraser 2007, p. 315). 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 (Fraser 1995). The reason for this is that socio-economic injustices require socio-economic restructuring that ‘often call[s] for abolishing economic arrangements that underpin group specificity’ (Fraser 1995, p. 74). This is what Fraser calls the redistribution–recognition dilemma.

Moreover, in the real world, many injustices are a combination of maldistribution and misrecognition, implying that most groups regarding these two categorical injustices are ‘bivalent’ (Fraser 1995). 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 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. (Fraser 1995, pp. 78–9)

Fraser acknowledges that no easy solutions are available for resolving this dilemma:

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, p. 92)

In addition, she articulated the dimension of *representation* as political participation stemming from 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 analyse claims-making about justice (Fraser 2007). But political claims-making is no longer only about relations among fellow citizens in a bounded nation state. Focusing ‘on the “what” of justice (redistribution or recognition)’ it was taken for granted ‘that the “who” of justice was the national citizenry’. 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. (Fraser 2007, p. 313)

Thus, justice requires a new participation frame that problematizes the political space as bundled polities and decision rules to identify who is included/excluded from the ‘circle of those entitled to a just distribution and reciprocal recognition’ (Fraser 2007, pp. 313–14).

Therefore, the purpose of this chapter is to build up and build out from Fraser’s framework to expand it with interdisciplinary input while not losing sight of some of its key assumptions – to highlight the importance of a context-specific analysis and direct attention to the fact that a given individ-

ual or group can suffer different kinds of injustices, which should not be examined in isolation. By enriching Fraser's theoretical framework and applying it to real-world situations, as is shown in Chapters 5 to 11, this volume aims to understand the tensions, potentially contradictory remedies and omissions in an empirically informed theory of justice.

4.3 MULTIDISCIPLINARY PERSPECTIVES ON REDISTRIBUTION

Despite Fraser's objections, considering redistribution foundational remains common in justice-theorizing. The principles and assumptions of just and fair redistribution vary between justice conceptions, ranging from the absence of constraints, access to welfare and/or primary goods, to the demand of real individual opportunities to do and be what people have reason to value (the 'capabilities' approach). In analysing justice concepts in various disciplines, this section shows that economists, legal, political and social scientists and political philosophers all approach redistributive principles differently in the light of their diverse normative and theoretical assumptions and traditions. Thus, what an 'optimal redistribution' would be or how it should be reached cannot be settled scientifically.

Since Marx proclaimed his economic and political philosophy by turning upside-down the triggers of social change and explaining hegemonic ideology as founded in the forces of production and class interests, debates on what comes first, 'ideas' or 'material resources', are ongoing. Fraser, as a self-defined cultural Marxist, acknowledges that redistribution is not only a matter of the allocation of resources to needs. She accentuates needs 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' (Fraser 1989, p. 291). Here, redistribution is not a matter of economic classifications 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' (Fraser 1989, p. 296). Today, she argues that belonging, in- and exclusion, and having a say are crucial for making claims on recognition and redistribution with the ultimate goal of 'participatory parity'. In line with that, we analyse arguments and principles of economic, law and social disciplines as well as of political philosophy from the point of view of (re)distributive justice.

Controversies on justice concern its principles, shape, scope and site (Rippon et al. 2018; Chapter 2 of this volume). While Rippon et al. demon-

strate that the grounds of redistributive justice principles are multi-fold in the theoretical literature, ranging and varying for example from bare power relations to enlightened self-interest, human development and independence, this rich variety is only minimally reflected in economic theory, as José Castro Caldas (2018) explores. While one could expect that economic theory par excellence would be interested in redistributive justice, Castro Caldas sketches the typical hegemonic economic theory in the twentieth century as indifferent if not aversive towards principles of just redistribution with disastrous effects. Self-interest, utilitarianism and ‘rational choice’ have dominated the redistributive approach of economists resulting in what Castro Caldas (2018) calls ‘the economization of justice’, an economic theory that claims to be ‘independent of any particular ethical position or normative judgments’ (Friedman 1953, p. 4). The ‘neutral’ proscription of certain economic policies, often paired with resistance to redistributive policies, seems, however, to often belie the claim to value-neutrality.

However, alternative and dissenting views are available. For instance, Amartya Sen’s (2009) ideas of sympathy and commitment as moral capabilities offer a redistributive justice perspective that brings to the fore functionings (states and activities constitutive of being healthy, safe, happy and enjoying self-respect) and capabilities (the alternative combinations of functionings to achieve). He challenges economists to engage in ‘reasoned diagnoses of injustice, and from there to the analysis of ways of advancing justice’ (Sen 2009, pp. 4–5). Joseph Stiglitz (2016) goes a step further by focusing on the principles of the underlying productive and financial systems. He analyses inequities caused by current rent-seeking behaviour resulting in savings being channelled to speculation in real estate and financial markets, while gross inequalities of outcomes and opportunity deplete the potential of those at the bottom and hinder not only present economic demand but also future growth. 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, p. 149).

The articulation of principles of (re)distributive justice in social theory follows a similar path (Anderson et al. 2017). By assuming rational choice of individuals and separating the economic analysis of the causes of inequality from the social analysis of consequences of inequality, mainstream sociology pretended to have become a ‘real positive science’ and left behind or marginalized normative justice reflections on the relationship between injustice, structural inequalities and capitalism (Streeck 2016; Romero 2019). Nonetheless, Anderson et al. (2017) report that some sociologists have challenged social and institutional power mechanisms causing maldistribution. Bourdieu (1979) unravelled the intergenerational transfer of economic, social and cultural

capital and showed how this was supported by networks of the elite, state institutes and schools. 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 (Deleeck 2001). Finally, Wilkinson and Pickett (2009) indicate that redistributive injustice goes at the cost of individuals at both the upper and lower end of the social ladder, in addition to undermining social cohesion, social well-being, health, safety and prosperity. While social theorists might be 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.

That inequalities are structured simultaneously by access to material resources and discursive resources is shown by black, disability and gender studies representing justice-oriented but marginalized subdisciplines in social theory (Romero 2019). Like Fraser social and economic gender studies mostly define 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. 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’ (Fraser 1998, p. 10). Also in line with Fraser and Gordon’s (1994) 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.

An alternative approach is to define care relations as interdependent by arguing that ‘every citizen is dependent on someone else in one way or another’. That assumption allows for the recognition and redistribution of reproductive work during the life course for both genders (Knijn and Kremer 1997, p. 352). 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, p. 130). By analysing care work and its systematic gendered distribution, feminist scholars question mainstream assumptions of social theory, economics and philosophy that a society is composed of equal and autonomous persons (Chapter 10).

While mainly an epistemic rather than a substantive position on justice, ‘standpoint theory’ comes to a similar conclusion by providing 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). 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 human needs seen as an unequal discursive arena. In such an arena, different categories of the population compete to generate those interpretations of legitimate social needs that will become hegemonic. Disability, gender and black studies also bring 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 (Anderson et al. 2017).

From the economic and social theory disciplines, 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 promote or undermine assumptions of a 'good society'. Such theorizing is absent in legal theory that tends to conceive redistributive justice in a rather formal way. A substantive legal theory of (re)-distributive justice is missing, and a legal vocabulary of needs-interpretation is not translated into law (Salát 2018).

Political theory does better in identifying the relationship between representation of marginalized groups and their resources. However, Buğra (2018) in her overview of political theory agrees with Bauman (2001) that socio-economic transformations accompanied by the salience of identity politics, multiculturalism and different types of communitarianism replace criteria of social justice by those of respect for difference. Individual anxiety and fear channels people away from the claims of social distribution. She argues that relating recognition and representation to the 'freedom to pursue one's valued ends of life' is 'an important concern in different conceptualizations of justice' in political theory scholarship (Buğra 2018, p. 8). The question remains what freedom means and how this relates to the proper setting of socio-economic and political relations where people could be equally free (Buğra 2018). Even a 'fair' distribution of resources available to people to pursue their valued ends (Rawls 1999) has to take into account the differences in the ability to use these resources in a way that allows different types of instrumental freedoms.

4.4 MULTIDISCIPLINARY PERSPECTIVES ON RECOGNITION

Recognitive justice entails that individuals are provided with care, respect and esteem; there must be adequate social appreciation of the value of one's contribution to the social division of labour (Honneth 1996). Recognition can be categorized according to 'the kind of features a person is recognized for'

(Iser 2013). Charles Taylor, for instance, 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’ (Taylor 1992, p. 37).

One might expect that recognition would be a constitutive aspect of legal theory because the idea of human rights ‘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 2018, p. 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’ (Salát 2018, p. 15). Hence, in legal theory, as in European Union (EU) law, Salát concludes: ‘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’ (Salát 2018, p. 33). By implication, legal theory has challenges to address recognitive consequences of human or fundamental rights. Salát explains that this is due the contested formal obligation to treat human rights globally in a fair and equal manner according to the 1993 Vienna Declaration on human rights:

[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. (Salát 2018, pp. 33–4)

The consequence is that fundamental (human) rights which the state must strive for are not enforceable as an individual fundamental right in court.

Furthermore, recognition concerns are also present in the sphere of ‘status-rights’. These are ‘rights of the person to be recognized as member of the community, being it citizenship, refugee or protected person’ (Salát 2018, p. 34). By consequence legal recognition often comes with the exclusion of others who do not satisfy the criteria of the given status.

Another issue in legal theory is the recognition of (ethnic) minorities. Nation states can do so by giving special status like cultural and language rights, such as rights of self-governance and territorial autonomy (Salát 2018). In such cases, justice claims of recognition and representation seem to merge. Despite their universalist orientation, human rights theory – and indeed, human rights law – often recognizes the equal dignity of members of minority groups. In addition to equal treatment, this demands positive measures regarding several

types of minorities as well as for women (Salát 2018). In sum, recognition as it is conceptualized in legal theory is subsumed to the ‘right to have rights’, while in other disciplines it is much broader.

Political theory deals with recognition in a ‘Janus-faced’ way. Buğra (2018) explains that political theory sees recognizing individuals and groups as indispensable for justice. For instance, Philip Pettit’s (2004, 2014) republicanism requires non-domination and the ‘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’ (Buğra 2018, p. 11). State actions that undermine these principles are unjust in virtue of violating the idea of equal citizenship.

The political-theoretical perspective on recognition also has negative sides related to intersectionality: 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 and individual rights, for instance the oppression of women within a group (Buğra 2018; see also Okin 1999). Buğra’s argument here is in line with Fraser’s who emphasizes that no acceptable recognition claim can violate basic rights and liberties (Fraser 1995) nor should identity claims prevail over claims for recognizing the equal status of individuals or groups (Fraser 2001). Instead of an ‘identity model’ of recognition that might result in a ‘drastically oversimplified group identity’, overlooking the ‘complexity of people’s lives’, and the ‘multiplicity of their identifications’ (Fraser 2001, p. 24), she offers the ‘status model’ of recognition as an alternative, which understands misrecognition as the lack of equal status of minority group members.

In social theory recognitive justice is discussed as a matter of categorization, for instance:

[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. 2017, p. 4)

Knowledge of the (marginalized) experiences of embodied people for instance LGBTQI, ethnic and elderly persons and people with disabilities provide a different lens through which to understand issues of justice, which can otherwise reflect the majority’s experiences. As Wasserman et al. (2016) point out, not giving due attention to the first-hand experiences of individuals with certain disabilities in designing public arrangements is a sign of misrecognition, because it is disrespectful to disregard experiences of either the

victims of injustice (in case of stigmatization) or the future users of the given arrangements.

While contemporary mainstream economics is largely silent on recognition, historically, economists have contributed to the conceptualization of recognitive justice:

[Adam] 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). (Castro Caldas 2018, p. 4)

This idea from Smith is related to the relational character of recognition, namely that someone must be recognized by others in a community, and that individuals must be able to appear in public without shame. Similarly, Sen has 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).

4.5 MULTIDISCIPLINARY PERSPECTIVES ON REPRESENTATION

Recognition and redistribution are deeply connected to representation. Democratic theorists and political philosophers are in broad disagreement about what theory of just representation is convincing, and what conceptualization of representation is normatively defensible (Rippon et al. 2018). 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 (Kosti and Levi-Faur 2018; Rippon et al. 2018). Even where a law, polity or policy meets other demands of justice such as redistributive and recognitive concerns, there may be representative injustices.

Fraser first focuses on 'ordinary-political' misrepresentation, where certain voices within a polity are unjustly excluded or muted. Pettit (2004) 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'. Another form of misrepresentation is 'misframing': the unjust exclusion of certain persons from

a political community because the boundaries of that community have been (unjustly) drawn (Fraser 2009).

Critical Social Theory has explored the socio-political determinants that lie behind philosophical analyses, asserting that the object of knowledge and the knower are embedded in historical and social processes. Theorists in this tradition claim that reflective assessment of communicative rationality and intersubjectivity are central to human emancipation (Benhabib 2004). Discourses of moral justification are thus necessarily open-ended and the ‘dialectic’ of rights and identities they involve introduces a different dimension to the way we think about transformative remedies against injustices (Buğra 2018, p. 19). As such, critical-discursive theories do not ‘consider the existing structure of institutions and social relations as given’, nor ‘regard identities as fixed and unchanging’ (Fraser 2014; Buğra 2018). This enables the theorist to think about *convergence* as a possible outcome of processes of democratic negotiation where norms of just representation prevail.

Mainstream politico-theoretical concerns with representative justice mainly focus on the question of formal versus civic participation, and the challenges to representative government from pluralism and autonomy. Another traditional concern is with ‘electoral proportionality’ (Buğra 2018; Salát 2018), which might be related to Fraser’s idea of participatory parity; certain electoral systems better translate votes into seats, although there may be trade-offs regarding minority representation. Buğra notes, however, that outside formal processes, issue-specific interest groups, petitions and referenda ‘have an increasing appeal’ to those engaging in ‘unconventional types of political action’ (Buğra 2018, pp. 25–6). In line with Sen, she argues that political theory has to cope with the paradox that democratic representative politics claims to give guidance on what to do with the fact of value pluralism despite democratic polities being riven by intractably divergent views of the good life. Settling such conflicts democratically requires an equal chance to people to ‘represent their grievances and claims’ in the context of ‘public reasoning’ (Buğra 2018), and 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).

Legal theory, like mainstream political theory, treats mainly the formal aspects of representation – the ‘ordinary-political’ level – such as ‘the right to vote, and the fairness of elections, including the voter districts’ (Salát 2018, p. 43). A key demand of representative justice in legal theory is that ‘every voice gets potentially heard and has an equal weight’. Although different electoral systems, including in Europe, are ‘rather grossly disproportionate in varying ways, not only by application, but by design’ (Salát 2018, p. 43), the international and human rights law frameworks have only a very moderate impact on electoral proportionality, given that electoral laws belong to the core

of national sovereignty and any nation states therefore resist interference in this domain.

In addition, legal theory does not engage in the notion of equitable representation of people's interests, considering it 'too vague or contested for being substantively legalised' (Salát 2018, p. 44). The lack of the right to interest representation has a significant impact on the assessment of legal representative justice. Law alone 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. Thus, legal theory considers that it is 'a political presupposition, but not an actual legal obligation, that representatives represent the interests of the represented' (Salát 2018, p. 44). This may blunt the impact that a legal-theoretical perspective can yield on the assessment of representative justice and characterizes 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' (Salát 2018, p. 26).

Social theorists have been sceptical of 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, p. 14). This 'universalist' perspective may paper over differences in people's identity, deeming them 'irrelevant to issues of justice', or even consider these differences undermining justice by 'emphasizing difference rather than commonalities' (Anderson et al. 2017, p. 14). Critical approaches, for instance to the marginalization of racial minorities, challenge the supposed 'objectivity, neutrality, and colour blindness' of liberal politics (Anderson et al. 2017, p. 15). Second, social theory has challenged universalist and formalist approaches to representation through emphasizing that identity is comprised of 'a multiplicity of fluid, unstable, and dispersed identities' (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.

Of the disciplines under study, economic theory has had the least to say on the question of representative justice (Castro Caldas 2018). The 'justice lacuna' in economic theorizing can be explained historically by Sylvia Nasar (2011) who sees it as a process in which the academic disciplines aim to fulfil the requirements of 'positive science' and in doing so have removed characteristics that could not immediately be tested because of its critically reflective nature.

This concern with positivism has also been central to other disciplines, including social theory, as reported by Anderson et al. (2017). The conceptualization of homo economicus (Castro Caldas 2018) as well as the condition to select value premises that are 'objective' deprive economists and social theorists of any critical leverage on valuations that are upheld by powerful groups

or even the state. It influences how economic, legal and social theory alike, can perceive *interest*, noted by Salát (2018) and Anderson et al. (2017) and their engagement with representative justice (albeit in very different ways).

4.6 BEYOND REDISTRIBUTION, RECOGNITION AND REPRESENTATION

In the previous three sections we have used the three justice conceptions elaborated by Nancy Fraser as a starting point for a conceptualization of justice based on a review of academic disciplines in the context of the ETHOS framework. Unsurprisingly, the way these disciplines conceptualized justice do not perfectly fit Fraser's mould. This section consequently presents and evaluates in a comparative and synthetic manner alternative justice conceptions developed in the disciplines.

In legal theory, Salát (2018) highlights two justice perspectives 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. Looking at political theory, Buğra (2018) analyses the focus in that discipline on the importance of freedom, which cuts across and may transcend Fraser's tripartite conception of justice, for instance with the idea of justice as non-domination – a 'neo-republican' justice conception. Buğra also draws attention to a particular type of 'procedural justice' that focuses on the acceptability of certain idealized deliberative procedures to generate authoritative norms. As disciplines often wary of explicitly normative assessment and theorization, social and economic theory offer more difficult terrain for the articulation of alternative paradigms of justice. Nevertheless, a justice concern with resisting the hegemonic social construction of dominant identities is central to social theory, as reported by Anderson et al. (2017), who also draw attention to justice concerns such as mobility justice. Castro Caldas (2018), in turn, theorizes 'economizing on justice' to articulate the finding that mainstream economic theory is very reticent to acknowledge justice concerns.

The notion of procedural justice in legal theory, as articulated by Salát (2018), cuts across and beyond the three dimensions proposing a different perspective of justice expressing the legal attachment to the (procedural) value of the rule of law and the associated notion of legal order and certainty. 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' (2018, p. 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 but not totally replaced substantive ideas of justice. Salát (2018) reports that the legal notion of 'equity' introduces a substantive dimension as do human rights. 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. However, human rights also concurrently reinforce the procedural dimension of legal justice in, for instance, a focus on electoral proportionality, which ought to be understood through Fraser's notion of representative justice, and in the right to a fair trial.

Another major alternative framework of justice-theorizing in legal theory is captured variously by concepts such as 'restorative' and communitarian justice. These heterogeneous aspects share 'practical orientation' and focus on 'bottom up initiatives with the goal of improving the life of the community' (Salát 2018, p. 26). Restorative justice seeks to frame justice in terms of the reparation of harm and the restoration of harmony to a fractured community, most standardly (though not exclusively) understood in terms of a criminal offender repairing the harm of their crime. 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' (2018, p. 27).

In political theory, Buğra also signals two alternative orientations to theorizing justice. The first is a primacy to the value of *freedom* implying concerns with the just distribution of material resources 'available to people to pursue their valued ends' (Buğra 2018, p. 10). An alternative approach frames distributive justice through the pursuit of freedom such as Sen's approach, commonly known as the 'capabilities approach' sensitive to differences in the ability to use resources to have different types of instrumental freedoms (Buğra 2018). She further reports on the 'neo-republican' theory developed in detail by Pettit (2014), 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' (Buğra 2018, p. 11).

A second alternative to theorizing justice is related to justice as representation and the notion of procedural justice. Discourse ethics in political theory posits a justice-norm that is input- rather than output-oriented. Buğra (2018) reports Seyla Benhabib's (2004) theory that holds that those approaches ought to be considered as authoritative which could in principle be agreed to under ideal conditions:

[This] metanorm 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. (Buğra 2018, pp. 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.

The discipline of social theory has had a touchy relation to normative theorizing, with general scepticism of the validity and value of normative approaches (Anderson et al. 2017). A similarity between several alternative approaches in social theory 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:

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 analyse 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. (Anderson et al. 2017, p. 21)

Such approaches raise important questions about the salience of identities for justice that resonate also in the sphere of politics (see Buğra 2018).

A second important theme that arises in social theory concerns borders and mobility (Anderson et al. 2017) related to the notion of social construction. 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’ to capture the differential between the ‘mobility aspirations and capabilities’, particularly for low-skilled workers and refugees. They conclude that in a period defined by growing globalization, urbanization and migration attention to mobility justice will become ever more important (Anderson et al. 2017).

Economic theory offers a paucity of justice-theorizing beyond (and indeed within) Fraser’s tripartite framework. Castro Caldas (2018) coined the term ‘economizing on justice’ to describe this, while acknowledging that certain heterodox economists move beyond these limitations. Nevertheless, as emphasized also elsewhere in this chapter, 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 to develop an empirically sensitive and multidisciplinary perspective on justice and fairness in Europe.

4.7 CONCLUSION: THE PULL OF POSITIVISM AND FORMALISM IN CONCEPTUALIZING JUSTICE

Fraser’s ideas on the liberal Westphalian welfare state and its economic principles, the redistribution–recognition dilemma expressed in opinions 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 remained in the margins of mainstream social and economic theory. In legal theory, theoretical reflections on (re)distributive justice are almost absent, while in political theory it seems that (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, political 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’ has found its way in other disciplines precisely through the lack of problematizing the relationship between maldistribution, misrecognition and misrepresentation. However, a critical analysis of redistributive justice going beyond a fair distribution of welfare state resources is under way. More engaged scholarship on the principles of the capitalist production and its maldistributive effects is emerging (Sen 1977; Piketty 2014; Stiglitz 2015), while from the other side, engaged scholars are reporting on the daily experiences of maldistribution by marginalized and vulnerable populations (Gorashi 2010; Anderson 2013; Lamont 2013).

The theorization of recognition in the disciplines under study show some more convergence, again except for mainstream contemporary economic theory. Although recognition is rarely explicitly conceptualized, it does emerge as a relational principle based on hierarchies in identities and social roles (Rippon et al. 2018, pp. 15–16). As such, justice as recognition is concerned with what kind of standing vis-à-vis other persons she deserves (Iser 2013). Justice is not only about ‘having’, but also about ‘doing’, ‘being’, ‘being seen’. 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 remedies of recognition. Misrecognition can damage the identity of those to whom it is denied and, as such, constitutes a form of oppression.

The disciplines given central stage in ETHOS’ multidisciplinary 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 tends to conceive of representative justice in a formal way, along the lines of Fraser’s concern with ‘ordinary-political’ misrepresentation (Salát 2018). Political theory 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 (Buğra 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 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 2018).

In conclusion, the disciplines discussed in this chapter frequently develop justice conceptions in their own unique register, which, although overlaps and similarities can be identified, often depart from the terms Fraser developed. It may seem that this chapter, and particularly Section 4.5, functions as a veiled critique of Fraser's account of the facets of justice and their interrelation. Highlighting alternative conceptions of justice, however, does not serve as an implicit rejection of Fraser's view, especially given that Fraser's is an explicitly normative theory, while we have seen that the nature of justice-theorizing in the disciplines under study is often heavily tempered by commitments to positivism or formalism. Rather, while it seems underspecified in some points, Fraser's framework provides a template that helps us to make sense of the main debates in the field and to offer a useful heuristic tool for approaching different claims of justice, the fault-lines and boundaries of justice, and the mechanisms that inhibit the realization of justice in Europe in an interdisciplinary and empirically informed fashion.

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