# ETHOS

# Report on a theoretical review of the conceptualization and articulation of justice in political theory

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# Acknowledgements

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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

# Executive Summary

This Deliverable 4.1 discusses the conceptualizations of justice in political theory in the context of WP4 of the ETHOS program which aims to investigate the discursive construction of the boundaries to justice with respect to the redistributive, recognitive and representative claims of justice. In this paper, different conceptualizations of justice are examined by raising three interrelated questions: What are the means each individual has to pursue his or her valued ends of life? How could the need for belonging and community be reconciled with individual freedom? To which extent can people contest, act upon and change the structure of institutions and social relations in which they find themselves?

Following the ETHOS approach which seeks to provide building blocks for an empirical study of justice as 'lived experience" set in the institutions of modern European societies, the working paper pursues these questions by insisting on the way the problems of redistribution, recognition and representation that surround the matters of justice together inform the drawing and re-drawing of the insider-outsider boundaries in response to the economic, social and political challenges faced by complex modern societies in the current historical conjuncture. In this historical conjuncture which is characterized by the anxieties generated in an environment of mounting insecurity surrounding individual lives and social relations, the incorporation of minority perspectives on the existing institutions and practices in political dialogue is increasingly difficult. Framing of justice in terms of belonging and participation in society therefore becomes particularly important and this calls for special attention to political representation as a claim to justice along with redistribution and recognition.

While this paper highlights the importance of the problem of political representation in the current conjuncture, an explicit attempt is made to avoid a compartmentalized view of different types of disadvantages faced by vulnerable groups. The interface between the redistributive, recognitive and representative dimensions of justice are investigated by engaging with- rather than presenting a survey of- liberal, republican or communitarian paradigms of justice to depict certain themes and ideas that are relevant to an inquiry into the justice-related problems that emerge in contemporary European societies. These themes and ideas are discussed as they appear in different conceptualizations of justice in political theory and the discussion is completed by a section on the recent contributions to the analysis of political institutions and behavior. This last section examines the views of political scientists on different visions of democracy and the current challenges to representative democracy.

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**ETHOS**

**Introduction**

This Deliverable 4.1 discusses the conceptualizations of justice in political theory with a view to contribute to the analysis of the discursive construction of the boundaries to justice with respect to the redistributive, recognitive and representative claims of justice which WP 4 of the ETHOS program proposes to present. In the paper, an inquiry into different conceptualizations of justice is pursued by raising three interrelated questions: What are the means each individual has to pursue his or her valued ends of life? How could the need for belonging and community be reconciled with individual freedom? To which extent can people contest, act upon and change the structure of institutions and social relations in which they find themselves?

Following the ETHOS approach which aims to provide building blocks for an empirical study of justice as 'lived experience" set in the institutions of modern European societies, these questions are pursued by insisting on the ways in which the problems of redistribution, recognition and representation that surround the matters of justice together inform the drawing and re-drawing of the insider-outsider boundaries in response to the economic, social and political challenges faced by complex modern societies in the current historical conjuncture. This conjuncture is characterized by deep-set feelings of insecurity and in certain ways it is reminiscent of the environment created by the global dynamics of market expansion in the nineteenth century discussed by Karl Polanyi. What is somewhat paradoxical- but also understandable in the light of the anxieties generated in an environment of mounting insecurity surrounding the livelihood of people- is the coincidence of the very salient cultural nationalism of populist politics with the challenges now faced by the nation state. In this tense and polarized environment where the incorporation of minority perspectives on the existing institutions and practices in political dialogue is increasingly difficult, framing of justice in terms of belonging and participation in society becomes particularly important and it calls for special attention to representation as a claim to justice along with redistribution and recognition.

While this paper highlights the importance of the problem of political representation in the current conjuncture, it makes an explicit attempt to avoid a compartmentalized view of different types of disadvantages faced by vulnerable groups. The interface between the redistributive, recognitive and representative claims of justice are investigated by engaging with- rather than presenting a survey of- liberal, republican or communitarian paradigms of justice to depict certain themes and ideas that seem to be relevant to such an investigation. After the first section on the current historical context, the second section, which is organized in three sub-sections, presents a discussion around some elements of a theoretical frame to investigate the discursive construction of the boundaries of justice in its different dimensions. These three sub-sections highlight the complexity of the issues of justice and fairness and examine both the liberal approach and the critical perspectives that insist on group differences which inform different experiences shaping aspirations and demands concerning participation. The multiplicity of the conceptualizations of justice is revealed in a discussion of different approaches to resources and capabilities, the views on the recognition of cultural, ethnic or gender-related differences, and the questions surrounding the ability of different groups of individuals    to

have a voice in the debates on the principles that govern social institutions and relations are discussed. In line with the ETHOS program's objectives, the relevance of the different perspectives on these issues in the current historical context is scrutinized with reference to the theoretical debates around concepts such as "domination", "the common good" or "intersectionality" and by drawing attention to the tension between "politics of identity" and "politics of ideas". The third section is on the recent contributions to the analysis of political institutions and behavior that are relevant for an investigation of the justice-related problems that emerge in contemporary European societies.

### 1. Historical Context

An "authoritarian", "illiberal" or "populist" turn in global politics appears as an important characteristic of the political environment of our times. Titles such as "The Populist Moment" or "The Populist Zeitgeist" of some of the articles written on the subject[1] are indicative of the centrality of this political development to the period in which this paper is being written. In many different societies, the emergence of political parties and politicians that challenge the basic norms and institutions of liberal democracy now leads to questions concerning the possibility of stable co-existence which would be in conformity with equitable treatment of people with different identities and ideas. From a liberal perspective, it does not seem difficult to criticize and contest the populist challenge against the recognition of and respect for difference. A stronger position taking against the challenge requires, however, a more careful assessment of the factors that explain the ascendancy of populist politics by considering its socioeconomic and ideological context.

In this regard, it would be important to recognize that the recent historical conjuncture is characterized by deep-set feelings of insecurity and in certain ways it is reminiscent of the environment created by the global dynamics of market expansion in the nineteenth century discussed by Karl Polanyi. Polanyi argued that the market economy involved the commodification of land, labour and money, and thus presented a serious threat to economic life and the livelihood of people. He also discussed the unprecedented standardization in socioeconomic organizations across the world as he presented the nineteenth century global market economy as a "historical aberration", "a utopian project", clearly incompatible with human society, which has led to widespread social resistance everywhere. According to Polanyi this resistance constituted an inevitable defensive reaction involving all segments of the population and he analyzed it by introducing the concept of the *countermovement*. The countermovement appeared

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[1] Ivan Krastev, "The populist moment", *Eurozine*, September 18, 2007 and Cas Mudde, "The Populist Zeitgeist", *Government and Opposition 39*, no.4 (2004): 541-563.

in different political forms, which included fascism as well as socialism. He thus discussed the rise of fascism in Europe as a perverse reaction to the social disruptions caused by the market economy.

Polanyi's *The Great Transformation* was written at the end of the Second World War and after the defeat of fascism in Europe, and the opening sentence of the book announced the collapse of the 19th century market civilization. Yet, at the end of the 20th century, we witnessed another wave of market expansion which also came with the commodification of land, labor and money, and the associated social disruption and human insecurity. There is now a vast body of literature on the impact of the late twentieth century market economy on the world of labour and socioeconomic relations.[2]

Could we, then, use the notion of the countermovement to analyze the channels of discontentment caused by the recent market expansion? To answer this question, one probably needs to consider the differences between the characteristics of the historical period analyzed by Polanyi and those of the present context of economic globalization. Polanyi was writing of a time when the nation states appeared as the key agents of transformation of the nineteenth market society and socialism appeared as an attractive alternative. In contrast to this conjuncture, the present political atmosphere is marked by a generalized disillusionment about the socialist experiment. In this environment, not only the pro-market political approaches but also the left-wing claims for justice have been marked by doubts about the possibility of relying on the nation state as a viable agent of desirable social change. At the same time, with "the cultural turn" which has followed the late twentieth century economic globalization, the interest in redistributive justice was, for several decades, dominated by claims of recognition of cultural difference and politics of identity. The ideals of rationality, citizenship and equality central to modern moral and political theory were questioned in

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[2] See, among many other, Richard Sennett , *The Corrosion of Character* (WW Norton & Company, 2011) and *The Culture of the New Capitalism* (Yale University Press, 2007); Guy Standing, *The Precariat:The new dangerous class* (Bloomsbury Publishing, 2016)*;* Joseph E. Stiglitz, *Globalization and its Discontents,* Vol. 500 (Norton: New York, 2002)*.*

(footnote continued)

some of the influential approaches. In these approaches, the centrality of redistributive justice in the context of welfare state policies was often another target of criticism.[3]

The observations concerning the limitations of the nation state or the criticisms of the bureaucratic structure and practices of the welfare state were not unfounded. However, it is somewhat ironical that in a period when markets were expanding to areas which were hitherto outside the orbit of market relations and economic inequality was rising, the criticism of the welfare state has not only come from neoliberal economic analysis but also from within the left-wing critical political theory. In a parallel vein, it seemed problematic that the justified emphasis placed on the recognition and respect of difference as an integral component of social justice went together with the homelessness of redistributive claims, as argued by A. Phillips in an extensive discussion of the politics of difference. [4]

 However, as Z. Bauman observed it is perhaps not surprising that the quest for community should dominate concerns about economic inequality in an environment laden with feelings insecurity and alienation caused by the demise of the hitherto effective mechanisms of social protection and forms of belonging in society. In his analysis of the socioeconomic transformations accompanied by the salience of identity politics, multiculturalism and different types of communitarianism, he thus argued that it is not a coincidence that the collapse of distributive claims and "the replacement of the criteria of social justice by those of respect for difference" go together and determine the way "the growing supply of individual anxiety and fear generated by the precariousness of 'liquid modern life' is channeled away from the claims of social distribution."[5]

In this environment where the claims of social justice were no longer central to left-wing discourses marked by the salience of the arguments around politics of difference, the nationalist discourse of the rising populist politics could effectively address the feelings of economic insecurity and social alienation and constitute what could perhaps be

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[3] For a typical example, see, Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeron University Press, 1990).

[4] Phillips, *Which Equalities Matter?* (Polity Press, 1999).

[5] Zygmunt Bauman, *Community: Seeking Safety in an Insecure World* (Cambridge Polity Press, 2001).

(footnote continued)

seen as a reactionary countermovement quite successful in mobilizing the discontents of the global market economy.[6] In one of the influential accounts of the phenomenon populism has been described as an "exclusionary identity politics." [7] It has also been defined "as an ideology that considers society to be ultimately separated into two homogeneous and antagonistic groups, 'the pure people' versus 'the corrupt elite', and which argues that politics should be an expression of the *volonté générale* (general will) of the people".[8] This definition points at the presence of a somewhat Rousseauean element in populist discourse; yet, the populist discourse is marked by the identification of "the real people" as a group of people that support the populist agenda and ruling out of the rest in the determination of what "the general will" would be.[9] Those who do not conform to the cultural nationalism inherent in populist discourse, "the liberal elites" with their emphasis on recognition of difference as well as ethnic minorities and other vulnerable groups, could thus be excluded from the debates around the "common good" on the basis of both their identities and ideas.

What is somewhat paradoxical, but also understandable in the light of the anxieties generated in an environment of mounting insecurity surrounding the livelihood of people, is the coincidence of the very salient cultural nationalism of populist politics with the challenges now faced by the nation state. In her discussion of "The Rights of Others", Benhabib discusses these challenges by writing that "The nation- state is too small to deal with the economic, ecological, immunological, and informational problems created by the new environment; yet it is too large to accommodate the aspirations of identity-driven social and regionalist movements. Under these conditions, *territoriality* has become an anachronistic delimitation of material functions and cultural identities".[10] She therefore refers to a "crisis of territoriality" which she thinks should be addressed in the inquiries into the problems of justice that emerge in relation to the questions of citizenship.

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[6] For the underlying economic causes of discontent, see, for example, J. Stiglitz, *Globalization and its Discontents* (Norton: Newyork, 2002).

[7] Walter Wilhelm Müller, *What is Populism*? (Pen State University Press, 2016).

[8] Mudde, "The Populist Zeitgeist", 543.

[9] Müller, *What is Populism*?, 22-24.

[10] Seyla Benhabib, *The Right of Others: Aliens, residents and citizens* (Cambridge University Press, 2004), 4-5.

(footnote continued)

 The increasingly vocal populist attempts at boundary drawing through demarcations between "us" and "the others", which involve a strong affirmation of cultural or "civilizational" identities, are situated in this conjuncture of the crisis of territoriality where the meaning of citizenship is under scrutiny.[11] In this tense and polarized environment, framing of justice in terms of belonging and participation in society becomes particularly important and it calls for special attention to representation as a claim to justice. As Nancy Fraser has argued, in the contemporary "postwestphalian world" master frames of redistribution and recognition need to be complemented with representation to come up with a three dimensional theory of justice. Fraser has insisted that the three dimensions in question are not to be considered separately but in the way they influence each other in defining the economic, cultural and political dynamics of social inclusion and exclusion.[12] By drawing on Fraser's approach, it could be stated that a discussion of the theories of justice which insists on representation is in a position to consider the two-way relationship between representation on the one hand, and redistribution and recognition on the other.  Institutions and practices that affect the distribution of material means and the respect for cultural differences determine an individual's position in society by mutually reinforcing ways. They also determine the resources individuals in different positions have to question, challenge and contest these institutions and practices through different channels of representation. At the same time, mechanisms of just representation enable the articulation of the claims for redistribution and recognition, thus opening to debate and modifying the existing character of social relations to the benefit of the disadvantaged.

With this observation at the background, this overview addresses the questions pertaining to just representation with an explicit attempt to avoid a compartmentalized view of different types of disadvantages faced by vulnerable groups. Resources and capabilities are important in determining the terms of participation in society. However, as it will be seen in section 2.1 of this paper, these debates often address the conditions under which the principles governing a just institutional order is determined and accepted, thus bringing the question of representation in the picture either explicitly or implicitly.

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[11] Seyla Benhabib, *The claims of culture: Equality and diversity in the global era* (Princeton University Press, 2002).

[12] Nancy Fraser, Reframing Justice in a Globalizing World, *New Left Review* 36, (2005): 69-88 and *Scales of Justice: Reimagining Political Space in a Globalizing World* (Columbia University Press, 2009). See also Nancy Fraser, Rethinking Recognition, *New Left Review* 3, 2000: 107-120.

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The mutually reinforcing character of different types of injustice related to redistribution, recognition and representation calls for an awareness of the limitations of binary thinking in matters of justice. The problems of binary thinking were explicitly addressed by R. Lister in a forceful argument against positing difference as the opposite of equality. In her words, "The opposite of equality is *inequality*. To posit it as difference disguises the relations of subordination, hierarchy and consequent disadvantage and injustice, which underlie the dichotomy, and serves to distort the political choices open to us". [13]

In a different vein, A. Phillips's discussion of the co-existence of the loss of interest in economic inequality with a shift of emphasis to disadvantages stemming from group identity and celebrations of difference[14] addresses an important limitation of binary thinking associated with the tendency to posit overlapping injustices related to maldistribution as different policy concerns and prioritizing one over the other.

Binary thinking could also be a problem in the context of the current reappraisals of the existing norms and practices of citizenship where they involve the positing of subnational and supranational spaces for democratic attachment and agency as substitutes rather than complements to existing polities. We find a word of caution against this tendency in Benhabib's *The Rights of Others* where she writes that "there is a crucial link between democratic self-governance and territorial representation. Precisely because democracies enact laws that are supposed to bind those who legitimately endorse them, the scope of democratic legitimacy cannot extend beyond the demos which has circumscribed itself as a people upon a given territory."[15] Hence, she argues that in the present conjuncture of territorial crisis, the questions of belonging and participation, attachment and solidarity need to be opened to debate by calling for a reconfiguration of citizenship through democratic negotiation rather than insisting on the decline of citizenship.

An attempt to go beyond binary thinking undertaken with such concerns informs the following discussion of the themes which are discussed in the following section as elements of a theoretical frame to discuss the contemporary problems of just representation.

2.  **Elements of a theoretical frame to investigate the discursive construction of the boundaries of justice in its different dimensions**

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[13] Ruth Lister, *Citizenship: Feminist Perspectives* (Palgrave MacMillan, 2nd edition 2003), 98.

[14] Anne Phillips, *Which Inequalities Matte*r? (Polity Press, 1999).

[15] Benhabib, *The Right of Others*, 219.

The questions that emerge in an inquiry into different conceptualizations of justice cut across the problems of redistribution, recognition and representation which are addressed in the debates around matters of justice. The following three sub-sections are aimed to present the multiplicity of the perspectives on the meaning of justice and the nature of a just society. The discussion will not proceed with a particular understanding of justice and fairness, but will examine the tensions between different theoretical approaches and scrutinize the problems raised and solutions offered in their relevance to the ETHOS program's objective to provide building blocks for the development of an empirically informed European theory of justice. While the terms justice or fairness do not have a single definition which is common to all conceptualizations of justice, it would be possible to suggest that the freedom to pursue the valued ends of life appears as a central concern in most approaches to matters of justice. Nevertheless, this common concern, rather than defining a common line of inquiry into justice, leads to a series of controversies around a series of issues concerning the characteristics of a just social order. Discussions on the limits of a transcendental theory of justice where the "fairness" of a given institutional structure is determined once- for- all at the initial stage, the relationship between resources and capabilities, the ways of accounting for group difference in determining the "valued ends of life", the implications of group difference for the debates around common good or public interest, the importance of dialogue and reason in determining the conditions for just representation introduce the main elements of a theoretical frame in which the discursive constructions of justice in its different dimensions could be analyzed in their relevance for the terms of participation and belonging in contemporary societies.

## 2.1. Justice and freedom: On resources and capabilities

Freedom to pursue one's valued ends of life is a central concern found in liberal paradigms of justice as well as in those paradigms that criticize the liberal approach by questioning and elaborating the meaning given to freedom. Rawlsian theory is probably to most prominent one among different approaches that address the question of justice in a society of equally free individuals. Rawls adopts a contractarian approach to develop a political conception of justice, where the "basic structure" of the society, consisting in the main political, social and economic institutions and how they fit together into one unified system of social cooperation, is the subject of justice.[16] The basic structure of society is determined according to the agreement reached in the "original position" behind a "veil of ignorance". Veil of ignorance is a theoretical construct presented to assure that the people in the original position are ignorant of their own identities so that their social class, gender or ethnicity related interests do not prevent the reaching of a fair

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[16] See, in particular, John Rawls, *Theory of Justice* (Harvard university press, 2009) and "Justice as Fairmess: Political not Metaphysical", *Philosophy and Public Affairs* 14, no.3 (1985).

agreement on what the basic structure should be. Behind the veil of ignorance people can thus see beyond their own interests and goals, and think about the principles of justice which would be considered as being "fair" by all regardless of the positions in society.

In this manner, Rawls formulates two principles of justice as fairness: 1) Each person has an equal right to a fully adequate scheme of equal rights, which is compatible with a similar scheme for all. 2) Social and economic inequalities are to satisfy two conditions: first, they must be attached to offices open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society. In this formulation, redistributive justice is posited in terms of "primary goods" as all purpose means to valued ends of human life and they include income and wealth, powers and prerogatives of offices, as well as the social bases of respect.

As B. Barry writes, the Rawlsian principles of justice guarantee that everybody's concerns will have some place in the solution that emerges in the original position. However, since there is no place for bargaining or negotiation in the original position, the way these concerns will be taken into account is not given. Bargaining or negotiation cannot exist among people who do not know what their ends are. The agreement reached on the principles is based on identical information and the same way of reasoning; but the people who agree are, as Barry puts it, "clones" undifferentiated from each other.[17]

Barry's own approach draws on the Scanlon's version of a contractual theory where the contractors retain their identity; they know that they will be differently affected by any proposal and they can protect their interests by rejecting any given proposal that can be reasonably rejected as a basis for agreement. This makes the hypothetical situation closer to the reality of actually existing social relations among real people.

Further steps in this direction are taken by Amartya Sen's critical take on the Rawlsian theory, which involves a substantive methodological questioning of the contractarian approach. Sen's criticism is one which is directed at the Rawlsian transcendental theory of justice, which aims to present the abstract principles that should govern the institutional structure o society, in its difference from a comparative theory, where what is just and unjust could be

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[17] Brian Barry, *A Treatise on Social Justice (Volume II), Justice as Impartiality* (Oxford University Press, 1995), 59.

(footnote continued)

assessed with reference to the actually existing social relations and their outcomes. Sen opts for a comparative theory by insisting that "justice is not a one shot affair" and highlighting the "inescapable relevance of actual behavior"[18]

"Actual behavior" is of course formed in society and in the presence of other people, and the presence of others informs the ways in which an individual assesses the consequences of his or her acts and consequently modifies them according to the observed reactions they trigger. In this regard, Sen recalls the place of the "impartial spectator" or "the man within the breast" in Adam Smith's moral theory and discusses how this device works to inform moral behavior as an individual learns from the ways in which others, especially those "real spectators" from whom much sympathy and indulgence cannot be expected, view and react to his or her sentiments and conduct.[19]

Sen argues that Smith's approach has a broader relevance beyond a given group of people in the original position. Notwithstanding the reality or the reliability of Smith's approach to the characteristics of human nature which govern social behavior, with the importance of real interaction among real people brought in the picture we are led to ask whether a given institutional structure, albeit one designed in agreement according to the principles of impartiality at a given moment in time, is considered to be just by all those who are affected by it.

Sen insists that assessing how just an institutional structure is in a comparative approach requires a move beyond means and resources to substantive freedoms, or from "means of living" to the "actual opportunities of living".[20] In Sen's *capability* approach, capability refers to the substantive freedom to achieve actual *functionings*, or various things a person may value doing or being.[21] Here Sen draws attention to personal differences, diversities in the physical environment, variations in social climate and differences in relational perspectives[22], which determine the different opportunities to translate resources into desired functioning to achieve alternative lifestyles.

In Sen's approach, therefore, freedom acquires a different meaning than it has in the conceptualizations of justice that consider the resources available to people to pursue their valued ends, and it takes into account the differences

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[18] Amartya Sen, The Idea of Justice (The Belknap Press of Harvard University Press, 2009), 262-263.

[19] Ibid., 124-126.

[20] Ibid., 233.

[21] Amartya Sen, *Development as Freedom* (New York: Alfred A. Knopf, 1999), 75.

[22] Sen, *The Idea of Justice*, 255-256.

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in the ability to use these resources in a way to have different types of instrumental freedoms, which contribute to the general capability of a person to live more freely. This approach addresses political freedoms, economic facilities, social opportunities, transparency guarantees, and protective security which complement each other in ways that determine the strength of their joint significance for freedom as an end.[23]

In his republican approach to the question of justice, P. Pettit defines freedom as non-domination and discusses the concept of domination by making a distinction between the *problems of imperium*, concerning the vertical relations between people and the government, and the *problems of dominium*, concerning the horizontal relations between people. This distinction forms the basis of a discussion on the question of justice which addresses a) the control people have over government intervention, b) the mechanisms to check the "tyranny of the majority, and c) the ability resist domination by other people.[24] Pettit writes that freedom as non-domination defined in these terms requires a level of protection and resourcing- a level of entrenchment- "which would enable people to pass the eyeball test: to look one another in the eye without reason for fear or deference".[25]

As in the liberal approaches to justice, fundamental equality of individuals appears an integral component of Pettit's republican approach. However, as Pettit observed, the question of how much equal treatment people get when they are treated equally remains important. Forms of discrimination such as racism or sexism expose people to domination by others as members of vulnerable groups and need to be addressed as such. When the representatives of the government and other public authorities use a discriminatory language against an ethnic group or women or the LGBT, there is obviously a threat of domination to which these groups are exposed.[26] The problem, however, is not limited to overt cases of discrimination. Even in the absence of discriminatory practices or discourses, the question of representation remains and leads us to ask whether these groups have an equal opportunity to contest and influence the terms of agreement concerning what the just institutional structure would be.

Positing freedom as non-domination therefore presents an important insight to the inquiries around justice by not only drawing attention to the availability or non-availability of the resources people need to pursue their valued ends

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[23] Sen, *Development as Freedom*, 36-40.

[24] Philip Pettit, "Just freedom: Philip Pettit and the republican idea of liberty"interview by Jonathan Derbyshire, *Prospect,* April 23, 2014, http://www.prospectmagazine.co.uk/blogs/jonathan-derbyshire/just-freedom-philip-pettit-and-the-republican-idea-of-liberty.

[25] Phillip Pettit, *Just freedom: A moral compass for a complex world* (WW Norton & Company, 2014), p.82.

[26] Philip Pettit, "Just freedom: Philip Pettit and the republican idea of liberty" interview by Jonathan Derbyshire, *Prospect,* April 23, 2014, http://www.prospectmagazine.co.uk/blogs/jonathan-derbyshire/just-freedom-philip-pettit-and-the-republican-idea-of-liberty.

of life, but also by inviting us to think about the grievances and claims that are heard and regarded to be legitimate and those that are not.

## 2.2. Culture and identity: from individual to group differences

The extent to which a given institutional structure accommodates and is open to change by considering the diversity of human ends rooted in different value universes is central to the criticisms of the liberal views on justice found in multiculturalist approaches or in the discussions of justice in the context of the politics of difference. These criticisms are developed in two directions. They are directed, first, to the prioritization of redistributive justice over other justice-related issues. This criticism could be said to entail a certain compartmentalization of different types of injustice stemming from socioeconomic and cultural relations. I.M. Young, for example, argues that the concept of redistribution would better be limited to material goods; other aspects of justice, which include decision making procedures, the social division of labor and culture, should be discussed in terms of oppression and domination. With this demarcation in mind, she writes that "Domination consists in institutional conditions which inhibit or prevent people from participating in determining their actions or the conditions of their actions". [27] According to her, domination affects disadvantaged groups by preventing them from expressing their grievances and claims in their own terms because of the structural inequalities inherent in the difference-blind context of liberal institutions.

This is related to the second direction of the criticisms against liberal views on justice, which are typically situated in multiculturalist approaches. Here, too, we find a shift from the individual to the group as the victim of injustices stemming from misrecognition. As Taylor stresses, individual identity formation takes place in dialogical relations with others who share the same cultural universe. Hence, misrecognition, which entails serious harm for the individual, could only be avoided by due respect and recognition for the group in which individual identity is formed. This observation then leads to a claim for the rights of different cultures to self-preservation.[28] In W. Kymlicka's

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[27] Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press, 1990), 76.

[28] Charles Taylor, "The Politics of Recognition" *Multiculturalism,* ed. Amy Guttman (Princeton University Press, 1994).

(footnote continued)

approach to multiculturalism the existence of different societal cultures, which involve "not only shared memories and values, but also common institutions and practices"[29], is conducive to freedom because it offers the individuals a choice between different such cultures.

The empirical case of Quebec appears as an important reference in the discussion of multiculturalism presented by Kymlicka, and Taylor. The case of Quebec, however, might not be very useful in revealing the problems that multiculturalist policies might entail in other contexts. [30] Taylor admits that Quebec language legislation includes certain provisions which are not compatible with the liberal idea of individual rights, such as the one preventing non-Francophone immigrants from sending their children to Anglophone schools. But he- quite legitimately- observes that the measures taken for the survival of French language, while overriding some individual rights and liberties, exist in a society where most of the fundamental individual freedoms are protected and complemented by social rights. This might not be case in other contexts where the preservation of the culturally informed way of life of the society might imply serious infringement on basic liberties of certain groups of people, the case of women in Islamic societies being perhaps the most obvious among them.

The claims for recognition that take a political form and are affirmed by the policies implemented by the provincial government are highly different from the claims of ethnic communities situated in nation states with other communities also protective of their cultural identities. In the second case, multiculturalist dreams might turn into nightmares, not only in their implications for individual freedom but also in relation to the kind of ethnic conflict and violence that might emerge in such situations. Amartya Sen's *Identity and Violence* presents a forceful critique of communitarian views of identity where multiplicity and hybridity of identities are denied in a simplistic call for the recognition of difference, not of individuals but their communities.[31]

It is true that a bureaucratic state implementing redistributive policies by remaining oblivious to the problems of recognition could indeed be inhibiting for people's culturally informed choices about the kind of life they wish to lead as part of the group in which their form of identity and belonging are defined. It is also true that "tyranny of the majority" might take the form of    misrecognition of group identity and undermine the personhood of an individual

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[29] Will Kymlicka, *Multicultural Citizenship* (Oxford and New York: Oxford University Press, 1996), 76.

[30] As Habermas argued, it is indeed important to discuss different claims for recognition by distinguishing between different groups that express such claims. See, Jürgen Habermas, "Struggles for Recognition in the Democratic Constitutional State" in *Multiculturalism*, ed. Amy Guttman (Princeton University Press, 1994). Women's struggle for recognition has to be distinguished from the claims of ethnic and cultural minorities, which are both different from territorially situated national minorities who put forward political demands for autonomy in certain areas or independence.

[31] Amartya Sen, *Identity and Violence*:*The illusion of destiny* (Penguin Books India, 2007).

either through discrimination or difference blindness. The affirmation of diversity is therefore a characteristic of a just society where it is acknowledged that group differences inform different experiences and shape different aspirations and demands concerning participation in society. However, it is also important to acknowledge two problems which emerge with the multiculturalist claims for the protection of a given culturally informed way of life. One of these problems pertains to the non-homogeneity of groups and the second is related to the concerns about social solidarity or the common good.

The problem of intersectionality**,** which has to do with the fact that groups are not homogeneous and people have intersecting identities, means that ethnicity, gender, age, sexual orientation as well as class might place certain individuals in disadvantaged positions in a group defined by one of these identities.[32] There is, therefore, a tension between group rights and the rights of individuals within the group.

Perhaps the most typical manifestation of this tension is found in the position of women in religious minority groups where women's subordination might be an important aspect of the way group identity is defined. In Okin's *Is Multiculturalism Bad for Women?[33],* we find a particularly forceful discussion of the problems that emerge in this context. These problems extend beyond headscarf bans in western countries which often dominate the discussions around the recognition of group difference, and they involve forms of domination which could not be overlooked by references to respect for cultural difference. The fact that the majority women within the group might be willing to accept the relations of domination which limit the choices they are able to make about their own lives might not be sufficient to disregard gender related injustices given the very likely presence of "adaptive expectations" formed on the perceptions of what seems to be possible under the existing circumstances rather than what is desirable from an individual point of view. M. Wollstonecraft was clearly aware of how adaptive expectations affect the behaviour of

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[32] See among many: Nira Yuval-Davis, Intersectionality and feminist politics, *European Journal of Women's Studies 13,*no.3 (2006): 193–209; Kimberle Williams Crenshaw, Mapping the margins: Intersectionality, identity politics and the violence against women of colour, *Stanford Law Review 43,*no.6 (1991): 1241–1299; Kathy Davis, Intersectionality as buzzword: A sociology of science perspective on what makes a feminist theory successful, *Feminist Theory* 9, no.1(2008): 67–85.

[33] Susan Moller Okin, "Is Multiculturalism Bad for Women?" in *Is Multiculturalism Bad for Women?,* ed. Cohen Joshua, Howard Mathew, and Nussbaum Martha C. (Princeton, New Jersey: Princeton University Press, 1999), 7-24.

(footnote continued)

women in a way to make them chose strategies of coping that involve cunning manipulations of men rather than contesting the injustices involved in their dependent status. It would not be unjustified to draw a parallel between the predicament of women dependent on their husbands in societies laden with gender inequalities and women's domination within a patriarchal cultural group.

In this regard, one could also remember an early critique of the patriarchal welfare state by C. Pateman where a trenchant criticism of the welfare state as a gendered institution is accompanied with a comparison of different forms of women's dependence.[34] Pateman takes issue with those feminists who argue that for women to look to the welfare state is merely to exchange dependence on individual men for dependence on the state. Against this argument, she writes that "In the welfare state, each woman receives what is hers by right, and she can, potentially combine with other citizens to enforce her rightful claim." This observation brings to the fore the question of resources available to individuals who might wish to challenge the norms that govern gender relations within the household or within a cultural group.

Young people or LGBT individuals might, like women, find themselves oppressed within a cultural minority. In a parallel vein, class differences might limit the validity of an analysis of the problems of recognition which dwells on an identity other than class.[35] What, then, are the publicly provided opportunities and resources that the individual members of minority groups can rely upon to make their own choices and determine the terms of their participation in society without leaving behind what they believe to be an integral part of their identity?

"The right to exit", which liberal communitarians like Kymlicka grant to be important, could not replace a meaningful inquiry into the conditions that would enable individuals to assess, act upon and change the terms in which "good life" is defined in their group without having to leave the group. Z. Bauman once wrote that "Community without

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[34] Carole Pateman, "The Patriarchal Welfare State", *The Welfare State Reader,* 1988, 134-151.

[35] Wollstonecraft was writing to vindicate women's rights, but with her experience of work as a governess in wealthy households she was also was intensely aware of the conflicts of class that can be present in relations between women and the cruelty with which rich women could treat their subordinates. See: Mary Wollstonecraft, *Vindication of the Rights of Woman*, Vol. 29 (Broadview Press, 1978).

(footnote continued)

freedom is a project as horrifying as freedom without community."[36] Individual freedom would be threatened by a cultural community which sets itself the goal of maintaining and cherishing its distinctness by closing itself to critical examination of the kind of life it offers to all of its members.

Beyond the problem of intersectionality, which brings to the fore a series of questions concerning individual freedom, a second problem emerges in relation to the terms of co-existence in a complex society and it concerns the relationship between different conceptions of good life and the common good. This question could be dismissed in an anti-universalist approach which appeals to the idea of incommensurability of different moral premises underlying different cultures or societies.[37] Ideas of good life, which emerge in different cultural contexts, could in fact be different from each other, at times in important ways. It is also true that the refusal to acknowledge this might be accompanied by assimilationist practices that might involve serious harm for the members of group members. Does the rejection of assimilation legitimate, however, a refusal to engage in the debates concerning the common good? How could an understanding of the common good be reached at the level of the society consisting in groups which jealously guard their distinctions? Could members of a group put forward their claims about the terms of their participation in the wider society on the basis of a given group identity closed to any type of critical assessment?

In relation to these questions, one could consider two types of distinctions by drawing on A. Phillips[38]. First, there is a difference between recognizing the equal worth of the group and recognizing the equal worth of their members.[39] Second, rejecting assimilation does not necessarily imply a rejection of the possibility and desirability  of

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[36] Zygmund Bauman, "On Communitarians and Equal Freedom or How to Square the Circle", *Theory, Culture & Society* 13, no.2 (1996): 89.

[37] See, in particular, Alasdair MacIntyre, *After Virtue* (Notre Dame, Ind.: University of Notre Dame Press, 1981).

[38] Anne Phillips, *Which Inequalities Matte*r? (Polity Press, 1999).

[39] Martha Nussbaum, "A Plea for Difficulty"in *Is Multiculturalism Bad for Women?* ed. Cohen Joshua, Howard Mathew, and Nussbaum Martha C. (Princeton, New Jersey: Princeton University Press, 1999), 105-114. as a response to Okin's article "Is Multiculturalism Bad for Women?" in the same book, observes that it might be difficult to respect individual members of a given group without due recognition of the group culture. While it might indeed be degrading for group members to find their culture misrecognized by the majority, lack of respect for culture is not the same thing as the criticism of certain ways in which the group treats some of its members or situates itself in the wider society.

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convergence. These distinctions suggest that matters of justice could not be settled without openness to dialogue and criticism.

### 2.3. Dialogue and reason for just representation

Habermas rejects the acceptability of the claim for the cultures' rights for self-preservation by writing that "The ecological perspective for species conservation cannot be transferred to cultures".[40]According to him, "Cultural heritage and the forms of life articulated in them normally reproduce themselves by convincing those whose personality structures they shape, that is, by motivating them to appropriate productively and continue the traditions... (T)o guarantee survival would necessarily rob the members of the very freedom to say yes or no that is necessary if they are to appropriate and preserve their cultural heritage".[41]

Thus highlighting the impossibility of preserving distinctness by refusing to change, Habermas adds that, "Even a majority culture that does not consider itself threatened preserves its vitality only through an unrestrained revisionism, by sketching out alternatives to the status quo or by integrating alien impulses- even to the point of breaking with its traditions".[42]

Habermas's critical take on the liberal paradigm does not challenge the principle of equal rights and liberties, but proposes to expand the notion of a legally protected autonomy of each individual to realize his or her personal life project. Habermas writes that "This interpretation of the system of rights is paternalistic in that it ignores half the concept of autonomy" [43]A complete understanding of autonomy would need to accept that people can acquire

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[40] Jürgen Habermas, "Struggles for Recognition"in *Multiculturalism: Examining the politics of recognition,*ed. Amy Guttman (New Jersey: Princeton University Press,1994), 130.

[41] Ibid.,130.

[42] Ibid., 131.

[43] Ibid., 112.

(footnote continued)

autonomy only to the extent that they consider themselves as the authors of the system of laws that are subjected to as private persons.

It is possible to see a parallel with this understanding and P. Pettit's formulation of the republican ideal as one where "each of us should live under a government in such a way that we do not think of it as an alien will in our lives."[44] Civic engagement is obviously important here, but also important is the conceptualizations of personhood in ways which incorporate or do not incorporate difference blindness. Habermas writes that "Persons, and legal persons as well, become individualized only through a process of socialization. A correctly understood theory of rights requires a politics of recognition that protects the integrity of the individual in the life contexts in which his or her identity is formed. This does not require an alternative model that would correct the individualistic design of the system of rights through other normative perspectives. All that is required is the consistent actualization of the system of rights."[45]

This type of actualization process could not proceed without contestation and dialogue, a form of contestation and dialogue where both the "basic structure" of the society and the nature of the relations within distinct groups are addressed in public debate. This means acknowledging the non-static nature of societies and social relations. Matters of justice could hardly be debated when ethical questions that relate to conceptions the good life are left out of the debate because they are either considered to be irrelevant or believed to be unchangeable.

In the *Rights of Others: Aliens, Residents and Citizens*, Benhabib's inquiry is directed specifically at the rights of immigrants and refugees in the current conjuncture where the problem of human displacement is particularly pressing. Nevertheless, the way she approaches the question of membership by following the theory of deliberative democracy and discourse ethics is highly relevant for political theories that approach justice related questions of exclusion and inclusion or misrecognition and respect. Benhabib states the basic premise of discourse ethics as "only those norms and normative institutional arrangements are valid which can be agreed to by all concerned under special

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[44] Philip Pettit, "Just freedom: Philip Pettit and the republican idea of liberty" interview by Jonathan Derbyshire, *Prospect,* April 23, 2014,8, http://www.prospectmagazine.co.uk/blogs/jonathan-derbyshire/just-freedom-philip-pettit-and-the-republican-idea-of-liberty.

[45] Habermas, "Struggles for Recognition", 113; see also: Jürgen Habermas, *Inclusion of the other: Studies in political theory* (John Wiley & Sons, 2015).

(footnote continued)

argumentation situations named discourses". She calls this a *metanorm* which presupposes the principle of *universal moral respect*, meaning that all beings capable of speech and action are to be included in the moral conversation, and the principle of egalitarian reciprocity, according to which in discourses each should have the same rights to various speech acts to initiate new topics and as for justification of the presuppositions of the conversations.[46]

In discourse ethics, then, the moral conversation necessarily involves the mediation between attachment to universal norms and different ethical premises of good life. Benhabib proposes the concept of *democratic iterations* as "complex processes of public argument, deliberation, and exchange through which universalist rights claims are contextualized, invoked and revoked, positioned and repositioned throughout legal and political institutions, as well as in the associations of civil society".[47] What she highlights, through the examples that she gives on such democratic iterations, is a particular dialectic of rights and identities where both are opened to question, reconsidered and given meanings different from the meanings they had before.

The discourses of moral justification are necessarily open-ended and the dialectic of rights and identities they involve introduces a different dimension to the way we think about the remedies against injustices associated with misrecognition or maldistribution. Beyond affirmative remedies that seek to include people with culturally or economically defined injustices- which frequently overlap- in an existing order of social relations, we are led to consider transformative remedies that question and challenge the existing order in which the underlying causes of these injustices are situated.[48] As we thus cease to consider the existing structure of institutions and social relations as given, we also cease to regard identities as fixed and unchanging. This takes back to the difference between assimilation and convergence introduced by Phillips and enables us to think about convergence as a possible outcome of processes of democratic negotiation where the norms of just representation prevail.

The extent to which the universalist premises stipulated by a liberal understanding of justice as fairness or impartiality are challenged by the dialectic of rights and identities highlighted in discourse ethics can be questioned. While it  is

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[46] Benhabib, *The Right of Others,* 12-13.

[47] Ibid., 179.

[48] On this, see Nancy Fraser,*Justice interruptus: Critical reflections on the" postsocialist" condition* (Routledge, 2014) and Phillips, *Which Inequalities Matter?,* 90-96.

(footnote continued)

clear that the conceptualization of justice is enriched by those political theories that explore the questions pertaining to the moral justification of the liberal premises, it may be important to acknowledge that some of the constitutive elements of liberal approaches maintain their significance in any inquiry into justice related issues. First, the significance of the appeal to reason, which is so central to liberal approaches to justice, could not be overlooked. Here, appeal to reason is to be understood in contrast to authority, prescription, revelation or coercion as a basis for the justification of institutions.[49] In its difference from an affirmation of instrumental rationality, reason in this sense appears to be a necessary component of public debate where people do not refuse to enter into dialogue with others to articulate their grievances and defend the legitimacy of their claims. It might also be important to note that the appeal to reason does not mean that emotions have to be absent in the way ideas are formed and defended. This is a point which Sen makes by giving the example of the remarkable way Wollstonecraft combines reason with indignation and anger in her discussion of the injustices face by women as well as by other oppressed groups.[50]

Sen writes that "When we try to determine how justice is to be advanced, there is a basic need for public reasoning, involving arguments coming from different quarters and divergent perspectives"[51] Presenting the importance of public reasoning as one the main concerns of his book *The Idea of Justice*, Sen notes that this concern has to be necessarily accompanied by the acceptance of the plurality of reasons.[52] Hence, complete agreement on all justice-related matters might be impossible, but it is also true that attempts to settle these matters democratically by giving a chance to those who are affected by it to represent their grievances and claims would be bound to fail where people are not interested in reaching a reasonable agreement.[53]

Positing the same problem in Republican terms, one might also ask how the following question asked by Pettit in his article "The Common Good" could be answered in the absence of dialogue based on reason: How does a given system of representation fare in allowing for the right way of tracking the common good (or public interest) as the common interest of people as citizens and not as the avowable net interests that people have in common?"[54] These two

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[49] Barry, *Justice as Impartiality*, 7.

[50] Sen, The Idea of Justice, 390-392.

[51] Ibid., 392.

[52] Ibid., 394-401.

[53] On the requirement that people would be motivated by the desire to reach reasonable agreement, see Barry's discussion of the Scanlonian alternative to the Rawlsian theory of justice, *Justice as Impartiality*, 67-72.

[54] Philip Pettit, "The common good", *Justice and democracy: essays for Brian Barry* (Cambridge University Press, 2004).

dimensions of the representation problem that emerges in the absence of dialogue based on reason would thus constitute a serious obstacle to social inclusion and social solidarity.

Plurality of reasons to which Sen draws attention might be interpreted with reference to the plurality of culturally informed value systems in which people's conceptualizations of justice are informed by their experiences within a given group or society. This interpretation would nevertheless be problematic since groups or societies are not homogenous entities composed of indistinguishable individual members. No culture is monolithic and people are capable of forming critical opinions on the character of social relations and institutional patterns proper to the cultural context in which these opinions are formed. The reality of dissent through criticism from within cannot, therefore, be overlooked. Urbinati's criticism of "block thinking" is in fact directed at the tendency to identify the individual with the culture or religion to which she or he belong to. Against this tendency, Urbinati proposes a "philosophy of the individual" to "emancipate" the quest for a meaningful life that people pursue, undoubtedly by using the symbols and expressions derived from their cultural experiences, but also as individuals capable of critical thinking.[55]

Urbinati's call for a philosophy of the individual could be said to involve an invitation to rethink the question of diversity in the light of the current political conflicts where references to cultural difference have a prominent place. In the classical liberal thought, diversity is understood to designate the differences in individual opinions and beliefs, and the right to non-conformity is defended as a central element of social justice in a society of equally free individuals. As it has been discussed in this paper, critical perspectives on this liberal approach have argued for a new definition of diversity which could incorporate group differences, which inform different experiences and shape different aspirations and demands concerning participation in society. Notwithstanding the justified concerns voiced by such critical perspectives, the question of individual non-conformity and dissidence remain important in a way to suggest that the tension between politics of identity and politics of ideas cannot be ignored and the second should not be dominated by the first in the articulations and conceptualizations of justice.

## 3. Institutions for justice

The questions of just representation that were discussed in this overview in their relations of mutual influence with redistribution and recognition as other dimensions of justice often inform the contemporary debates on political

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[55] Nadia Urbinati, "Two Visions of Democracy," *Dissent,* January 6, 2008, https://www.dissentmagazine.org/online_articles/two-visions-of-democracy-nadia-urbinati. See also: Nadia Urbinati, *Representative democracy: principles and genealogy* (University of Chicago Press, 2006) and Nadia Urbinati "Representation as advocacy: a study of democratic deliberation." *Political theory* 28, no.6 (2000): 758-786

institutions and behavior. Theoretical problems that are debated around concepts such as "the common good", "recognition of difference" or "intersectionality" call for inquiries into the proper institutional arrangements that address these problems. The following questions raised by Pettit and Phillips, for example, find their counterparts in discussions on institutional choices that reflect different visions of democracy and around the current challenges to representative democracy carried out by political scientists.

In a discussion of the common good as the common interests people have as members of the public (and **not** as the people's common net interest), Pettit draws attention to two dangers that emerge in the attempts to design a political order where people's common interests are identified. The first one, *the false negative danger*, involves the missing out or ignoring certain public interests, and the second, *the false positive danger*, consists in misrepresenting common interests and falsely identifying other interests as common interest.[56]

Political institutions that serve to avoid the first danger are those that allow widespread public discussion where publicly admissible reasons given for different interests could be heard and proposals for changes in political practice and policy could be considered. Designing those institutions that could serve to avoid the second danger requires that the problems of "the tyranny of the majority" and "the tyranny of the elite" are properly addressed not to overlook the interests of the minorities and to avoid presenting factional interests as the interests of the public.[57]

Anne Phillips's *The Politics of Presence* also raises questions pertaining to institutions that would allow for an equitable representation of women or ethnic minorities by allowing for a politics of presence of people who share a common experience and common interest with a given group without relying on an essentialist understanding of group identity.[58]

Such questions of just representation pursued at a theoretical level also emerge in the literature on electoral systems, political parties or the uses of referendums. In the debates on electoral systems, it is possible to find two different

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[56] Pettit, "The common good", 2004

[57] Pettit, *Just freedom*, 2014.

[58] Anne Phillips, *The politics of presence* (Clarendon Press, 1995).

(footnote continued)

concerns that reflect different visions of democracy.[59] The majoritarian vision, posits the purpose of legislative elections in terms of reducing the diversity of citizen preferences to create legislative majority for a party that represents the policy preferences of a citizen majority. The idea is to frame elections in a way to allow voters to choose decisively the government itself, presumably, would lead both to government stability and responsiveness and accountability. Higher electoral thresholds and small single member district rules are favored to achieve the objectives defined in this manner, by denying, the normative significance of vote-seat disproportionality, as reflected in the number of "wasted votes", which emerges in this context. The majoritarian system entails a series of other problems including the range of represented views, among which the problems concerning the representation of minorities are particularly important.

There is in general widespread agreement that electoral proportionality is a major goal of electoral systems, "virtually synonymous with electoral justice". It is also regarded to be an important means for minority representation.[60] According to Bird, proportional representation with preference voting (where voters might change the order of the candidates on the party list) would encourage both party support for minority candidates and minority mobilization.[61] Hence, low threshold proportional representation is generally accepted to perform better in both vote-seat proportionality and the range of citizen concerns represented in legislation than majoritarian systems.

However, the performance of a proportional system in connecting voters to policy makers depends on a range of factors which are not necessarily an integral part of the system. The presence of multiple parties offering a variety of alternatives to the voters, for example, appears to be important in determining the range of voter concerns can be represented. If the parties converge to the centre while the voters are not situated in the same way, the proportionate election laws would not result in a legislature with parties representing different groups of voters in their proportionate strength. It is also important that the institutional arrangements are designed in such a way that the parties in the opposition have meaningful influence on the policy making process. In this regard, a system where

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[59] G.Bingham Powell Jr and Georg S.Vanberg, "Election laws, disproportionality and median correspondence: Implications for two visions of democracy", *British Journal of Political Science* 30, no.3 (2000): 383-411.

[60] Arend Lijphart,"Constitutional design for divided societies", *Journal of democracy* 15, no.2 (2004): 96-109.

[61] Karen Bird, "Comparing the political representation of ethnic minorities in advanced democracies", *Annual Meeting of the Canadian Political Science Association, Winnipeg*, 2004.

(footnote continued)

strong committees with proportionately distributed chairmanships play a role in policy-making would contribute to more equitable representation.[62]

What is also important to recognize is that high electoral thresholds, as well as the co-existence of different constituencies with very different numbers of voters, might lead to particularly perverse results in systems of proportional representation. Horowitz refers to the results of the Turkish election of 2002 to demonstrate how a high threshold, in the presence of a fragmented electorate might result in a situation where many parties fail to clear the threshold and a party can win a large majority of seats on a minority of votes.[63] As to the importance of constituency delimitation, Horowitz observes that "constituencies whose boundaries are drawn to advantage one ethnic group over the other can undo the effects of electoral systems that have ethnically conciliatory features."[64]

While systems of proportional representation are often thought to be beneficial for minority representation, it is also observed that there might be problems in this regard. Small minority groups might be able to form parties but it might be difficult for them to obtain the minimum number of votes to be represented in the parliament. The representation of regionally concentrated minority populations might actually be easier with plurality rules. It is also observed that in systems of proportional representation, fewer women get a chance of being elected from religiously based ethnic political parties.[65]

Many countries now use quota systems to improve the parity of political representation by combating persistent inequalities in the representation of women or ethnic, racial minorities. Quota systems take different forms and vary in their success in attaining their purpose. M. Hughes argues that the quota systems would be more effective if the question of intersectionality is taken into account. For example, gender quotas would often benefit middle to upper-class women from dominant racial, ethnic, or religious groups, and not minority women. Similarly, with a minority

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[62] Powell and Vanberg, "Election laws, disproportionality and median correspondence: Implications for two visions of democracy", 2000.

[63] In the elections of 2002 in Turkey, 46 percent of the votes were wasted.

[64] Donald L.Horowitz, "Electoral systems: A primer for decision makers." *Journal of Democracy* 14,no.4 (2003): 126.

[65] Melanie M.Hughes, "Intersectionality, quotas, and minority women's political representation worldwide." *American Political Science Review* 105, no.3 (2011): 604-620.

(footnote continued)

quota that facilitates the election of only one or two representatives from a minority group or a party, even a gender quota might be ineffective in promoting the election of minority women. Hughes suggests that "nested quotas requiring that women be included among the minorities or that minorities be included among women"[66] might improve the effectiveness of the quota system in contributing to the parity of participation.

A discussion of the institutional coordinates of just representation would not be complete without reference to the changes in political attitudes, which transform the patterns of political participation. In a discussion of these changes that affect electoral processes, J. S. Dalton insists on the declining role of socioeconomic cleavages in determining electoral behavior. According to him, traditional social cleavages along the lines of class or religion are now less relevant in determining voter behavior and framing electoral decisions; this creates more "free-floating" voters who might be mobilized in less stable ways on the basis of candidate images, evaluation of performance or the appeal of specific issues. Under these circumstances, increased electoral volatility goes together with not necessarily rational character of voter choices which might be under the influence of superficial media campaigns or oversimplified electoral campaigns making the outcomes of elections less predictable.[67]

Peter Mair makes similar observations on the increasing trends of volatility and unpredictability, and also insists on the decline of partisanship in policy making and the convergence of parties into a mainstream consensus while drawing attention, at the same time, the replacement of the former anti-system parties by far-right or national populist parties often espousing very radical and anti-consensual policy positions. Mair writes that the party competition now takes a bipolar form and, even in systems marked by strong party fragmentation, creation of competing pre-election coalitions tend to divide voters in the two contingent political camps. Elections appear as contests rather than a medium of representation, where political parties as organizations play an increasingly less important role as a more direct linkage between political leaders and the electorate emerges.[68]

These developments that Mair discusses to present a picture of the challenges to party government are indicative of the difficulties that the institutions of representative democracies now face in dealing with political controversies. In this context, direct forms of political involvement and decision making have an increasing appeal to people who

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[66] Ibid., 618.

[67] Russel J Dalton, "Political Cleavages, Issues, and Electoral Change," in *Comparing Democracies: Elections and Voting in Global Perspective*, ed. Lawrence LeDuc, Richard G. Niemi, and Pippa Norris Thousand Oaks (CA: Sage Publications, 1996), 319-342.

[68] Peter Mair, "The challenge to party government." *West European Politics* 31, no.1-2 (2008): 211-234.

engage in unconventional types of political action by signing petitions or joining in issue based citizen interest groups, while referendums become an important means of settling conflicts and settling contentious matters.

Dalton, Burklin and Drummond also discuss these developments by raising series of questions on the causes and political implications of the trends toward direct democracy. Against the rather optimistic assessments of these trends according to which the support for direct democracy comes from better educated and politically sophisticated groups engaged in social movements dealing with environmental or gender-related questions, these writers present a more sober evaluation of the current challenges to party politics and representative democracy. They draw attention, first, that the support for direct democracy mainly comes from those segments of the population who are less informed and less interested in the organizations and practices of representative democracy or in the questions of representation and accountability. Hence, the decline of traditional political parties and discrediting of legislative assemblies are accompanied by the rise of plebiscitarian forms of representation in which populist leaders displace parties as the primary vehicle of expressing popular will. The promises of "efficient" and "ethical" government bring populist parties which often espouse radical and anti-consensual positions from the fringes of the political system to the centre.[69]

**Conclusion**

On the basis of this overview of different conceptualizations of justice in political theory, it becomes possible to present a series of challenges facing the ETHOS program's attempt to provide building blocks for the development of an empirically informed European theory of justice in the tense and polarized environment of the current political conjuncture. To meaningfully address these challenges, it would be useful to acknowledge the multiplicity of approaches that highlight the complexity of the issues concerning justice in its different dimensions and make use of the insights that are provided more by the questions raised than the answers given. It is hoped that the following observations that emerge from the discussion presented in this paper would be helpful for the empirical investigation of the discursive construction of boundaries to justice.

Freedom to pursue one's valued ends of life remains an important concern in different conceptualizations of justice. However, the meaning of freedom differs in different approaches and each of these different meanings gives rise to important questions concerning the proper setting of socioeconomic and political relations where people could be

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[69] Russell J Dalton , Wilhelm P.Burklin and Andrew Drummond, "Public Opinion and Direct Democracy*", Journal of Democracy* 12, no.4 (2001): 141-153.

considered to be equally free. An institutional structure with a "fair" distribution of resources available to people to pursue their valued ends such as the one discussed by Rawls is important; however, as Sen insists, it is also important to take into account the differences in the ability to use these resources in a way to have different types of instrumental freedoms which contribute to the general capability of a person to live more freely. In a different vein, Pettit's approach to freedom as non-domination leads us to ask whether a fair distribution of resources is sufficient to enable people to pass the "eyeball test" and "to look one another in the eye without reason for fear or deference". Forms of discrimination such as racism or sexism expose people to domination by others as members of vulnerable groups and need to be addressed as such. Even in the absence of discriminatory practices or discourses, there emerge questions concerning the grievances and claims that are heard and regarded to be legitimate and those that are not.

Critical approaches challenging the universalist principles of the liberal paradigm insist on group differences which inform different experiences and shape different aspirations and demands concerning participation in society. Notwithstanding the justified concerns voiced by such critical perspectives, the problem of non-homogeneity of group identity as discussed around the concept of intersectionality or the questions surrounding the reconciliation of group difference with the common good of the society remain to be resolved. The questions pertaining to individual non-conformity and dissidence remain important. The tension between politics of identity and politics of ideas cannot be ignored and the second should not be dominated by the first in the articulations and conceptualizations of justice. In a parallel vein, attempts to define the common good of the society cannot ignore the different definitions of good life rooted in culturally different value universes. Hence, the fairness of the basic structure of society could not be taken as given, but should be open to question in public debates that bring together different perspectives on what the just institutions and social relations should be. At the same time, non-homogenous character of groups and the non-static nature of social relations within them could not be ignored. While it is important that the grievances and claims of minority groups should not be overlooked, it is also important that the minority voices are heard without an essentialist understanding of group identity. The question of just representation is to be addressed by recognizing the differences within the society as well as within the groups demanding the recognition of their difference.

The debates around the challenges faced by the institutional context of representative democracy presented in the last section of this paper takes us back to the first section where the rise of populism was discussed as a reactionary response to a socioeconomic environment laden with feelings of anxiety and insecurity. In the polarizing and conflictual environment marked by the rise of populism which often appears as "an exclusionary identity politics", the theoretical questions pertaining to just representation in its relations of mutual influence with the redistributive and recognitive dimensions of justice acquire a crucial significance, especially with respect to the participation of ethnic minorities and other vulnerable groups in society.

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**ETHOS**