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Representative justice in the European normative framework and tensions with the national political discourses

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ABSTRACT

Political discourses in Europe operate at the supranational, national and local level, with supranational institutions providing a normative framework for the policy making at lower governance level. However, the actual appeal of the legal, political and normative frameworks offered by supranational European institutions remains unclear. For example, while ‘justice’ is deemed constitutive of European values and ideals of democracy, and European institutions offer a clear vision of what ‘justice’ in pluralistic European societies should imply, relatively little is known about how this normative framework is reflected in national-level politics. The current article aims to close this gap by comparing political discourses on representative justice in six European countries with the European normative framework reconstructed on the basis of documents issued by the Council of Europe (CoE) and the European Parliament (EP). The research question we address relates to how the European normative framework on representative justice for minority and vulnerable groups is present and strived for in national political discourses. Our analysis shows that the principles of representative justice set out at the supranational European level lose their appeal at the national level politics permeated with conflicting visions of what is just, for whom and on what moral grounds.

KEYWORDS

Representative justice;
European normative
framework; misframing;
national political discourses;
minority groups

Introduction

Political discourses in Europe operate at the supranational, national as well as local level with supranational institutions, like the European Parliament, European Commission and Council of Europe, providing a normative and discursive framework for the policy-making at lower governance levels. At the same time, Europe remains a collection of nation states – each defined by its distinctive political community, own cultural identity, own shared rights and obligations of citizenship and own path-dependant institutions. This multi-layered-ness of Europe raises questions about the actual appeal of the legal, political, and normative frameworks offered by the supranational European institutions. For example, while justice is deemed constitutive of European values and ideals of democracy,

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and European institutions seem to offer a clear vision of what 'justice' in pluralistic European societies should imply, relatively little is known about how this normative framework is reflected in national-level politics: national laws, regulations, and practices, but also political debates. The current article is an attempt to close this gap by comparing political discourses on representative justice in six European countries with the European normative framework of (representative) justice, that emerges from documents issued by the Council of Europe (CoE) and the European Parliament (EP) – the two institutions that are crucial in setting normative agenda for the political debate around principles that shall govern justice in Europe and beyond. It should be noted that the supranational institutions in Europe do not always live up to the principles stated in the official documents and recommendations issued by the European institutions. Moreover, political parties and groups at the European level often engage in discourses that do not comply with the normative agenda set by the EP and CoE. Still, considering that European political groups are constituted by *national* political parties, which speak predominantly, if not exclusively, to their domestic electorates, our research question relates to how the European normative framework on representative justice is present, and thus – at least declaratively – strived for, in national political discourses.

Current political debates, and especially those related to the issues of (in)justice, take place within a temporal conjuncture, marked by a sense of growing insecurity, rise in populism, a drift towards authoritarianism, and the emergence of a variety of counter-movements (Bugra, 2018; Krastev, 2014; Müller, 2016; Worth, 2013). The sense of threat, while inherent in the 'liquid modern life' (Bauman, 2006), has been recently aggravated by a series of crises, including, the financial crisis of 2008, the debt euro-zone crisis, the subsequent social crisis marked by rapidly growing unemployment and soaring inequalities, the migration and refugee crisis of 2015–2017, and – last but not least – the health crisis triggered by the outbreak of the Corona-pandemic in 2020. The various insecurities, ranging from physical, through economic, to ontological – related to questions of identity and belonging (Bauman, 2006; Giddens, 1991), are further exacerbated by the apparent impotence of the territorially delimited (nation) state disempowered by the processes of globalization (Benhabib, 2004) and 'enforced cosmopolitanization' (Beck, 2007, p. 287). Concerning justice, the tearing down of national boundaries has been viewed as both a chance and a threat. Habermas (2013), for whom cosmopolitanism is a significant prerequisite of a just society, calls for national and supranational institutions that could sustain Europe as a cosmopolitan space. Nonetheless, any cosmopolitan vision of justice, which builds on an assumption of 'some community among all human beings, regardless of social and political affiliation' (Kleingeld & Brown, 2019), challenges the European polity that operates along the lines of 'categorization of difference' and 'majority/minority positioning' (Knijn & Akkan, forthcoming 2020) developed in the processes of 'minoritization' that have been taking place throughout the history of nation state formation (Anderson et al., 2018). The current understanding of 'politics of difference' (Phillips, 1998) further reinforces the 'majority/minority positioning' and incites anxieties and tensions pertaining, among other things, to just and fair representation of minorities and other vulnerable social categories.

The extent to which the above-mentioned processes play a role and define the justice-related political discourses within the territorially-bounded social-political environments of (nation) states depends very much on a particular political context. Europe, both as a

political entity and a territorially-bound collection of nation states, is increasingly perceived as a shifting political space, where equal participation, belonging and fair representation as the basis of pluralistic living is repeatedly challenged. Against this background, the current study explores what conceptualization(s) of representative justice dominate European normative framework and how these are reflected in political discourses in a selection of European countries. In our analysis, we draw on Nancy Fraser's tripartite theorization of justice, which stresses the entwinement of representation with two other facets of justice: redistribution and recognition (Fraser, 2007, 2009). We also relate to Fraser's distinction between 'ordinary political representation' and 'mis-framing' as two different forms, or levels of representative justice (Fraser, 2009). Since our analysis focuses on representative justice for minority categories: ethnic, religious, regional and migrant, mainly due to their (relative) exclusion from the (national) systems of reciprocity (Komter, 2005), we also draw from theoretical debates on group representation, and minority and/or migrant representation in Europe (Bauböck, 2015, 2018; Young, 2000, 2007).

Theoretical framework

Political science has dealt extensively with equality in representation¹ that takes different forms in different constitutional settings (Lijphart, 2004; Urbinati, 2000, 2006). One of the fiercely debated issues is the question of group representation and/or implications of the 'politics of difference' that allows differential treatment of members of (historically oppressed) groups, such as racial, ethnic, religious or sexual minorities, and women, 'for the sake of promoting equality or freedom' (Young, 2007, p. 81). Political mobilization of those who experience similar disadvantage is, according to Young, indispensable to bring attention to (the historically embedded) relations of privilege and oppression and cultural depreciation such relations are often build on (Young, 2000). However, the categorical understanding of group representation is not unproblematic. Group representation is believed to increase the danger of block thinking (Urbinati, 2000), which disregards the within-group (political) dissidence (Bugra, 2018; cf. Brubaker, 2002). It is also likely to create new forms of hierarchies in society (Phillips, 1998). As stated by Bugra (2018, p. 27), '[t]he 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'.

Fraser (2007, 2009), in her tripartite model of justice, treats representation as an analytically distinct category, yet intertwined with redistributive and cognitive justice. She conceptualizes representative justice as having a voice in a political space where struggles over redistribution and recognition are played out (Fraser, 2007, p. 313). Fraser also identifies two different forms, or levels, of representative injustice: '*ordinary political misrepresentation*' and '*mis-framing*'. Concerning the *ordinary political misrepresentation*, representative injustice 'arises within a political community whose boundaries and membership are widely assumed to be settled' (Fraser, 2009, p. 62). Seeking representative justice pertains to changes in formal democratic processes and includes support for (or adjustment in) gender quotas, indigenous self-government, multi-cultural rights, campaign finance reform, proportional representation, and others. Relevant in this context are, for example, traditional concerns with 'electoral proportionality' (Powell & Vanberg, 2000), and especially the electoral systems turning votes into seats, which might result in injustices concerning minority representation (Horowitz, 2003; Hughes, 2011).

Mis-framing as a form of representative injustice is discussed by Fraser in the context of the boundaries of the polity. '[S]uch injustices occur,' according to Fraser, 'when a polity's boundaries are drawn in such a way as to wrongly deny some people the chance to participate *at all* in its authorized contests over justice' (Fraser, 2009, p. 62). Fraser (2009) refers here to 'meta-political' injustice when the non-members of a polity (such as the global poor) are wrongly excluded from consideration in matters of justice that are relevant to them. However, with the 'crises of territoriality' (Benhabib, 2004, pp. 4–5), enhanced mobility and the shifting sources of belonging, the distinction of who is 'in' and who is 'out' – vital for (non-)realization of justice – is increasingly difficult to draw. The growing incidence of double and multiple citizenships co-exists with rising statelessness; and the category of (non-)citizen – embedded in various sub-state, cross-state and supra-state political communities – becomes increasingly multi-layered, with individuals simultaneously linked to (or excluded from) several political entities (Bauböck, 2010; Yuval-Davis, 2011). This is further complicated by the co-existence of alternative (yet not always mutually exclusive) principles that guide the attribution of citizenship/denizenship – *ius soli*, or *ius sanguinis*, or *ius domicilii* across different types of (nested) polities (Bauböck, 2015, 2018). Mis-framing as a means of exclusion from political membership (and rights it entails) is thus becoming exceedingly multi-layered, especially in the case of international migrants. While most of them are external citizens of their countries of origin *as well as* local citizens of the municipality where they take up residence, their *de facto* membership in the host society (as inhabitants, workers, taxpayers) is often insufficient for gaining access to the 'host' state's democratic membership.

Problematizing the issue of belonging and the processes that (implicitly) re-draw the fault lines (or boundaries) of justice shifts the discourse of justice from the domestic setting, placed in a paradigm of liberal nationalism, according to which justice is a relation that can only hold between fellow-nationals of a liberal-democratic state, to post-national conceptions of global, or cosmopolitan justice, which claim that relations of justice can hold between all human beings (Bauböck, 2010; Rippon et al., 2020). Problematizing the issue of belonging also draws attention to the role of European institutions as supranational entities in addressing the framing of justice in the face of the current crisis of territoriality and problems with defining membership in a polity. It also puts extra weight in exploring how the European normative framework on (representative) justice for minority groups is reflected, and thus – at least declaratively – strived for, in national political discourses.

Method and data

The current study is a part of a larger research project on justice in Europe.² The analysis presented in this article constitutes a synthesis of findings from six country studies on the discursive construction of justice in politics and own analysis of a selection of conventions, reports, and resolutions issued by the Council of Europe (CoE) and reports and resolutions issued by the European Parliament (EP). In each of the countries under study we have analysed 'texts'/documents produced by political actors in two clearly defined discursive contexts: (1) recent election campaign(s) and (2) country-specific case/ 'discursive event' that triggered debates on issues of justice, representation and/or rights of minority groups. The choice of the to-be-analysed debates has not been driven by their 'representativeness' in

terms of public popularity but rather the implications they (might) have for the understanding of justice, especially from the point of view of vulnerable populations.

In our analysis, we have focused predominantly on 'texts' that could be classified as 'official' communication by relevant actors, such as party programmes, manifestos, electoral advertising, parliamentary debates, policy documents. With respect to (social) media content, we have limited our sample to 'texts' issued or controlled by the political actors analysed. However, researchers involved in country studies had some freedom to choose sources they found most appropriate for the analysis of the selected cases. The document analysis, which forms the basis of the study, has been supplemented by a limited number of semi-structured interviews (4–7 per country) with public figures selected according to their capacity to shed light on the discourse(s) uncovered in the process of document analysis.

The following discursive events have been analysed per country: in Austria: (1) the electoral campaign of the 2017 general elections; and (2) debates surrounding the introduction of the Anti-Face Covering Act (2017) that prohibits full-face veiling in all public spaces and public buildings and that affects predominantly a small minority of Muslim women; in Hungary: (1) the multi-layered 2014 electoral campaign from winter to autumn of 2014, involving the national, European, and local elections; (2) Tusk speech about 'illiberal democracy'; and (3) debates triggered by migrant and refugee crisis of 2015/2016; in the Netherlands: (1) the electoral campaign of the 2017 general elections; and (2) debates around the controversial Black Pete figure that constitutes a crucial element of traditional nation-wide Saint Nicolas celebration while being also criticized as a symbol of unacknowledged racism that pervades contemporary Dutch society; in Portugal: (1) debates triggered by the local elections campaign in the municipality of Loures in 2017; and (2) public debate that followed the persecution of police officers on the grounds of violence against young men of minority origin (the 'Cova de Moura Case'); in Turkey: (1) two national elections held in June and November 2015; and (2) two initiatives undertaken by the AKP government in the second half of 2000s for democratic participation – the 'Kurdish resolution' and the 'Alevi initiative'; in the United Kingdom: (1) the 2017 general elections, called by the Conservative Party in an attempt to consolidate its authority ahead of Brexit negotiations; and (2) the debates following the fire that engulfed Grenfell Tower in June 2017, killing over 70 residents and leaving many others traumatized and homeless. For the analysis of electoral campaigns, electoral communication of 31 political parties has been used. In each country-level analysis, we included representatives of different (broadly understood) ideological streams from more radical (far)right parties (e.g. FPÖ in Austria, Jobbik in Hungary, PVV in the Netherlands, and UK Independence Party) to ultra-nationalist parties (MHP in Turkey), conservative right-wing parties (e.g. Fidesz-KDNP in Hungary, CU and CDA in the Netherlands, CDS in Portugal, AKP in Turkey), centre-right (e.g. List Sebastian Kurz – ÖVP in Austria, VVD in the Netherlands, Conservative Party in the UK), centre-left (e.g. SPÖ and Grüne in Austria, PSD in Portugal, CHP in Turkey, Labour Party in the UK) and (progressive) left-wing parties (e.g. PILZ in Austria, LMP in Hungary, Groen-Links and DENK in the Netherlands; Left Block in Portugal, HDP in Turkey and Green Party in the UK). A complete list of political actors included in the study and documents analysed in each of the countries is available from the authors.

The analysis of the texts selected involved qualitative content analysis with elements of discourse analysis, where content analysis entailed a systematic search for underlying

meanings, patterns and processes and careful mapping of themes and arguments used to convey a specific vision of justice, representative justice in particular; and where 'discourse analysis' came to the fore in our specific attention to both explicit and implicit meanings conveyed by the texts, e.g. via metaphors, allusions, similes, semantic and syntactic choices but also by silences or omissions (i.e. absence of specific topics/issues/actors from the discourse) as well as our specific focus on the (broader) context of communication. Strictly speaking, however, while rooted in the tradition of discourse analytical studies, our analytical approach is very much sociologically-oriented with only limited attention paid to the linguistic analysis *sensu stricto* (Wodak, 2008).

In all countries, our analysis was guided by a set of questions related to (1) the framing of (representative) justice; (2) the moral grounds of various minority groups being given or denied (or restricted in) their right to representation; (3) the grievances, threats, conflicts and polarization mentioned or exposed; (4) the nature of the political debates; and (5) rhetoric devices applied. However, mainly due to the divergent context and different agendas of the political actors included in the analysis, our country findings are not always straightforwardly comparable. The various country cases are therefore not directly compared in this report but rather used to highlight justice-related themes and issues that cluster around certain visions of justice.

(Representative) justice in European normative framework

In the documents analysed, it is acknowledged that Europe is a place troubled by intolerance, discrimination and phobias on the grounds of race or ethnicity (e.g. via Afrophobia, anti-Gypsyism and anti-migrant sentiment), a person's religion and belief (e.g. anti-Semitism, Islamophobia), but also age, disability, sexual orientation or gender identity (e.g. in the form of homophobia or transphobia) (CoE PA, 2015b; EPR, 2014, 2015; LIBE, 2015). The xenophobia and discrimination are believed to be based on mistrust and hate toward minority communities that have been triggered by the migration crisis, strengthened by radicalization in Europe and accompanied by the rise in populism and extremism (EPR, 2015; LIBE, 2015), the popularity of 'political parties that base their political programmes on exclusion on ethnic, sexual orientation or religious grounds' (EPR, 2015) and inadequate reactions of the member state authorities to instances of hate speech and hate crime on their territories and in internet (EPR, 2014, 2015). The documents examined draw attention to 'the growing trivialisation of racist and xenophobic acts and speech owing to the ever-greater visibility in the public sphere of racist and xenophobic groups' (EPR, 2015; see also EPR, 2014); and relate acts of anti-Semitism and 'increasingly widespread efforts to deny or downplay the Holocaust' as well as 'attacks on mosques and the widespread tendency to associate Islam with the religious fanaticism of a tiny minority' (EPR, 2015; see also: CoE PA, 2015b). Given the entwinement of misrecognition with representative injustices (Fraser, 2007, 2009), and the role of stigmatization and 'othering' in how the contested social categories are (discursively) established, such an awareness of the troubled minority-majority relations, their historical embeddedness and contemporary expressions, has the potential to challenge the boundary-drawing processes that underlie the injustice of 'ordinary political mis-representation' as well as 'mis-framing' (exemplified, for example, by the denial of residence rights and/or citizenship to minority residents deemed culturally 'other').

Indeed, as if in protest to the rather grave diagnosis of the current state of intergroup relations in Europe, the European normative framework of (representative) justice is built on a vision of an inclusive, pluralistic, cohesive, stable and peaceful society, 'where individuals maintain their own identities while respecting each other's difference' (CoE CM, 2016). It appeals to the values of democracy, the primacy of human dignity, respect for human rights and fundamental freedoms, social justice, tolerance, non-discrimination, social inclusion, active participation and co-operation. Since diversity is seen 'as an integral part and a major asset of European societies for centuries', the contribution of minorities to the 'richness and diversity of Europe' is taken for granted (LIBE, 2015; see also CoE AC, 2008; CoE CM, 2016). The basic underlying question then is not whether or not to protect minorities, or whom exactly to protect, but rather 'what' is required to manage diversity most effectively (CoE AC, 2016).

According to the documents analysed, creating conditions for effective participation of minorities in public affairs – considered a condition *sine qua non* of societal cohesion and stability and 'the development of a truly democratic society' (CoE AC, 2008, 2016) – shall involve not only active prevention of any forms of discrimination and/or creation of policy niches in which minority issues might be (inadvertently) compartmentalized, but also, or predominantly, the implementation of measures that lead to the active involvement of minorities in the mainstream institutions of social, cultural and public life and, implicitly, promote viewing and treating minorities as an integral part of the society.

While a clear definition of representation is missing, understood – in the spirit of Fraser – as power/real opportunity to participate in democratic debate and exercise influence, on par with others, on the way society's basic norms, laws, and regulations are being set, representation is the very substance of the European discourse. In the Council of Europe (CoE) documents under investigation, participation in the public sphere is construed as entailing various forms of what Fraser calls 'ordinary political representation', such as presence in elected bodies, involvement in consultancy and decision-making mechanisms, presence in the executive, judiciary and law-enforcement agencies, and – last but not least – effective influence on the shape of public debate via presence in media and media-related bodies. At the same time, representative justice is entangled with the civil rights and freedoms, and especially the freedom of expression, and the freedom to associate and to form an assembly, and intertwined in a complex and multi-layered manner with other dimensions of justice; often caught in the language of equality (judicial, procedural, redistributive) and recognition (e.g. when touching upon the issues of identity and self-determination).

Understood in redistributive terms, equality is demanded, for example, with respect to minorities' 'equal access to economic sectors and social services', presence of 'equal opportunities' and 'minorities' participation in the delivery of benefits and outcomes' (CoE AC, 2008). The importance of recognitive justice is reflected in frequent references, especially in CoE documents, to issues of free self-identification as well as issues of specific 'needs' of various minority groups and their right to, and the (public) support for, the protection, preservation, and development of their culture and identity as expressed/embodied in their religion, language, tradition, and cultural heritage (CoE AC, 2008; CoE PA, 2015b).³ Similar arguments resonate in European Parliament (EP), 2014 resolution, which recognizes the dissimilarity of the needs of various minority groups and

calls for public policies that would not only protect minority persons and groups but also foster 'their appropriate development' (EPR, 2014).

Important in the context of recognitive justice are calls for the facilitation of the visibility of (national) minorities and the creation of conditions that would allow to 'have their voice heard' (CoE AC, 2008) not only on issues of particular relevance to them but also on those of relevance to the society as a whole. Crucial here is the understanding of minority identities as non-exclusive and the necessity to allow (national) minorities 'to both preserve their identities' and to become 'an integral part of society' (CoE AC, 2016). In the context of the latter, it is asserted that 'establishing a set of specific rights for persons belonging to national minorities' is vital to enable full participation and equality in society 'while being protected from assimilation' (CoE AC, 2016; CoE FCNM, 1995). Essential as well is the assertion that any imposed categorization based on predetermined characteristics, including those considered problematic for identity (such as 'language, religion, culture, ethnic background, specific traditions or visible features') may constitute a violation of the minority right to identity (CoE AC, 2016). In a similar vein, underscored is the importance of freedom of thought, conscience, and religion, which includes freedom to express religious affiliations as well as the freedom to refrain from any such expression and freedom to change religion or belief (LIBE, 2015). In the case of Roma communities, of utmost relevance is also freedom of movement, i.e. 'the right of citizens of the Union and their family members to move and reside freely within the territory of the Member State' (LIBE, 2015).

All in all, the need to protect minorities from discrimination and respect their claims to justice is repeatedly legitimated by reference to the EU's founding principles and the core of European values. At the same time, the protection of minority groups is seen to serve society as a whole, and as such seems to acquire an instrumental dimension. The effective participation of (national) minorities, for example in consultation mechanisms and advisory bodies, is seen as 'essential' not only to ensure that the needs and interests of specific minority groups are taken into account, but also, or predominantly, to promote trust among minority communities, to enhance 'discussion and dialogue between different groups in society', and thus to 'promote societal cohesion and stability' (CoE AC, 2008). In a similar vein, integration and cohesion are likely to benefit from breaking with the problematization of difference. Abandoning the either-or logic embedded in the in-and-out discourse and binary stereotypes, and ensuring that 'the space for diversity and for being 'different' is socially protected and affirmed', is seen as a route towards greater integration and cohesion of European societies. Particularly important in this context is the emphasis given to the promotion of tolerance and intercultural dialogue (EPR, 2015; LIBE, 2015). As noted by CoE AC (2008):

[p]romoting the effective participation of persons belonging to national minorities in the society requires continuing and substantive dialogue, both between persons belonging to national minorities and the majority population and between persons belonging to national minorities and the authorities (CoE AC, 2008).

Moreover, 'full equality cannot be effectively achieved when diversity as such is perceived negatively or when only certain forms of diversity are accepted and tolerated' (CoE AC, 2016). States are therefore encouraged to stimulate intercultural dialogue 'among all persons living on their territory' (CoE AC, 2008) 'irrespective of their ethnic, cultural, linguistic identities' (CoE AC, 2016). Facilitation of the intercultural dialogue can be

achieved by ‘involving all actors in society, and at all levels of governance’ (LIBE, 2015) and by ‘making it possible for national minorities to be visible, have their voice heard’, for example via media (CoE AC, 2008).

Such appeals seem to indirectly address the issue of representative injustice in the form of mis-framing: the relevance of pre-established categories of insiders and outsiders is questioned, as is the a priori exclusion of certain voices, such as resident non-citizens, from a democratic deliberation. Particularly important for the issues of mis-framing is, however, the recognition of the possibility of multiple and non-exclusive (self-)identifications, and their (inter-)changeability. This is in fact what puts minority members ‘on par’ with other groups: being a member of a minority is never fixed or permanent; it is socially constructed, affected by societal change and also situational. Moreover, since self-identification is seen as evolving through shared practices and common exercise of rights, membership in European society (and ‘majority’?) appears, in principle, open to everyone who engages in the (democratic) practices and embraces the European values. (Although what is the ‘common good’ in the European polity and whether or not it could be universally embraced, regardless of the majority/minority positionings, is still a valid question to ask.) Interestingly, while this openness and apparent inclusiveness seems to shift the European discourse on representation towards cosmopolitan conceptions of justice, the fact that the on par participation in the European demos is conditioned upon adherence to common (liberal) values, indicates this cosmopolitanism to be rather moderate.

How ‘European’ are the national discourses?

In our analysis of national political discourses, we attempted to overcome the temptation to ascribe specific discourses to specific ideological perspectives and/or specific political actors thus forcing the ideas about justice and injustice into the already-existing-ideological boxes. Our research indeed shows that while specific political actors, especially political parties, draw more extensively from one or two discourses, different invocations of justice are not necessarily tied to ideological positioning of any specific actor.

In the course of the analysis, we identified four meta justice discourses that could be construed as falling along two distinctive axes – one related to the definition of *whose* moral reasoning and well-being is prioritized (majority vs minority) and the other pertaining to the delineation of *how* a specific vision of justice and imagined common good is to be realized (through dialogical reconciliation vs struggle) (Lepianka, 2018). In the following section, these meta discourses are compared to the European normative framework along the lines of the Fraserian theorizing on representative justice; where relevant, the analytical categories of ‘ordinary political mis-representation’ and ‘mis-framing’ are applied.

Within the discourse of *justice as book keeping*, the common good – defined as a sort of equilibrium whose meaning and shape is determined by the majoritarian values and way of life – is to be achieved through ‘conflict resolution’, i.e. seeking ways to accommodate the minority claims without compromising the position of the (autochthonous) majority. Search for conflict avoidance is also present in the discourse of *justice as responsibility and care*, within which common are demands for the accommodation of both the majoritarian claims and the claims by minority groups. Problematic within this discourse of ‘unbounded’ belonging is its implicit assumption about the common adherence to

liberal values and respect for individual freedom, which is bound to exclude those to whom liberal values are less dear. Finally, demands of respect for minority claims of representation, recognition, and redistribution are at the heart of the resistance discourses grouped under the heading of *justice as freedom from oppression, discrimination, and neglect*, which in many respects constitute a (distorted) mirror reflection of nativist discourses, grouped in our analysis under the heading of *justice as majoritarian rule*. Minority and majority claim to justice (and/or right to co-define the common good) are within those two groups of discourses antagonized and their realization for one side always is discursively framed as entailing some form of cost for the other.

When comparing the national (meta) discourses to the European discourse of justice, and especially justice as representation, it is difficult to ignore, the anti-European sentiments permeating the nativist discourses as well as the resolutely pro-European rhetoric of their political opponents. Whether or not and how specific discourses accommodate the European rhetoric concerning minority claims to justice relates very much to their construction of Europe as a community of value vs Europe as the institutional yoke and/or source of oppression. The polarization of discourses seems particularly strong in countries most affected by the populist and authoritarian zeitgeist – Hungary, Austria, and Turkey where the far-right, ultra-nationalist and (more) conservative parties position themselves in opposition to Europe ('We are (...) members of these alliances and not hostages (...). In the European Union elections we must tell Brussels loudly and resolutely: respect the Hungarians!⁴'), and where their political opponents see Europe as both a normative anchorage and salvation from authoritarian oppression and oligarchy (Left Unity and LMP parties in Hungary).

The anti-European and especially illiberal rhetoric, *par excellence* exclusive, bitterly contests the spirit of inclusiveness, openness and tolerance invoked in the European normative framework. The most conservative, and especially the far-right populist discourses, include vivid illustrations of intolerance, discrimination and a variety of race, ethnicity and religion-related 'phobias' diagnosed in several EP and CoE documents⁵ as one of the biggest challenges of contemporary Europe. Striking in those discourses is not, or not only, the very sharp distinction between the 'majority' and the 'minority,' or the 'insiders' and the 'outsiders,' but also the fluidity of the boundary drawing and the existence of liminal categories whose (always) contingent inclusion in the 'national community' is conditioned upon their perceived loyalty and contribution to the well-being of the (autochthonous) majority. Exemplary here is the Jobbik's construction of Roma in Hungary – criminalized and problematized, but at the same time construed as re-formable by 'a cadre of leadership for Gypsies in Hungary who consider Hungary their home and who endeavour for a relationship of brotherhood with Hungarianism.'⁶ Such imaging allows for simultaneous othering of the Roma population as a whole and the elevation of 'a cadre of leadership' considered worthy of inclusion in the Hungarian family. Similarly ambivalent is the discursive construction of Hungarian Jews, who are sometimes referred to as 'compatriots', but on other occasions – via the notion of 'coexistence' – 'treated as and the adjunctive component of the nation and not explicitly an integral part of it' (Zemandl, 2018 quoted in Lepianka, 2018).

Such problematization of otherness and the permeating of either-or-logic, typical for nativist discourses, frequently feeds calls for the exclusion of the other and the bounding of their (political, civil) freedoms. Illustrative here is the hostile attitude to hyphenated

citizens, whose involvement in the politics of their country of origin is – contrary to the spirit and recommendations of the *Resolution 2043 on Democratic participation for migrant diasporas* (CoE PA, 2015b) – interpreted as a sign of disloyalty towards the host country and condemned (the Netherlands), or even prosecuted (dual citizenship is not allowed in Austria). For example, in the Netherlands, the mass pro-Erdogan manifestations in the aftermath of the coup attempt in Turkey, which gathered a few generations of Turkish-Dutch in Rotterdam, provoked invocations against those who ‘misuse our liberties to take away our liberties’ (Wilders, PVV).⁷ Such forcing of the minority members to choose their loyalties clearly contradicts CoE approach to multiple and non-exclusive (self-) identifications. Problematic here, however, is not only the injustice of misrecognition, inherent in such imaging of minorities and/or ‘new’ citizens (including 2nd and 3rd generation ‘migrants’), but also how it may contribute to the processes of their mis-framing (e.g. through preventing their acquisition of franchise or – in case of persons with double citizenship or external citizens – their disfranchisement).

A discursive gap between the European discourse and the nativist discourses (grouped under the meta-discourse of *majoritarian rule*) of the (allegedly) far-right parties (Jobbik in Hungary or PVV in the Netherlands) and – occasionally – the well-established conservative parties seems hardly surprising, especially considering their general anti-European rhetoric. Strikingly, however, discourses used by political actors who declare themselves as (more) faithful to the common European creed do not necessarily attempt to move beyond those by and large ‘preambular’ declarations, either. Thus, even though the dominant European vision of common good – as open, tolerant and inclusive – is traceable in all non-nativist discourses present in the campaign communication of centrist and leftist political actors, i.e. in the discourse of *justice as book keeping*, discourse of *justice as care and responsibility* and – especially – discourse of *justice as freedom from oppression, discrimination, and neglect*, specific measures for the inclusion of minorities and their equal participation in the society (and politics) are discussed only sparingly.

Such omissions are particularly striking in the discourses that associate justice with taking care and responsibility for the Other (used, for example, by GroenLinks in the Netherlands, Left Unity in Hungary, NEOS in Austria). Despite their declarative appeal to European values and quasi-cosmopolitan vision of community, the discourses of *justice as care and responsibility* remain rather ambiguous about the manner of inclusion and ‘harmonious co-existence’ of the various others, and especially those who may not share the (liberal) normative creed on which the vision of common good is built. While ‘harmonious coexistence’ often implies mutual accommodation, it is vague to what extent it stretches beyond the ‘non-humiliation’ or ‘non-violation of dignity’ of the Other. When combined with claims for redistribution, the ‘harmonious co-existence’ does seem to presuppose the inclusion of the various others in a common system of reciprocity. At the same time, however, it is not clear to what extent, if at all, the various Others are treated as partners able to co-define and maybe even re-define the moral creed of the society, for example, through the instruments of ordinary political representation that would allow for their on par inclusion in democratic deliberation. In fact, the success of ‘colourful coexistence of cultures’, evoked by the discourses of *justice as care and responsibility*, is often framed as dependent on the good-will of the Other, especially the newcomers, and their willingness to fit in and ‘abide by our rules.’⁸ This vagueness and the implicit conditionality of belonging robs the solidaristic declarations of their credibility and reduces

them to a vision ‘under construction’ – a project that will only reveal itself in the process of realization.

The minority need for adequate representation and effective participation in the public and political sphere, justified by their vulnerability and proneness to discrimination, historically and structurally disadvantaged position, and/or the need for redress, repeatedly stressed in CoE and EP documents, is best reflected in the resistance discourses (grouped in our analysis under the heading of *justice as freedom from domination, oppression and neglect*) voiced by parties, advocacies and members of (protest) movements active on behalf of minority groups or issues (such as minority party DENK in the Netherlands, pro-Kurdish liberal-left HDP in Turkey, leftist parties united under the Left Union in Hungary AD2014, or Grenfell activists in the UK). For example, in Portugal, where consecutive generations of Afro-descendants are denied citizenship and treated as immigrants, that is, as ‘someone that is here in the passing, who is incapable of creating a proper representation,’⁹ particularly strong are demands for their formal inclusion in the political community via citizenship rights. In the Netherlands, European normative discourse on representation is traceable in the demands of non-discrimination in the exercise of civil liberties (voiced by DENK but also activists fighting against the public enactment of a national tradition they consider racist¹⁰); and in the UK – in the complaints against lack of *effective* representation in elective bodies (voiced by Grenfell activists¹¹). At the same time, resistance discourses most explicitly link the specific justice claims (recognition and representation in particular) to the normative framework of human rights, human dignity, enriching cooperation, societal dialogue, and multicultural opening, all of which are high on the European agenda.

The grievances underpinning the claims raised by the resistance discourses clearly resonate with both types of representative injustice identified by Fraser: ordinary political mis-representation (in Portugal) and mis-framing (the Netherlands, the UK). At the same time, the very presence of discourses of *justice as freedom from domination, oppression and neglect* in the national politics could be seen as weakening the appeal of Fraser’s ‘mis-framing’ as a form of representative injustice that is haunting present-day Europe (Fraser, 2007, 2009). Not only do they testify to the presence (albeit often marginal) of minority voices in political deliberation, but – through their vocality – they also put a question mark to a vision of minority representation as stemming from their needy and vulnerable position. Interesting as well is the fact that discourses of resistance clearly move beyond Frasers’ framework, attaching particular attention to role of civil society, emphasized, for example, in the work of Young (2000, 2007).

In the material analysed, particularly paradoxical appears the logic of the discourse of *justice as book keeping* (used predominantly by conservative and centre-right parties, such as VVD in the Netherlands, ÖVP in Austria), in which the invocations to the European creed and openly embracing of European ideals of mutual respect, solidarity, social justice, non-discrimination, and social inclusion are combined with strong ideas about the conditionality of belonging and near-complete neglect of structural diagnoses as to the causes of the minority (sense of) non-belonging and weak participation. As aptly put in the electoral programme of the Dutch Christian Democrats (CDA):

Integration requires reciprocity. Newcomers themselves have the responsibility to integrate into a society that also offers everyone the opportunity to participate (...) The government

sees Dutch citizenship as something to be proud of and what you must earn by doing everything possible to quickly integrate: learning the language, respecting our laws, embracing freedom and equality and looking for work.¹²

The disadvantaged position of minorities, if acknowledged, is here often (implicitly) attributed to individual choices and/or failures of minority members to properly integrate, and/or the more general fiasco of the abstracted 'integration policies.' Only sparingly, is it explicitly linked to the social environment that may not be 'meritocratic enough' (for example, in the UK). The assimilative character of many assertions and the emphasis put on the conditionality of belonging (and franchise) seem to indicate that discourse of *justice as book keeping* remains rather blinded to the injustice of mis-framing, which may take place when (long-term) residents are prevented from the acquisition of franchise on the grounds of their (alleged) non-belonging. This emphasis on conditionality and the assimilative undertone of this rhetoric locates the discourse *justice as book keeping* in the proximity of nativist discourses of *majoritarian rule*. To certain extent, this is counter-balanced by the value attached to diversity and the fact that ordinary political representation of (legally recognized) minorities is, within this meta-discourse, taken for granted (although barriers to the *effective* exercise of political rights remain silenced).

Conclusion

This article explored how the European discourse on justice, representative justice, in particular, compares to the national discourses with respect to the position of minorities (ethnic and religious) and vulnerable groups. In the course of analysis, we compared European normative framework, reconstructed on the basis of a selection of documents issued by the Council of Europe and the European Parliament, and the political discourses in six European countries, reconstructed, among other things, on the basis of electoral campaigns that took place between 2014 and 2017. Our analysis showed that the principles of representative justice (and the measures needed to realize them) set out at the supra-national European level lose their appeal, and implications, at the national level, at least when analysed through the lens of national political debates.

In fact, out of the four meta discourses identified on the national level, the discourse of *justice as care and responsibility*, with its quasi cosmopolitan vision of community shows most affinity with the European normative framework, but then fails to present a clear vision of how to avoid the evils of 'ordinary political misrepresentation' and/or the injustice of mis-framing, and remains rather vague about the inclusion of individuals (or groups) that do not necessarily adhere to liberal values. Also within the resistance discourses, grouped under *justice as freedom from oppression, discrimination and neglect*, the relative faithfulness to the European normative framework, in both their appeal to disregard group boundaries and their demands for measures that would secure 'ordinary political representation', seems flawed by a drift towards antagonizing the minority and majority claims to justice. While this might be necessary to achieve 'on par' participation for minority groups via, what Fraser calls, transformative remedies, it does not necessarily follow the 'peace-searching' and 'dialogical' logic of the European discourse. While the open rejection of the European calls for the accommodation of difference by nativist discourses (*justice as majoritarian rule*) is hardly surprising, interesting is the stance of centrist discourses (*justice as book keeping*), whose invocative support for the European vision of

'harmonious coexistence' does not find its expression in supporting measures that would effectively, and – most importantly – unconditionally, facilitate minorities' 'ordinary political representation' and/or responds to the (potential) harm of mis-framing.

Our results clearly show that the 'battle' over the meaning of (representative) justice in Europe is by no means over. The validity of European normative framework is being questioned and the public debate is permeated with conflicting visions of what is just, for whom and on what moral grounds. While such conflicts are not entirely new, the present-day questions over the meaning, shape and scope of representative justice are enhanced by the crisis of territoriality, the shifting boundaries of belonging and the on-going re-definition of the scope of political membership. For Europe, build (allegedly) on the values of tolerance, respect for diversity, human rights and fundamental freedoms, the successful resolution of those conflict is of paramount importance. The central question, therefore, it is not *if* minorities shall be admitted to share full-fledged membership in European community, or *under what conditions* this could happen, but rather *how* to achieve normative consensus on their (unconditional?) on par inclusion in the complex societies of politically shifting Europe.

Notes

1. The variations range from representative to direct democracy, electoral systems, political parties, referenda and forms of deliberative democracy at the national and the local levels (Bugra, 2018). In political science, a cross cutting distinction is along the lines of direct democracy (Rousseau, 1762/1997) and representative democracy (Burke, 1790/1987; Mill, 1861/1991), where the latter can take the form of, for example, single member district representation or proportional representation (Christiano, 2015; Beitz, 1989).
2. Horizon 2020-funded project *Towards a European Theory of Justice and Fairness* (ETHOS). See: <https://ethos-europe.eu/> for more information.
3. Admittedly, thinking of cultural preservation as a matter of recognition does not directly fit Fraserian concept of misrecognition as status subordination. On the other hand, however, it does relate to two types of recognitive denials identified by Fraser (1995): *nonrecognition*, understood as being rendered invisible as a result of dominant cultural forms, and *cultural domination*, that is being subjected to patterns of interpretation that are alien or even hostile to one's culture (p. 71).
4. Orbán's speech to supporters on May 10, 2014. Available at: <https://theorangefiles.hu/christian-democratic-peoples-party/>.
5. P7_TA(2014)0173 Fundamental rights in the European Union (2012) - European Parliament resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012) (2013/2078(INI)); P8_TA(2015)0286 Situation of fundamental rights in the EU (2013-2014) - European Parliament resolution of 8 September 2015 on the situation of fundamental rights in the European Union (2013-2014) (2014/2254(INI)); see also: Parliamentary Assembly of the Council of Europe (2015) *Resolution 2076 on Freedom of religion and living together in a democratic society*. Council of Europe: Strasbourg.
6. Jobbik (2014) A 60 lépés program (2014-es választási program). Available at: <https://www.jobbik.hu/programunk/60lepes>.
7. Gert Wilders (PVV) during the parliamentary debate 'Algemene Politieke Beschoouwingen' (21 September 2016). *Handelingen TK 2016-2017*, 2-6. Available at: <https://zoek.officielebekendmakingen.nl/handelingen/TK/2016-2017/2/h-tk-20162017-2-6?resultIndex=6&sorttype=1&sortorder=4>.
8. Sozialdemokratische Partei Österreichs (2017) Plan A für Austria. Das Programm für Wohlstand, Sicherheit & gute Laune. Available at: <http://diepresse.com/mediadb/Wahlprogr.pdf>.

9. Abilio Neto and Cristina Roldão statements during the debate in 'Pros and Cons' program with the theme 'Portugal, a racist country?' RTP, 17 July 2017. Available at: <https://www.rtp.pt/play/p3033/e298781/pros-e-contras>; group interview PT4.2.03 with youngsters from Cova da Moura.
10. The figure of Black Pete – a clownish character that features in the most popular national festivity of Saint Nicholas – is seen by its opponents as embodiment of racism inherent to Dutch society.
11. The debates following the fire that engulfed Grenfell Tower in June 2017, killing over 70 residents and leaving many others traumatized and homeless.
12. CDA - Standpunten: Immigratie & integratie [CDA – Key Program Points: Immigration and Integration]. Available at: <https://www.cda.nl/standpunten/immigratie-en-integratie/>.

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