

When asking, ‘if there is justice deficit in Europe?’ we should query the power of Member States

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Europe's Justice Deficit? throws up sets of questions to consider not only in legal studies but also across the board of social sciences, including my own sub-discipline of political studies. For over two and a half decades, since the demise of communism in the East of Europe, the proliferating social science literature has been concerned with issues that are relevant across very distinct societies, nations and nation-states, but which all share a deep unease about the hard-to-foresee impact of European integration on the people on the ground. Contributors to this volume offer a potent reminder to students of society and politics about the original incentive for the European integration project: a concern for justice for all Europeans.

Between the covers of the book we find some stimulating zooming-in on the issues of justice and justification in the European project. These do more than just invite students of politics to engage with the practical implications of European integration at the time when policy opt-outs and revision of states' commitments to the EU are high on the agenda. As a person with no legal training, and as a representative of the discipline often lambasted for its circumscribed understanding of the letter of the law, I could hardly cast doubt over the contributions to *Verfassungsblog*. Also, there seems preciously little to disagree with the book's contributors; it is uncontested that 'the EU affects lives of many people in ways they perceive as profoundly unjust.'

The main issue that most contributors to the volume and the thread of this debate address bears on the variegated impact economic developments across Europe have exercised on societies and polities, and importantly, on *perceptions* of legal norms. Indeed, it is perceptions that prove the most interesting for both students of law and politics. Is it merely a perception that some Europeans' hold or is it as [Eftheriadis](#) and [Bartl](#) have pointed out, Eurozone and Europe respectively lacking justice by design? Can the perceptions about the limits of justice in Europe expressed by legal scholars be translated into a viable research paradigm to study European politics and societies?

At the book presentation on June 4, both [Giuliano Amato](#) and [Christian Joerges](#) argued in favour of legal and political institutions greater involvement in managing the impact of economy on people across the continent. Joerges indicated that the Single market has been driving the political and social integration of European societies, and in the past it is from economic development that one would have expected a more just, redistributive Europe. Amato similarly pointed out that since the Euro crisis the perceptions about what is just, previously shared across the board of the continent have been drifting apart, eroding the sentiment of common

purpose, trust and ultimately empathy toward those on the benefitting end of policies redistributing the spoils.

These are pertinent questions for citizens, but even more so for the political elites. While these enjoy significant latitude in framing policies to publics, they are themselves constrained by two factors outside their immediate control: law and past precedent, as I frequently have to remind my students. Yet, who are those public leaders still prepared to debate the various sources of the justice deficit? If we ultimately view the volume and debate that followed from aside: what are the reasons to address the justice deficit; who are the agents of change in this regard, and are the subjects and objects of justice deficit the same set of institutions? As [Ruffert](#) and [Zucca](#) remind us, when the EU ceased to be seen as a community of spoils and became a community of joint liability, fewer and fewer volunteers have been keen on addressing the justice deficit.

What one perceives justice to be depends on one's view of the agents tasked with its implementation, and whilst it might be clear for legal scholars that laws are out there, social and political scientists often do find it hard to believe that legal benchmarks emerge in a norm-free space. The institutions that established and maintain justice in Europe anticipated a distinct vision of a just community of states, societies and individuals, but how this vision is being received and interpreted across the continent is far from clear. Twenty-five years after the demise of communism in the East of Europe, enhanced democratic cooperation and — in some states — considerable length of EU membership, the once receding concern for those 'closer to home' has yet again gained high currency since the Euro crisis.

As the winds of populism blow across Europe, from the Algarve to Lapland and from the Irish to the Aegean Sea, it might be tempting to dismiss the return to nativism as a temporary and transitory vehicle of popular protest. However, as UKIP, Golden Dawn, Jobbik, the Sweden Democrats, Podemos, Syriza, Vlams Belang and True Finns all secure seats in local, regional, national and supranational assemblies, the questions mount about differential impact of the Euro crisis on comparative attractiveness of these political forces to national electorate over the idea of a unified and indeed just Europe. With populist parties advocating extremely diverse political agendas, they all reach out to their voters hushing them away from the political forces who have dominated the political scene during the years of plenty before the Euro crisis.

Perhaps unsurprisingly, the 'lean years' that followed saw a growing number of populist themes dominating public concerns and increasingly questioning the very nature of the European integration project. Many of these have siphoned out the debate on common European matters that laid the foundations for reproach from EU citizens, such as recognition of diversity and redistribution of social and economic resources. Even in countries where, in the past, European issues enjoyed much support, ethnocentric debates have made it onto the stage and into the political arena. In others, where centrist political forces have dominated agenda setting on all things 'Europe', these have re-capitalised on voters' resentment with forces lying outside their nation-state and promoted the idea of welfare capitalism for their own country only.

The shift away from the perception of the EU as the ultimate guarantor of justice is particularly obvious in the region I am most familiar with, the Central Eastern European EU Member States. Here, the integration of national economies into European market delivered individual autonomy to many postcommunist citizens whose memory of communist bloc integration made them resent the stiff control over individual lives associated with supranational governance. With most postcommunist EU member-states offering just very loose social support and welfare, their publics have foregone commitment to social solidarity and societal integration in favour of a highly individualised culture of aspiration and achievement. Where before the 2004 enlargement the 'normative power of Europe' contributed to institutional change and liberalisation of state-society relations, the rise of communitarian and reconciliatory sentiments in the region has found an abrupt end with the onset of the Euro crisis. More recently, postcommunist EU citizens vent their discontent with the direction of social, political and economic change, but mostly about their unmet expectation of prosperity and welfare in the EU ten years after joining the Union.

Such an interpretative lens lends itself handily to critics of the EU, market liberalisation and societal democratisation even in states a decade ago still concerned prominently with their dutiful place in the European family of nations. Indeed, it is the 'nation' that has become the main focus of both left and right political forces across the region, finding its most illustrious expression in Orban's 'illiberal democracy'. The concern for the welfare of one's national community wedged the door open for the previously marginal idea of 'saving the nation' through 'EU integration of nation-states' as in Estonia, Latvia, and Slovakia. These developments affect not only these new and still consolidating, even if no longer peripheral polities; they solicit a peculiar kind of solidarity in the 'old' Member States about the pitfalls of European integration.

Across the board of new Member States the new sentiment is on the rise about diminishing opportunities for individual advancement in their countries, and in the united Europe as a whole. Feeding from the common perception of publics about the inability of the established political elites to amortise the impact of economic crisis on national societies, publics in the EU member-states which just years earlier benefitted immensely from freedom of movement in the EU see migrant citizens of other Member States, not to mention those non-EU migrants as well as refugees, with great caution. There is a clear rift across the continent between the left and right leaning populists emerging in different parts of the EU; these new political forces increasingly converge on the view of institutional responsibility for success, yet individual achievement and success.

Thus, while I wholeheartedly applaud this volume's and this thread's contributors to shift the debate on the justice deficit, I am just not compelled to believe that enough has been said about the too overpowering role of the Member States in the European integration project. Indeed, the gamut of international organisations does provide for some blueprint to steer domestic policy preference away from self-serving ends. Yet, much power to shore up each and every Member States' citizens from austerity and competition lay outside of national governments' control. And over these 'lean years' we have seen the rapidly changing perceptions about

welfare-state and increasing contestation of European redistributive arrangements for access to welfare and labour market, education and healthcare, housing and political representation. These changes in public opinions have given rise to new sets of political issues debated around the continent by the European publics. Have they challenged the established narrative of Europe as a place for sharing liabilities as well as spoils, as a good pupil of redistributive justice? I am not certain. Yet, the growing insecurities of European publics about access to and guarantees of opportunities previously provided only to citizens of their state are high on political agendas in all Member States.

This brings me squarely to consider the limitations of commitment to a joint political project pledged during the 'years of plenty' by the European political leaders. This commitment has been increasingly hard to sustain when the 'lean years' have unlocked the potential for the return to nativism across the continent. The sets of roles political elites have assumed when interacting with variant audiences – the EU, other Member States and domestic publics – in the process of consolidating their electorates and extending their bargaining power vis-à-vis other Member States has changed dramatically as economic wells ran dry.

In these interactions, political elites in all Member States have negotiated normative conflicts in performing different roles: Domestically, they have assumed the role of sovereign decision- and policy-makers in order to attain recognition from their citizens; they claim to exercise control over levels of service available to their citizenries in order to maintain perceptions of a 'service station' as during the 'years of plenty'; finally, these political elites also sought recognition from international partners by patching up their own image vis-à-vis their European partners. Yet more often than not, they have subverted the efforts to secure and justify their relationship in terms of anything but entitlement, particularly in relation to their citizens' access to public goods and services. Although limitations for EU citizens to move from one country to another are not part of a serious debate (yet?), some Member States have imposed conditions on entry for non-EU migrants. People of non-EU origin such as myself, are required to demonstrate 'good' reasons for movement, having desirable skills etc, in short, allowing state to judge migrants' potential to contribute, and as such, earn rights.

This rhetoric of contribution increasingly defines how the leaders of 'old' EU Member States' frame their relationship with citizens from other, usually 'new' EU states in terms of entitlement to rights on egalitarian accounts enshrined in EU legal provisions. And here lays the potential for the EU to attain greater leverage over issues of justice and justification: While publics in some Member States are primed to recognise individuals' contribution to common welfare regardless of her citizenship status, in others access to public welfare is open only to those who discretely contribute to economy. In itself, the relations between states with such different approaches to ensuring distributive justice ought to be regulated by neglecting the economic and political cost to states and ideally at the level of the EU. In such a situation every EU Member State would be clearly recognisable as an agent of justice for its own citizens *as well* as of citizens of other, not necessarily only of EU member-states, in the role of sovereign authority ensuring equality of all its residents.

Thus, as a student of politics and polities, I can only hope that several lessons from *Europe's Justice Deficit?* between the legal scholars will be imported into my own discipline: First and foremost, we ought to take seriously the link between perceptions of justice deficit and the impact of political economy on European publics. This of necessity opens up the Pandora box of issues that political studies have dodged in favour of engaging in self-congratulatory assessment of the (overall, positive) impact integration on economy across Member States. It is worth reminding ourselves that only spurious interest in the European social model has been around while the interest in the ever deeper integration of economies did not match up with equal social integration of publics across the continent into European society. Particularly, the long-term impact of integration into common market of the 'new' Member States politics and societies have been barely touched upon while their citizens voted with their feet, leaving in droves to reach more open and competitive markets for labour, education, and cultural production in the Western, 'old' Member States.

The second cue that students of politics should take from the *Europe's Justice Deficit?* is that about the challenging underpinnings to the normative order across the Europe. The emerging range of new populist political forces of all spectrums is gradually transforming the pool of candidates for governmental posts, tilting political debate to focus on concerns of growingly nativist electorate. As in this country, issues of the EU membership, freedom of movement and access to welfare are cast in a distinctly economic light and become part and parcel of alternative political visions. Politicking on issues of short-term relevance are effective when they focus cost-benefit calculus as the debate about the immediate policy steps, yet these can – and do – resonate mostly when electorates are hard pressed to make ends meet, go through the long spreadsheet of positives and negatives, or both. Regrettably, for political pundits of sorts, Amato's plea for greater mutual responsibility is an anathema. Where membership in the Eurozone, freedom of movement and deeper integration are projects securing common welfare are but a ball in political ping-pong, solidarity between parts and countries of Europe will remain challenged by self-promoting political communicators.

Finally, the discussion in the book and on this blog should pull political scientists into a more active engagement with what many of us, political scientists, perceive to be dry and forbidding issues of law and matters of justice. By now, the whole generation of political scientists has been engaged in discussions about the immediate impact of Europe on economies, states and their peoples. Oftentimes in the past these changes have been an attractive rallying point for social movements that took alterations in the welfare regime close to heart. Today, many of these changes sip through from the everyday into the political arena via political contenders and their leaders who are not heeding the pledge for justice. As both anti-statist and welfare-nativist ideas spread across societies and form the backdrop for political campaigning, the acutely felt economic pressures of electorates provide a ready-made mix for considerable roll-back in redistributive role Europe at large and the EU specifically can play in the 'lean years'. So, if we are to take seriously the question about justice deficit in Europe we ought to expand the scope of justice to incorporate all residents of the EU into explanations about why Euro crisis caused reluctance to

demonstrate solidarity with those who are a bit unlike us. Ultimately, it is the lack of solidarity among citizens of nation-states that is at the heart of blame shifting from 'us' to 'them', be it for the failure of Europe to be as one wants it to be, or for failure of others to hamper our expectations.

In this overcast corner of Europe from where I write, people have more often than not felt remote from political decision making, opting in for labour market opportunities closer to home and relying heavily on their closely knit network of friends and family for education, welfare provisions and opportunities for social advancement. As can be increasingly seen in other parts of Europe today, publics rarely take concerns over matters of justice seriously unless they do perceive law, state, political elites and above all the EU promote their individual wellbeing. The book's contributors as well as authors in this blog note duly that presently the European integration project is challenged by these radically changing perceptions of citizens about the type of polity they want to be governed by and the sort of society they feel confident enough to identify with.

