3.   From political philosophy to messy empirical reality

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3.1   INTRODUCTION: THE NEED TO CONNECT NORMATIVE AND EMPIRICAL

The mainstream of analytic political philosophy, which was our focus in Chapter 2, has primarily focused on 'ideal theory' that develops a conception of a more or less perfectly just society. This kind of theory has little need for empirical information. Philosophers have developed interesting and plausible ideal theories about how to distribute limited resources, or recognize each other as equals, or ensure that political power is fairly shared, in a just society.

But we don't live in the just society, nor can we realistically hope to reach utopia from here. So, what does ideal theory tell us to do here and now? Suppose, for example, that in the just society we would all give a certain proportion of our income to charity to help the least fortunate. In the real world, not everyone does their fair share of charitable giving. In consequence, some people starve, or die from curable diseases. One might reflect: If I were to give my fair share, people would continue to die because others would still fail to give theirs. So, am I obliged to give much *more* than my fair share, to mitigate these harms? More generally, people do not and will never comply with all their duties of justice. Knowing this, how should we arrange institutions in a just way? Given the manifold injustices in our society, how should we try to reduce the injustices and work towards a more just society? And what about the empirical complexities of the real world often overlooked by ideal theory: that it contains groups who have suffered a history of discrimination; or that it contains a wide variety of human beings with different abilities, attachments and responsibilities; or that it contains an intricate set of existing social and political institutions with specific roles and particular flaws, for example. What should be done here and now? Ideal theory is not designed to answer these questions, at least not directly.

As we argue in this chapter, those interested in justice in Europe should take an interest in 'non-ideal theory': roughly speaking, a kind of down-to-earth theorizing about justice that takes into account relevant empirical information. Empirical information, of course, includes information about a society's values, beliefs, preferences and experiences of justice and injustice. But justice is not simply what most people believe it is, or would prefer. Looking back on history, from Ancient Athens even until the 20th century, we now see that most people held seriously mistaken beliefs about justice: it was at times widely accepted as just that women should be denied the vote and excluded from the workplace, that slaves were bought and sold, or that the poor and so-called 'idle' would starve or were forced into the workhouse. Today's widely accepted beliefs about justice may come to be seen as equally mistaken. So, we cannot find out what justice is – how the world ought to be – simply by surveying people's beliefs, preferences or the like. This is an instance of 'Hume's Law' (see Chapter 2). Normative theory cannot be built wholly from empirical bricks. We need to take care to integrate empirical information into normative theorizing in the right way.

We proceed as follows. In Section 3.2 we examine the potential differences between ideal and non-ideal theory. We also defend the approach we recommend for thinking about justice in Europe, for which we borrow Jonathan Wolff's (2015b) term 'real-world political philosophy'. In Section 3.3, we give an illustration of this approach to justice; showing how different diagnoses of the nature of disability (that is, attention to the nature of the problem) can inform different policy responses to injustices. Section 3.4 explores the ways public opinion and preference, and the opinions and experiences of vulnerable groups, matter for theorizing about justice. Section 3.5 discusses the crucial concepts of vulnerability and vulnerable groups. Section 3.6 briefly discusses the relevance of existing European legal frameworks and institutions for theorizing justice in Europe.[1]

3.2   IDEAL THEORY AND REAL-WORLD POLITICAL PHILOSOPHY

The term non-ideal theory is used in contemporary political philosophy in several distinct though overlapping ways, almost always in opposition to ideal theory. Following Laura Valentini (2012), we identify three different understandings of the distinction: (1) the degree to which a theory assumes 'full compliance'; (2) the degree to which a theory is 'realistic' or 'utopian'; and (3) whether a theory is 'transitional' or 'end-state'.

The first way of understanding the distinction between ideal and non-ideal theories is as a distinction between theories that assume that (virtually) all agents do everything justice demands (full compliance) and those that assume

only partial compliance (Valentini 2012). The obvious attraction of idealization in this sense is that it makes analysis more tractable. Focusing on what justice would demand if everyone was willing to comply with the requirements of justice promises to show us justice in its 'pure' form (Ismael 2016). The risk is that it takes us too far from where we stand for the theory to provide useful guidance. For example, in a full compliance condition, we would only need to do our fair share to prevent injustices. But what should we do when compliance is only partial? For example, what are our duties with respect to global warming when others do nothing? Should we then do more than, less than, or just what would be our fair share in a full compliance condition? The answer seems to hinge on contingencies of the particular problem (Miller 2011; Valentini 2012).

Second, we can understand the distinction between ideal and non-ideal theories as one between utopian and realist theories (Valentini 2012). The most prominent example of a utopian theory is that of G.A. Cohen (2008). Utopian theories treat justice as a timeless set of principles that are not hostage to empirical facts such as the complexities of human nature, real-world political disagreements and so forth. This means they do not so much tell us what we should *do* in the world we live in, as how to *think* about what kind of world would be ideal.

Rawls describes his own theory as ideal insofar as it assumes full compliance, and assumes that natural and historical circumstances are favourable, including the stipulation that society is developed enough economically and socially for justice to be achievable (Rawls 1999b; see also Chapter 2). But Rawls's theory is designed in a realist way insofar as it assumes common sense facts about moderate scarcity, limited altruism, and the conflicts that arise between individuals with differing conceptions of the good life, that is, differing goals and values. At the heart of Rawls's theory is the idea that justice is a matter of seeking fair terms of cooperation among 'reasonable' people: people who hold more or less coherent conceptions of the good life (usually relating to a religious, philosophical or moral tradition), are willing to accept and act on fair terms of cooperation on condition that others do likewise, and accept that because people reasonably disagree, no one should impose through state coercion the view of the good life that they happen to think is true. Rawls's principles are thus designed for 'beings like us, in circumstances similar enough to those in which we live' (Valentini 2012, p. 658).

Cohen (2008) critiqued Rawls's theory for being too fact-dependent, and hence not utopian enough. Other critics have targeted Rawls from the opposite side: arguing that his theory of justice is not realist enough, because it fails to take seriously what they regard as relevant facts about real-world politics. For example, some critics claim that there is reasonable disagreement not just about conceptions of the good life, but about what justice is, and that this needs

to be taken seriously (Waldron 1999). Others have claimed that justice theorizing should take into account existing power structures, accepted practices and beliefs, and facts about the shortcomings of human nature (Williams 2005; Geuss 2008; Galston 2010). This shows it is a matter of degree how utopian or fact-sensitive a theory is.

Finally, the distinction between ideal and non-ideal theories can be understood as the difference between end-state and transitional theories (Valentini 2012). Rawls's (1971 [1999a]) theory is an end-state theory in this sense, since it sets out to describe a 'fair' and 'well-ordered' society, in which not only is the basic structure just, but citizens accept the principles of justice and the justice of basic structure, and recognize that their fellow citizens accept it too. The problem with end-state theories is that they don't directly tell us much about what we ought to do in the here-and-now, in societies which are far from the ideal. Other theorists have argued for transitional theories that lay more emphasis on how we can identify and correct glaring injustices here and now. Some theorists claim that for this purpose, we do not need to know what an ideal society would look like (Young 1990; Mills 2005; Wolff 2015a).

A good example of a transitional theory is the comparative method adopted by Amartya Sen (2006). Sen thinks that we can approach justice by a process of pairwise comparisons, on the one hand of the current state-of-affairs in a given circumstance, and on the other of the expected state-of-affairs after a reform or policy change, and that we need no conception of an ideal end-state to do this successfully. Simmons (2010) criticizes Sen's view on the grounds that focusing on nearby improvements in justice might lead us further away from the ideal state of affairs (by analogy, heading uphill in the middle of a mountain range might lead us away from the highest peak). Fraser (1995) would criticize such approaches for failing to distinguish between 'affirmative' remedies, which focus on remedying identified unjust end-states, leaving the social processes that generate them untouched and potentially entrenching other kinds of injustice, and 'transformative' remedies that change social processes and solve the problems at their roots. But Fraser can in turn be accused of belittling the potential of incremental improvements in justice (see Chapter 12).

Sen's approach is most powerful and convincing when it is used modestly, that is, when the real-world state-of-affairs in question is grossly or manifestly unjust in a way that the reform or policy change is expected to alleviate. Consider Sen's idea of the example of gender violence: it just seems obvious, even in the absence of an ideal theory of justice, that decreasing the instances of gender violence would reduce the level of injustice in the world, other things being equal. An advantage of this modest version of Sen's comparative approach is that it mitigates the problems of irresolvable but reasonable disagreement and of value pluralism: the idea that there are multiple values that are incommensurable in the sense that they cannot be jointly realized

(Berlin 1969). Even if there is reasonable disagreement and, possibly, value pluralism about perfect justice, this does not mean we need to be committed to such reasonable disagreement about gross injustice. Perhaps reasonable views can and do converge when confronted with such injustices. It may not matter what grounds the injustice in question (presumably this would be the object of widespread disagreement) if one wants to articulate practical proposals for alleviating injustices.

Consider, for example, the idea that it is unjust for a state to make no accommodations whatsoever to enable disabled persons to exercise their right to vote. That this is unjust may be grounded on a plurality of different reasons: it may be considered unjust qua a violation of disabled persons' human rights, qua in conflict with procedural democratic justice, qua unfairly discriminating between disabled and able-bodied people and so on. Some of these reasons may be congruent or intertwined, while other reasons may be incommensurable. Still, this view holds: regardless of the disagreement over *why* it is unjust, we can agree that it *is* unjust for states to make no accommodations whatsoever to enable disabled persons to vote. A state that reforms the organization of elections and electoral policy would then, in this precise sense, become less unjust. In other words, more generally stated, we don't need to settle the precise nature of why certain injustices are unjust to be able to identify them as plausibly unjust.

This approach to prioritizing gross or manifest injustice, however, may seem to undermine interest in theorizing justice altogether. A critic may wonder why, if injustice is manifest, much is needed by way of empirical or indeed normative research. This position is wrongheaded. The fact that certain injustices are manifest *when they are in view* need not entail their obviousness in the absence of analysis. Many manifest injustices may be hidden from sight, either because of a lack of attention to a particular issue or because there are reasons for them to be hidden, both in the passive and the active sense. Returning to the topic of gender injustice, Sen (1990) shows that there are 100 million fewer women alive than ought to be expected by biology, a difference that cannot be (fully) explained by selective abortions. This leads to the conclusion that millions of girls and women are dying earlier than they should, relative to boys and men, due to neglect. The idea that this situation is a manifest injustice does not discount the fact that it took painstaking and difficult work to recognize its existence.

This last point can be generalized: it will often take painstaking empirical work to determine 'the facts', some of which, when in view, will appear manifestly unjust. Furthermore, it will be useful to understand the root causes of the manifest injustices we identify, so that we can address the fundamental problems rather than merely mitigate the symptoms. But even this does not conclude our normative inquiry. This is because solving a problem is not

always as simple as removing or reversing its cause. One does not help a stabbing victim by simply removing the knife; that may make things even worse.

If we wish to understand justice in Europe, we think it necessary to adopt a bottom-up approach to justice that begins from the practical problems and the manifest injustices that we face. This requires collaboration between empirical research and normative thinking, because bottom-up theorizing requires plenty of empirical information to be able to get off the ground (Wolff 2011, chapter 9, 2015b). We adopt Wolff's phrase 'real-world political philosophy' to describe our favoured approach. Real-world political philosophy is non-ideal theory in all three of the senses defined by Valentini (2012). It makes no idealistic assumption of full compliance, it begins from the empirical complexity of real-world problems, and it seeks improvement from where we are now, rather than a utopian ideal.

It is important to note that real-world political philosophy must be partial, as it does not aim to provide a complete account of a just society. Instead it might selectively focus on particular real-world issues such as drug regulation, gambling or public safety (Wolff 2011), or analyse specific forms of injustice and the social mechanisms that bring them about (Young 2011), or focus on particular vulnerable groups, as the ETHOS project generally has (see in particular Chapters 8 to 11). That said, in proposing a bottom-up, partial approach to justice, we do not thereby advocate 'isolationism' in Simon Caney's sense (2012, pp. 258–9). By 'isolationist', Caney means a treatment of the justice of one issue (for example, of climate change or gender) as if it were independent of all other issues of justice, and of general principles of justice. In the approach we advocate, as Wolff writes, 'the first task is to try to understand enough about the policy area to be able to comprehend why it generates moral difficulties, and then to connect those difficulties or dilemmas with patterns of philosophical reasoning and reflection' (Wolff 2011, p. 9). This approach need not be isolationist, since one can go on to connect bottom-up philosophical reflection on one real-world problem with broader normative considerations, including those of a more comprehensive or ideal political theory. In the end, while we believe that this integrative philosophical work is valuable, it does not follow that everything must be provided by the bottom-up, partial theory itself. Moreover, by a 'partial' or 'selective' bottom-up approach we do not mean that problems of injustice should be treated as though they are causally independent of one another, or that we should ignore intersectionality. Injustices, such as those related to climate change, migration and inequality are frequently related, and a sound bottom-up approach to justice would seek some understanding of their relations.

Because of its attention to specific, identifiable injustices, not only is real-world political philosophy partial (in the sense that it cannot hope to provide a complete normative theory of injustice, analogous to an ideal account

of the just society), but it is also rather difficult to characterize in general terms. Perhaps there is no better way to characterize this kind of theorizing than by example. Therefore, though considerations of length mean we cannot resolve or do justice to the complexity of the issues, we now turn to an example of how real-world political philosophy might approach one kind of problem of justice. We will show how concerns of recognition and redistribution arise in connection with a group of potentially vulnerable persons: people living with disabilities. Then we will indicate how different empirical models of the ways in which disabled people come to be disadvantaged suggest different kinds of policy remedies.

3.3   AN ILLUSTRATION: DISABILITY

People living with disabilities are frequently victims of exclusion and stigmatization, and are often disadvantaged in terms of income, wealth and opportunities (Putnam et al. 2019). This twofold concern evokes Nancy Fraser's (1995) two-dimensional framework of justice in terms of claims to recognition and redistribution (compare Fraser's later three-dimensional framework, discussed in Chapters 1, 4 and 12 of this volume). Indeed, as Gideon Calder points out, 'in particular, internally diverse ways, people with disabilities have been on the end of a kind of pincer movement between Fraser's two impediments to parity; maldistribution and misrecognition' (2010, p. 62, quoted in Putnam et al. 2019).

Justice for the disabled can be conceived of as a requirement that people with physical or mental impairments should not suffer disadvantages due to their atypical physical or mental characteristics. This needs an approach that we described above: one that first aims to diagnose injustice by understanding the ways in which people with physical or mental impairments come to be disadvantaged, and only then suggests a remedy. To diagnose injustice in this context, we start by examining the different explanatory models of disability.

Mainstream models of disability are of four different types: (1) the medical model; (2) the radical social model; (3) the minority group model; and (4) the human variation model. These models provide different explanations of the nature of disability and of why it is a problem (Wasserman et al. 2016):

1.   The medical model of disability sees disability as an individual pathological condition that results in certain kinds of personal and social limitations. On this view, the limitations and disadvantages that physically or mentally impaired persons face stem from their individual impairments.
2.   The radical social model of disability has been embraced by social movements since the 1960s in opposition to the medical model. According to the social model, disabilities are the results of discrimination and exclu-

sion from mainstream society. The activists of the Union of the Physically Impaired Against Segregation (UPIAS), the leading advocates of the social model in the UK, denied any causal role to physical impairments in creating disabilities: 'In our view, it is society which disables physically impaired people. Disability is something imposed on top of our impairments, by the way we are unnecessarily isolated and excluded from full participation in society' (UPIAS 1976, p. 3, quoted in Shakespeare 2006, p. 29).

3. The minority group model of disability, popular among contemporary disability scholars, is a version of the social model that emphasizes the similarity between disabled people and groups such as racial or ethnic minorities, who are subject to discrimination. On this model, the harm of disability arises primarily from exclusion. It advocates placing physical or mental impairments among the suspect categories in discrimination law (see Hahn 1996).

4. Another contemporary version of the social model, the human variation model, emphasizes the interaction between individual characteristics (impairments) and the social/material environment (for example, public buildings). It sees disadvantage as stemming from a *mismatch* between the two, which arises because the social/material environment cannot suit every individual human variation (Putnam et al. 2019).

The four different models of disability may suggest different remedies (Putnam et al. 2019). Wolff (2002) suggests four kinds of possible remedy. We first outline these, then briefly assess their congruence with the different models of disability outlined above:

(a) Personal enhancement: acting directly on the body or mind (for example, medical treatment).

(b) Targeted resource enhancement: the provision of (money for) resources for specific purposes (for example, a wheelchair to improve mobility, or eyeglasses to improve vision, or assistance services).

(c) Status enhancement: changing the way the public see the disabled, and enhancing the social/material environment to improve their functional ability (for example, adding ramps to public buildings for wheelchair users).

(d) Cash compensation: offering money, not for targeted resource enhancement, but to counterbalance supposed suffering such that the person no longer minds or regrets their disability.

As Wolff points out, cash compensation is a problematic remedy: 'I do not know of an argument from within the disability movement that the special miseries of the disabled need cash compensation, and no doubt this would be

considered deeply insulting' (Wolff 2002, p. 211). Therefore, we can focus only on the first three, comparing these remedies with the four models of disability previously outlined.

The medical model sees the problem in personal physical or mental impairment and suggests the cure of personal enhancement. The medical model can also recommend targeted resource enhancement and status enhancement, but only as second-best solutions. The radical social model sees the problem in disabling environments and suggests their reconstruction. This model disfavours personal enhancement as a solution and suggests status enhancement. The minority group model holds that the problem is the exclusion and discrimination of mainstream society, which suggests as a remedy status enhancement for the disabled. The human variation model locates the problem in the mismatch between human variations and environment, and suggests the remedies of either targeted resource allocation or status enhancement, with an emphasis on reconstructing the environment to accommodate the atypical personal characteristics.

In this way, different understandings of the problem of disability, and the mechanisms by which injustice is brought about, can help us shape the kind of policy recommendation to be offered as a remedy. Our method of theorizing justice in the context of disability will be real-world political philosophy insofar as we begin from an empirically informed understanding of the problem, use this to reason about the kind of moral difficulties it raises, and then reason towards principles of justice and policy recommendations that may ameliorate it. We are not engaged in top-down application of a preconceived theory of justice, but in bottom-up reasoning from the specific challenges that confront members of society. (For more on issues of disability and justice, see Chapter 10; also Anderson 2018.)

3.4   THE RELEVANCE OF PUBLIC OPINION AND THE OPINIONS AND EXPERIENCES OF MARGINALIZED GROUPS TO THEORIZING ABOUT JUSTICE

As mentioned in the introduction, empirical information about a society includes information about people's values, beliefs, preferences and experiences of justice and injustice. But justice is not plausibly understood as whatever (most) people believe it is. The question of how real-world political philosophy should be sensitive to psychological states is thus a delicate one.

There are several reasons for taking into account public opinion about justice when we are theorizing about it, as described by Adam Swift (1999). First, public opinion can play a useful cautionary role for the theorist. Knowing that others think differently about justice may give one cause for doubt, and reason

to reconsider one's theory. Philosophical reasoning can lead us to principles of justice that radically diverge from received opinion, and that many would find counterintuitive. While this is not in itself an objection to the principles, it should lead us to take particular care to check our arguments.

Second, at least in democracies, public opinion can set limits on what is politically feasible. Insofar as we are theorizing about justice and offering arguments to try to change the world, and not purely for academic interest, we had better take public opinion into consideration. At the same time, however, we should be wary of taking public opinion as a given and as a hard feasibility constraint on justice. Public opinion can change, and the views propounded by theorists can play a role in changing it. If we hew too closely to the limits of what we view as feasible in the short term, we may miss out on long-term progress.

A slightly different but closely related role of public opinion has to do with the stability of political and economic institutions. Rawls's project in *Political Liberalism* (1993), for instance, was to investigate how a just and stable democratic society is possible. His concern with the stability of the basic structure of society was an important reason for giving a justificatory role to public opinion. Rawls's basic idea was that there exists a reasonable pluralism of conflicting religious, moral and philosophical traditions, so the principles of justice for a society should be justified not by reference to any particular tradition, but rather by reference to shared principles and values that are implicit in democratic practices and institutions as such. Rawls sought an 'overlapping consensus' in which citizens affirm the same basic conception of justice, though for different reasons, stemming from their differing conceptions of the good and their desire to pursue these. Rawls contrasts this idea of an overlapping consensus with that of a mere *modus vivendi* in which there would only be a balance of power between competing groups. In case of an overlapping consensus a society is stable for the right kind of reason, because all reasonable citizens can wholeheartedly affirm the shared conception of justice (for different reasons), whereas in a *modus vivendi* a society may be momentarily stable, but not robustly so.

Third, one might think that public opinion plays a constitutive role in determining the true principles of justice. The boldest version of this view is the one encountered in the introduction: that justice is just what people believe it is. This view is implausible because public opinion can be abhorrent or incoherent. Weaker versions of it have been defended by interpretivist theorists such as Michael Walzer (1983) and David Miller (1999, 2016). Walzer's egalitarian theory of distributive justice starts from an analysis of the social meanings that arise from our conception and creation of different kinds of goods. Walzer considers himself guided by a 'decent respect for the opinions of mankind' (1983, p. 320). At any rate, Walzer is certainly guided by his interpretation

of the meaning of actual institutions and practices, and the ways that they treat different criteria and arrangements as appropriate for the distribution of different kinds of goods. For example, our institutions suggest that money and political office should not be distributed according to the same logic: political office is not to be bought and sold. Similarly, Miller claims that a theory of justice is to be developed by 'bringing out the deep structure of [the public's] set of everyday beliefs' (1999, p. 51), so that philosophical theorizing about justice should be constrained by the public's commitments. A main challenge that has dogged theorists like Miller is to explain why theorists are entitled to use a critical standpoint to, as it were, correct the deficiencies of existing public opinion and of the practices of their fellow citizens, while yet maintaining that normative theorizing should be fundamentally constrained in any way by what people happen in fact to think or to treat as appropriate (Baderin 2018).

A modified version of the constitutivist view is not similarly theoretically problematic. On this view, public opinion does not determine the true principles of justice at a fundamental level, but rather the true principles of justice, which have independent grounding, give weight to public opinion on certain issues. For example, it might be that society's conventional desert claims are mistaken, but when people have acted in good faith on these, they still seem relevant to what these people should get as a matter of justice (Swift 1999).

There are many more contexts in which the true principles of justice plausibly give weight to the public's experiences and preferences, not just their opinions about justice. For example, suppose that a town can apply for a limited grant to build either a handball arena or a football stadium, and that a large majority would prefer the handball arena. All other things being equal, it is plausible that justice requires following the majority preference and building the arena. More generally, justice must take into account what people experience as beneficial or detrimental to their well-being.

In addition to considering the opinions, preferences and experiences of the public as a whole in theorizing about justice, we have particular reason to take into consideration the experiences and opinions about justice of marginalized and vulnerable groups, such as women, ethnic minorities and refugees. Members of marginalized and vulnerable groups often have unique insight into the circumstances of injustice they experience (Young 1990). Their relevant social knowledge may be largely tacit, which means it is not a matter of knowing propositions that can be straightforwardly expressed and transmitted by testimony. Indeed, their knowledge of injustices they face may be tacit because of hermeneutic injustice they have suffered, where the dominant social group denies them the conceptual resources needed to fully interpret and express their experiences of injustice (Fricker 2007; Lepianka 2019; Rippon and Zala 2019). Consequently, members of marginalized and vulnerable groups have special claims to be heard and to be included as participants in

theorizing about justice; both *epistemic*, in virtue of their superior epistemic standpoints, and *moral*, in virtue of their claims to recognition as victims of injustice (Wasserman et al. 2016). For a presentation of some of the ETHOS project research that attempts to give voice to marginalized and vulnerable groups, see Chapters 8 to 11 of this volume.

3.5   VULNERABILITY

As we have seen, it is important to listen to the opinions of the members of marginalized and vulnerable groups. Members of vulnerable groups are more likely to suffer injustice, giving them a claim to recognition, and they are in a privileged epistemic position to identify the injustices they may face and the mechanisms that reinforce these. But what is vulnerability, anyway? We can understand vulnerability in either an absolute or a relative way.

Absolute vulnerability is thought of as an inherent, ontological property of human life. On this view, our human nature as embodied creatures who are mortal, needy and dependent on others makes us essentially fragile and susceptible to suffering, wounding and injury (Mackenzie et al. 2014). This absolute view of vulnerability is closely connected to the focus on interrelatedness and dependency of human beings found in the 'ethics of care' tradition.

In contrast, relative vulnerability is the 'susceptibility of particular persons or groups to specific kinds of harm or threat by others … vulnerable persons are those with reduced capacity, power, or control to protect their interests relative to other agents' (Mackenzie et al. 2014, p. 6). While some vulnerability may be intrinsic to the human condition, relative vulnerability often has a context-dependent, situational character. Situational vulnerability is socially constructed, that is, it 'may be caused or exacerbated by the personal, social, political, economic, or environmental situations of individuals or social groups' (Mackenzie et al. 2014, p. 7). To take an example, in a natural disaster, situational vulnerabilities may arise from the way in which social factors mediate and amplify its effects in certain populations (Mackenzie et al. 2014; see also Young 2011, chapter 2). A subset of situational vulnerabilities can be identified as pathogenic. This subset includes 'morally dysfunctional or abusive interpersonal and social relationships and socio-political oppression or injustice' as well as special cases when the attempt to alleviate someone's vulnerability leads to 'the paradoxical effect of exacerbating existing vulnerabilities or generating new ones' (Mackenzie et al. 2014, p. 9). Another morally important point is that while broad groups are subject to vulnerabilities, whether these vulnerabilities are manifest (that is, whether harms occur because of them) depends on a range of different factors, such as socio-economic status and education, access to health care and so on. For example, all pregnant women are vulnerable to complications in childbirth, but

these complications do not occur with equal frequency or harmfulness to all women. Within vulnerable groups, some are more vulnerable than others, and vulnerability is frequently exacerbated by intersectionality (Anderson et al. 2018; see also Chapter 13 of this volume).

Implicit in the relative notion of vulnerability, then, is the role of social causation in creating vulnerabilities. This is especially important in the context of theorizing about justice because unjust social structures often create vulnerabilities. For example, in Section 3.3 we encountered the radical social model of disability: that it is society that turns impairments into disabilities. A related claim is that society unnecessarily institutionalizes the disabled, although they could be just as creative as others if adequate social accommodations were provided (Shakespeare 2006; see also Chapter 10). Similarly, Judith Butler makes the distinction between 'precariousness', that is, a 'general feature of embodied life', and 'precarity', that is, a politically situated concept where 'precariousness is amplified or made more acute under certain social policies'. Thus, according to Butler, 'precarity is induced. And precaritization helps us think about the processes through which precarity is induced – those can be police action, economic policies, governmental policies, or forms of state racism and militarization' (Butler, interviewed in Kania 2013, p. 33).

It is evident that vulnerability bears a complex relationship to the human being, to the social world, and to justice, for which it very much matters whether a vulnerability is absolute or relative, whether it is situational, and whether it is exacerbated or made manifest by unjust social structures. Real-world political philosophy for a project like understanding justice in Europe needs a division of labour. It is necessary to identify what situations or processes worsen (or can alleviate) what kind of vulnerability of what groups. These groups are numerous, and it is also clear that vulnerabilities can also intersect (Crenshaw 1991; Wolff and de-Shalit 2007). It is probably impossible to give a comprehensive list of vulnerable groups that exist in Europe and their vulnerabilities. But the ideas of vulnerability and of vulnerable groups can work together with the concept of manifest injustices we encountered in Section 3.2, helping us to identify and better understand the manifest injustices that exist across a pretty heterogeneous region. Vulnerable groups are likely to include ethnic and cultural minorities (Chapter 8), children (Chapter 9), the elderly, caregivers and people living with disabilities (Chapter 10), and women (Chapter 11), who may be subject to marginalization and misrecognition. However, it must be remembered that vulnerable groups are not internally homogeneous. Some are more vulnerable than others, and intersectionality plays a significant role. Specific problems of relative vulnerability can be raised within vulnerable groups due to hierarchies of social and political influence, relative socio-economic position, gender and so on (see also Bugra 2018). But even the identification of particularly vulnerable persons and the

nature of their vulnerabilities is not the end of our normative inquiry, because the mere identification of vulnerabilities, like the identification of manifest injustices, does not yet tell us what should be done about them, or who should be responsible for doing it, for example, the nation states or the European Union as a supranational entity.

3.6   THE RELEVANCE OF EUROPEAN LEGAL AND INSTITUTIONAL FRAMEWORKS

Real-world political philosophy begins from the real world we live in, rather than an ideal world we might like to live in. The current European legal frameworks and traditions, both within European states and at the supranational level (in the EU and in the Council of Europe, for example) is of importance for at least two reasons. First, it is important to understand how vulnerabilities and injustices arise from the way that legal and social institutions impact on particular groups and individuals. Second, if we want to make pragmatic proposals about what to do here and now, we must propose amendments to current law and policy, however imperfect it may be, rather than propose some imaginary policy we would like to have instead. We must be able to get there from here.

The EU as a unique supranational entity raises the scope of justice question, as discussed in Chapter 2. For anti-cosmopolitans, principles of justice will apply at the level of the EU as they apply to nation states only insofar as fellow citizens of the EU are analogous to compatriots, with whom we are engaged in a shared political project and with whom we have communal ties. For institutionalists, inspired by the Rawlsian idea that justice concerns arise only in situations in which individuals cooperate for mutual benefit, principles of justice will apply only insofar as the institutions at the supranational level are robust enough to trigger obligations. One influential institutionalist, Andrea Sangiovanni, argues that the EU is 'an attempt to support the interests of each of its member states in enhancing both growth and internal problem-solving capacity (including the capacity to act on domestic commitments to national solidarity) against a background of regional stability' (Sangiovanni 2013, p. 228). Since some member states may benefit more than others from this project, this raises the question what principles should apply for the redistribution of benefits and burdens.

One important question to consider both from the pragmatic perspective of real-world political philosophy and from the perspective of the scope question is the legal question of which areas of policy are competencies of supranational institutions, and which competencies are reserved to states. Supranational institutions cannot, at least currently, be expected to uphold justice in Europe in areas in which they have no legal competence to intervene.

For these reasons, we need to pay close attention to the nature of existing legal frameworks and institutions. (The nature of various existing European legal frameworks and traditions, and their impact on justice, is explored in detail in Chapters 5 to 7 of this volume.) We should not forget, though, that justice is normative: it is not about what *is* the case, but about what *ought* to be. We should therefore not limit ourselves to internal criticisms of European institutions, taking their current ambitions for granted. The fact that institutions currently do not take responsibility in particular areas does not imply that they should not (be enabled to) take responsibility. As well as the specificities of the European legal frameworks and traditions, we should not forget to pay heed to considerations of moral responsibility, capacity and efficiency when considering who should remedy injustices in Europe.

NOTE

1. This chapter draws on material previously published in ETHOS reports by Rippon et al. (2018), van den Brink et al. (2018) and de Maagt et al. (2019).

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