



Structural Injustice and Solidarity

The Case of the Eurozone Crisis

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Abstract

This paper deals with the type of duties structural injustice triggers with reference to the Euro-crisis. Structural injustice confronts us with the normative puzzle of injustices that benefit some and no one in particular is liable to pay damages. The paper discusses the problem of unjust enrichment and difficulties of compensatory obligations in the so-called wrongful-benefits paradigm. The problem with this paradigm, also when it involves disgorgement, is that it individualises responsibility and conceives of it in quantitative, financial terms. The paper argues that the European Monetary Union (EMU) and the Euro-crisis have created expectations of collective responsibility. Solidarity has become a duty. Solidarity is the building block of every democratic community. It expresses a norm of equal membership that constitutes the basis for claims-making. The type of structural injustice generated by the Eurozone arrangement gives rise to collective, forward-directed duties – to correct wrongs akin to political justice. Forward-directed duties apply to interdependent actors and their ways of coping with contingencies and conflicts.

Keywords

Disgorgement – Dominance – Duties – Euro-crisis – Solidarity – Structural Injustice

Introduction¹

The European Union (EU) has domesticated international relations in Europe and has protected the individual from the abuse of power and dominance by external forces or their own state. The EU has protected against discrimination based on nationality, gender, sexual orientation, race, disability or age. By raising elements of constitutional democracy to the European level the EU has contributed to the abolition of arbitrary rule. A brutalised Europe has been supplanted by a civilised one. The dignity-protecting, juridification and democratisation processes, which have been underway for the last 60 years in Europe, have brought about a post-humiliation society (see Eriksen 2015).

However, the manner, in which the Eurozone crisis has been tackled, has brought humiliation back as people suffer the effects of austerity policies. There is however not only economic and social exclusion. There is also dominance as citizens are subjected to arbitrary influence. There are infringements of political rights in the form of pre-emption of choice and decisional exclusion. Heads of government who lack a European mandate have agreed to a series of financial, economic, social, and wage policies that affect the freedom and well-being of many European citizens. According to the Lisbon Treaty², such issues belong to the remit of the Member States. Executive, intergovernmental dominance is abnormal politics according to European democratic standards. The lingering crisis – the many non-decisions, stop-and-go measures, and austerity programmes initiated by the European Central Bank (ECB), the Commission, and the International Monetary Fund (the Troika) – has brought the European civilising process to a standstill. In some respects, this process has even been reversed. The public autonomy of citizens – their right to participate in making the laws they are subjected to – is being infringed. A largely unaccountable technocracy is making decisions with severe consequences for citizens' freedom and welfare.

When the crisis struck, it became clear that the Economic and Monetary Union (EMU) was an unfair arrangement in the sense that although under the same system of rules some fared better than others did. The EMU was not a win-win arrangement but one with uneven distributive effects. The design of the Eurozone and the crisis management create losers and winners: Some lose and some profit from the same arrangement. The Eurozone crisis raises the problem of structural injustice: the beneficiaries receive a diverse array of benefits under an enduring social structure. Who is responsible? Some injustices, particular actors, have directly or indirectly participated in causing, some not. Some injustices benefit them, some harm them, and

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² The Lisbon Treaty entered into force on 1 December 2009 (Official Journal of the European Union 2007). See also the consolidated versions of the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) (Official Journal of the European Union 2012).

some do both. Equally, there may be situations where things are wrong but not unjust, in the sense that they are the fault of others.

What type of obligations do the winners have towards the losers in the Eurozone? If there are wrongs that benefit the winners, if there is unjust enrichment, it is a question of redress – payback time. However, if there is no ‘isolatable action or event that has reached a terminus’ causing the harm, it is hard to hold individual agents responsible (Young 2006: 121). Then we are confronted with the normative puzzle of injustices, that benefit some, and no one in particular is liable to pay damages. In that case, what type of duties are involved – those referring to moral responsibility or those referring to solidarity?

In this paper, I will deal with the Eurozone crisis and the problem of structural injustice and the types of duties it triggers. First, I make it clear why there is a problem of structural injustice involved in the crisis arrangement of the Eurozone. Then, I raise the problem of unjust enrichment and compensatory obligations in the so-called wrongful-benefits paradigm (WBP). Thereafter, I discuss the concept of political justice and the paradigm of solidarity as opposed to that of the liability model of responsibility and the WBP. The idea is that the type of structural injustice generated by the Eurozone arrangement gives rise to duties that are not in the form of compensatory obligations. Rather, it gives rise to duties of solidarity – to correct wrongs akin to political justice.

Structural injustice

The Greek crisis was never solved. Greece is disconnected from the European banking system and capital control is still in place. This crisis reveals the structural problems of the EMU, which is a product of the Treaty on the European Union (TEU). The Eurozone is not an optimal currency area partly because of the large differences between the economies, and partly because of no efficient mechanisms to provide economic transfers from economies that fare well to those that fare less well – which essentially gives way to procyclical fiscal policies (Tuori and Tuori 2014, 53ff.). The euro area as such lacks the fiscal instruments to redistribute income across different levels of economic development. It also lacks fiscal instruments fit to handle sudden demand shocks. Moreover, workers are insufficiently mobile across countries for labour markets to absorb the sudden increase in unemployment. While the Union holds exclusive competencies in monetary policy, the Member States are sovereign in fiscal and economic policy. Countercyclical (Keynesian) fiscal policies are constrained because of the rules of the Stability and Growth Pact (SGP). Hence, this leads to austerity policies in the crisis-ridden countries.

The SGP commits Eurozone members to balanced budgets (the structural deficit is not to exceed 0.5 per cent of GDP), and to public debts of less than 60 per cent of GDP. There are automatic penalties for non-compliant states and there is automatic supervision by the European Commission. The EMU has produced new treaties of its own, establishing the European Financial Stability Facility (EFSF), the ESM and the

Treaty on Stability, Coordination and Governance (TSCG), also referred to as the Fiscal Compact.³ The Fiscal Compact and the task-specific *de novo* EU bodies were introduced as a new (i.e. stricter) version of the previous SGP. They include the European Stability Mechanism (ESM), which has a lending capacity of up to 500 billion euros and a bank resolution fund of, ultimately, 55 billion euros (Genschel and Jachtenfuchs 2016: 47). This is in addition to the two other Eurozone ‘mechanisms’ of banking union: the Single Supervisory Mechanism (SSM) for Eurozone banks and the Single Resolution Mechanism (SRM). The *de novo* ‘European semester’ effectively establishes European and national institutions as a *joint fiscal authority* for managing large questions of taxing, borrowing and spending. Its objectives are, in the first instance, to promote differentiated, growth-friendly consolidation and restore normal lending credibility.

The EFSF, the ESM and the Fiscal Compact were established outside of the Lisbon Treaty and the SGP as part of the application of the amended Article 136. They have their own intergovernmental decision-making bodies and operate behind a shield of extensive immunity and confidentiality. Neither treaty provisions based on the principle of transparency, nor complementary secondary legislation applies, and hence, parliamentary and public control is ‘extremely difficult’ (Tuori 2012: 47). The purpose of these treaties was to provide *conditional assistance* to Eurozone Member States in financial difficulty in case of banking failures, fiscal imprudence, or both.⁴

Conditionality is intended to avoid moral hazards – that is, to prevent actors from taking risks when others are liable for the damages – and to help sovereigns to get back on track. Access to aid packages is provided in exchange for domestic reforms. The Fiscal Compact is heavily dependent on the supranational Commission and the ECB. Still, it is an intergovernmental treaty, and one with an alienating effect on the EU’s representative institutions. It is also difficult to invoke the EU’s Charter of Fundamental Rights in relation to matters regulated by the Fiscal Compact.

These arrangements for monitoring and ensuring compliance severely restrict the fiscal policy space of the Member States, which have already, by adopting the euro, given up national control of interest rates and currency exchange rates. Since crisis-ridden states are members of the Eurozone, they cannot devalue and have little space for overspending in order to recover from recession. Therefore, the instruments for

³ The European Financial Stability Facility (EFSF) was created as a temporary rescue mechanism by the Eurozone Member States in 2010 to safeguard financial stability in Europe. In October 2010, the EU decided to create a permanent rescue mechanism, the European Stability Mechanism (ESM), which entered into force in October 2012. With the Euro-Plus Pact (adopted in March 2011), some Member States have made concrete commitments to political reforms intended to improve their fiscal strength and competitiveness. The EU economic governance, Sixpack, a set of European legislative measures designed to reform the Stability and Growth Pact (SGP) and to introduce new macroeconomic surveillance, entered into force in December 2011. Finally, the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, also referred to as TSCG or the Fiscal Compact, is effectively a new, stricter version of the SGP. The TSCG has been signed by all Member States (except the Czech Republic and the UK) and entered into force in January 2013 for the 16 states that completed ratification prior to this date.

⁴ Treaty establishing the European Stability Mechanism, Article 3 (European Commission 2012).

national fiscal policy are largely abolished for crisis-ridden countries. The crisis-ridden states are left in a 'take it or leave it' position (see Scharpf 2014: 11; Menéndez, 2017).

Constraining self-rule

The debtors are subjected to the imperatives of the financial markets and to the dictates of the largely unaccountable Troika.⁵ The members of the creditor club of the EU are privileged by the rules of the Eurozone, which position debtors in a subjected position. The debtors' freedom of choice is limited because their unbalanced budgets compel them to accept conditions imposed by creditor countries – the creditor club. Loans and credit are conditional on reforms, which neither are initiated by citizens' representatives nor are they justified to the affected citizens. There is a pre-emption of choice, as debtors must obey the rules and the instructions if they are to be seen as reliable borrowers and trusted members of the Eurozone. There is also decisional exclusion. Technocratic bodies, not citizens' representatives, make vital decisions. There are infringements of both European law and democratic principles.⁶

Today, the 'general' laws and policies of the Union cause highly diverse effects and impact in the different Member States, with the result of producing the feeling of more and more people in more and more countries that they are ruled by 'others', not themselves or the likes of them.

(Offe and Preuss 2016: 13)

The present euro arrangement interferes with the interests and preferences of the states and citizens of Europe – it creates winners and losers, it benefits and threatens, it rewards and punishes, and it transforms identities. Hence, there is a transnational context of justice and democracy beyond the nation state in Europe. There is a circumstance of justice to talk with Hume and Rawls.⁷ There are claims to corrective justice, to compensation and redress. However, arbitrary rule, which is in breach of European citizenship rights, also gives rise to a different kind of claims. To be subjected to the arbitrary wielding of power is to be dominated, which is the essence of injustice. Dominance is wrong, but is it also unjust in the sense that it is the responsibility of others? Whose fault is that? Who is guilty? Who is to blame?

What we are dealing with in the Eurozone is not merely episodic or transactional injustices, which can easily be mended as the perpetrators and beneficiaries would then be traceable. Rather, what we are faced with is an instance of *structural injustice*. The politico-legal arrangement grants the members unequal political status. When persons are systematically treated differently due to the way institutions operate,

⁵ See, e.g., Altvater et al. (2013), Blyth (2013), Galbraith (2016), Schäfer and Streeck (2013), Stiglitz (2016), Streeck (2013), and Varoufakis (2016).

⁶ See also Enderlein (2013), Kreuder-Sonnen (2016), and Menéndez (2013).

⁷ 'The circumstances of justice obtain whenever mutually disinterested persons put forward conflicting claims to the division of social advantages under conditions of moderate scarcity' (Rawls 1971: 128).

when the consequences are severe and moral responsibility is significant, there is a case for structural injustice.

Moral blame

Justice is the first commandment of morality and stems from the person's right to freedom and respect. Justice is a duty of Right: of equal freedom for all (Kant 1797/1996). *A* has an original right to independence from *B*, and vice versa.⁸ The right to have one's freedom protected infers obligations on the part of the actors and institutions inflicting harm and injustice, when there are transgressions of zones of freedom. Actors and institutions are responsible for the consequences of their wilful actions. They are responsible for faults of harm.

Guilt for harm and wrongdoing 'is tied to violations of what we owe to each other' and is the basis for moral blame (Scanlon 1998: 271). An act is wrong when it is in breach of principles that no one could reasonably reject. Guilt constitutes the basis for claims-making and for moral criticism aimed at changing or modifying an actor's behaviour by making him or her aware of the faults and responsibilities involved (ibid. 277). To be morally responsible for an event is for a person to be properly attributable to one. The actor is then open to a certain kind of response in light of the event. What renders the responsibility moral is that the event is within the domain of actions and attitudes implicated in our relations with one another (Scanlon 2008: 131). Guilt and wrongdoing thus give rise to duties. Culprits are obligated to provide assistance or to compensate in other ways for the harms inflicted. An obligation or duty stipulates a rule of action, specifying which actions count as performing the duty. Protest and opposition are indicators of unredeemed moral obligations. When reactions such as resentment, indignation and guilt are triggered, moral criticism has hit home. Legal reasoning, for its part, helps us to establish guilt or fault for a harm, i.e. who is liable. Rights and compensation schemes identify legal obligations.

Directed duties should, however, be distinguished from undirected ones: 'while directed duties correlate with another's rights, undirected duties have no such correlate' (Zylberman 2014: 154). Responsibility for wrongdoing presupposes a correlation between directed duties and rights.⁹ Thus, 'if you bear a claim-right, then another owes you a relational duty [...] of providing assistance or remuneration. For *A* to be endowed with a claim-right is for *B* to owe a duty to *A*, and vice versa' (Zylberman 2014: 155). Later in this paper, I introduce the term *forward-directed duties*, which straddles the line between directed and undirected duties. Such duties are oriented towards the political citizenry. In this case, responsibility is with the collective.

⁸ '[...] my first-person judgment *I have the right to life* entails the judgment *you owe me the duty to respect my right to life*, and vice versa. Furthermore, the reciprocity condition shows that the judgment *I have the right to life* must also entail *you have the right to life*, for you and I are one in original rights' (Zylberman 2014: 167).

⁹ 'A duty or a legal obligation is that which one ought [...] to do. "Duty" and "right" are correlative terms. When a right is invaded, a duty is violated' (Hohfeld 1913: 32).

In general, duties are created when one party's acts affect another's rights. The liability model of responsibility underscores the causality dimension.

Under [the] liability model, one assigns responsibility to a particular agent (or agents) whose actions can be shown to be causally connected to the circumstances for which responsibility is sought.

(Young 2006: 116)

In the extension of this, the so-called WBP sees justice as a question of fulfilling compensatory obligations (Butt 2014). According to Kant, moral obligations are categorical and the WBP requires rational consistency between compensatory obligations and actions. Not only should wrongdoers recompense for harms inflicted. The beneficiary should pay as well when profiting from wrongs. Obligations arise in a context when our actions have consequences for others – their rights, freedom and values – but they also arise when we are part of a wrongful regime. The identification of injustice, of benefiting from injustice, including wrongs committed by others, involves a duty to act and to compensate for wrongdoing:

If our moral condemnation of injustice, our regret that injustice has occurred, is to be taken seriously, it must be matched by action to remedy the effects of injustice, insofar as they persist as the automatic effects of injustice. We are right to feel guilty at benefiting from others' misfortune, precisely because this suggests that we have not fulfilled our compensatory obligations.

(Butt 2007: 144-5)

However, when the causal connection is unclear, there is a problem of delineating moral obligation. Blameworthiness requires causality and foreseeability, as well as responsible actors and clear rules of evidence. The wrongful-benefits framework is demanding, as it implies *disgorgement* – that is it requires a party who profits from illegal or wrongful acts to give up any profits he or she made.¹⁰ Nevertheless, a full compensatory scheme, in line with the requirement of rational consistency, is demanding when it comes to information. One question is whether there is, in fact, any benefit from the injustice at all. The other is 'the epistemological question of how to determine what benefit, if any, has been thus derived' (Brooks 1989: 40).¹¹ We need to know who did what, to whom, when and how, and whether they were coerced or not, whether the choice situation was open or not, and whether consequences could be foreseen, etc. In order to be responsible for harm, one needs to have contributed to causing it. One must have had some control of it and could have prevented its outcome if they had wanted to (Stilz 2009: 188). One's actions must have made a difference. Otherwise, no charge applies: 'If past injustice has shaped present holdings in various

¹⁰ 'Agents can be morally blameworthy for failing to disgorge in compensation benefits which they involuntarily receive as a result of wrongdoing which harms other agents' (Butt 2014: 343).

¹¹ And further, 'a probabilistic distribution curve might be developed so that the closer one is to the injustice, the likelier it is that one has benefited even though there is nothing to prevent someone a good deal further off from benefiting more or someone very close from not benefiting at all' (Brooks 1989: 40). So, 'the general duty to prevent injustice bears more heavily on those who are closest to it' (p.31). See also Waldron (1996) on Kant's proximity principle.

ways, some identifiable and some not, what now, if anything, ought to be done to rectify these injustices?’ (Nozick 1974: 154)

According to Robert Goodin:

Full-bore compensation would require us to know all the following things that Nozick lists:

1. We would have to know (a) who did what (b) to whom.
2. We would have to know all of the consequences that followed from that.
3. We would have to know all the counterfactuals concerning what would have happened had the wrong not occurred.
4. If the principals are no longer alive, we would have to know who (if anyone) in the current generation has inherited (a) the responsibilities and (b) the claims of each of the individuals involved in the original wrongdoing.

(Goodin 2013: 485)

When applying this to the Eurozone crisis, one is inclined to think that since Germany – Europe’s biggest country and largest economy – has profited from the single market and the EMU (which it contributed to the establishment of), it also has specific obligations.¹² Here, there is a circumstance of both benefit and causality, but are the conditions for benefit and causality met?¹³

According to some simplified, stylised facts, Germany has benefited the most from the single currency as a net exporter. It profits from the single market, the abolition of customs and non-tariff barriers, and the stable framework of common currency. Germany also benefits from the Eurozone crisis as ‘[f]inancial investors have been fleeing from investments in risky bonds of the deficit countries, seeking the safe haven of German bonds. As a consequence, German real borrowing costs have been lower (in fact negative), than they would be in ‘normal’ times. Also, Germany profits from the favourable external value of the euro, which allows it to remain Europe’s export champion’ (Offe 2014: 98). Germany is benefiting from the decrease in interest rates for the German government bonds created by the crisis (which are matched by an increase in interest rates for over-indebted, crisis-stricken countries). It is also profiting from the influx of well-trained workers from crisis-ridden countries (see also Habermas 2015: 19; Offe 2014). There may be a case to be made for enrichment at others’ expense because the ‘‘bailout for Greece’’ was nothing more than the rescue of private banks through EU taxpayers’ money, only five per cent of which went into the Greek economy’ (Bantekas and Vivien 2016; see also Huliaras and Petropoulos 2016).

¹² Germany has benefited at the expense of the weaker economies, according to: Galbraith (2016), Stiglitz (2016), and Varoufakis (2016). On 28 November 2011, on the occasion of an official visit to Berlin, Radek Sikorski, the Polish foreign minister, addressed an audience, pointing out that Germany is the biggest beneficiary of the euro and has ‘the biggest obligation to make [it] sustainable’ (Offe 2014: 98).

¹³ Causality and responsibility are tricky. The circumstances of benefit and causality may, in fact, be interlinked; one may be responsible when benefiting from injustice. In that case, it is a question of inverted or reversed causality.

It looks like Germany has benefited from the euro and Eurozone crisis arrangement, but is it also responsible for creating it? The circumstances of benefit seem to be met, but the circumstances of causality seem more unclear. The effects and injustices of the Eurozone crisis do not add up to a particular directed duty for Germany to compensate for wrongful benefits, because links of causation are diffuse (again, according to some stylised facts):

- The structural problems of the Eurozone were not common knowledge.¹⁴
- The crisis could be seen as an unintended consequence of the US-instigated financial crisis, first caused by the collapse of Lehman Brothers Holdings Inc.
- Many of the failures in the crisis-ridden countries are due to domestic policies, banking failures and fiscal imprudence.¹⁵
- The Eurozone is a cooperative scheme and risks have been distributed and redistributed throughout the integration process. According to some calculations, on average most countries have won. The internal market is expected to have increased GDP considerably.
- Even if Germany profits the most from Eurozone cooperation, the EMU is a collective initiative and for a decade, many countries have profited from the Eurozone due to low borrowing costs.
- The political decision to create a monetary union and to abandon national currencies was taken unanimously by eleven governments and ratified by eleven parliaments, in some cases being accompanied by referendums.

If we compare this to Nozick's list on what makes up a moral obligation – in line with the full compensatory scheme of the liability model – we find that:

1. It is not clear that Germany has particular responsibility, because it is unclear who did what to whom in initiating the EMU.
2. It was unclear what the long-term consequences of the EMU would be when it was created.
3. We are not sure what would have happened in Europe in the period after the EMU was introduced had it not been established.
4. Even though states also have legal personality¹⁶ and, hence, responsibility, it is unclear which responsibilities present principals have for the putative original wrongdoing.

The Eurozone governance structure is the product of many actions, and many actors are responsible for its effects. There may be duties to provide assistance, but there are difficulties inherent in measuring liability, probability and proximity.¹⁷ Conditions of

¹⁴ However, there were warnings. See Yeager (ed.) (1962).

¹⁵ See, for example, Issing (2014).

¹⁶ Who, like persons, have legal personality and can sign and terminate contracts.

¹⁷ See, for example, Kenadjan et al. (2013), Lastra and Buchheit (2014), Olivares-Caminal (2009), and Rieffel (2003). See further: Esposito (2013), Lienau (2014), and Wong (2012). On the general problem of measuring liability, probability and proximity, see Birks (2005), Brooks (1989), Feinberg (1968), and Hedley (1997).

causality are not easily met. Hence, there is a case for *structural injustice*: many persons, organisations and policies have contributed to the present state of affairs, but it is not possible to identify specific culprits or track which specific actions of which agents are responsible for particular parts of the structure and their outcomes. It would be hard to bring Germany to court for being part of the decision-making body that established the EMU and gave rise to the present politico-economic structure. It would be hard to establish morally significant responsibility. Structural injustice puts persons under a systematic threat of dominance, but 'this is a kind of moral wrong distinct from the wrongful action of an individual agent or the wilfully repressive policies of a state' (Young 2007: 114). There are structural injustices in the Eurozone, but the processes that produce wrongs are consequences and by-products of many institutional actors and policies. It is unclear who is responsible for which harm at a certain point in time. When this is the case, which type of duty is involved?

In order to grasp the normativity of structural injustice, we need to move beyond the strict requirements of causality and clear evidence in the liability model of responsibility. There are obligations regardless of blameworthiness. Some have lost because of the politico-economic arrangement established as a response to the financial and economic crisis. What type of obligations, if any, does this systemic wrong trigger?

Corrective justice

The European context is one of justice in the sense that its cooperative scheme affects interests and gives rise to claims for assistance or remuneration. Someone is guilty, but it is unclear what kind of obligations there are. Benefiting from injustices or inquisitives raises a *prima facie* obligation of compensation, but when it is unclear who the perpetrators are and what exactly they are responsible for, there is a problem with the WBP. The WBP confronts the beneficiaries as moral debtors, as it entails a *perfect duty of compensation*. However, when it comes to structural injustice the causality conditions necessary for such duties to apply are not in place. Correcting wrongs through compensation is blocked. Goodin, therefore, suggests an alternative mechanism to that of the information-demanding model of 'full bore' compensation. Goodin suggests that mere non-compensatory disgorgement – with the return of the benefits to the public purse – is available when we do not know who the victims are or how to help them. Even when one is not able to locate the culprits or the wronged ones in time and space – they may be dead, hard to find or indisposed; the wronged ones may have disappeared; it may be difficult to identify the rightful heirs – *innocent beneficiaries* have an obligation to give up wrongfully possessed goods. Disgorgement refers to requiring a party who profits from illegal or wrongful acts to give up any profits he or she made thereof. The purpose of this remedy is, according to Goodin, to prevent *unjust enrichment*, while not demanding all the information that the liability model of responsibility requires. Disgorgement only requires that the fruits of wrongdoing be relinquished:

People wrongfully in possession of goods should acknowledge that they have no legitimate claim to them and should be prepared to give them up. [...] In that limited sense, disgorgement is at least a partial undoing and rectification of the wrongdoing. It is corrective justice.

(Goodin 2013: 478)

Non-compensatory disgorgement may capture the problem of historical wrongdoing, which is Goodin's main target. However, as Avery Kolers (2014) underlines, it does not capture the main difficulty of structural injustice. As mentioned, this is a kind of moral wrong distinct from the wrongful action of a particular agent at a particular point in time. Structural injustice raises not only the problem that since wrongdoers are not easily identifiable there is no point in seeking to exact compensation or redress. It also raises the question of what we owe each other in a context of justice. Are we only expected to pay our dues? Is responsibility exhausted by compensatory obligations?

The problem with the WBP, also when it involves disgorgement, is that it individualises responsibility and conceives of it in quantitative, financial terms. It turns the problem of injustice and the severity of the wrongs into a question of personal debt. The WBP simultaneously demands too much and too little of the actors. It demands too much because individual actors are never able to do enough; they will always be in the red. Due to societal cooperation, particular actors continuously incur more duties than they can reciprocate – more debts than they can pay back. In general, we owe much more to society – due to social cooperation – than we may lay a rightful claim to.

The WBP demands too little, because if 'I can somehow pay back my debt in full, I am released from further work against injustice, no matter how onerous or odious that injustice remains' (Kolers 2014: 428). But 'why should the fact that G is no longer my biggest personal moral creditor carry any weight in whether I continue to work to end the injustice suffered by G? Why is my moral balance of payments so crucial in the face of ongoing structural injustice?' (ibid. 427). If I can pay back, I am off the hook. This view is problematic, because there are obligations regardless of guilt or individual consent. Children have obligations towards their unchosen parents, just as citizens have obligations towards their own coercive state. There are natural duties of justice and there are non-voluntary associative obligations stemming from membership in institutions that are necessary or cannot be avoided (Rawls 1971: 114; Dworkin 2011: 320).

The WBP is morally insufficient when it comes to structural injustice because it disregards obligations to correct systemic wrongs. Proper non-compensatory disgorgement would require that structural injustice be abolished. There would be no point in paying back to the public purse when injustice prevails and new wrongs are produced. Duties will be undirected and payers will not be sure that their payments are reaching the right pockets.

Another question is whether all kinds of injustices should be addressed through the WBP. This necessarily involves a process of identifying the needy, wronged, and disadvantaged actors and groups, which may have stigmatising consequences. We see this logic playing out in the Eurozone. Humiliation is brought back in as naming, shaming, and blaming take place among groups and states in Europe. This creates stigmatising images of suppliers and spenders, of donors and receivers. Images of guilty debtors flourish.

The debtor is morally inferior – guilty – because he lacks the self-control necessary to live within the limits of his means; that is to say: *not* because his low income and poor social security forces him to rely on consumer credit, *not* because uniquely cheap credit, facilitated by faulty monetary policy, plus lax conditions have offered him an irresistible opportunity to purchase ‘subprime’ mortgages, *not* because actors in the financial industry were granting credit frivolously because they could confidently expect to be bailed out according to the ‘too big-to-fail’ logic in case something ‘goes wrong,’ and *not* because sovereign debtors have incurred debt in order to stimulate investment and employment in the ‘real’ economy – all these possibilities are being obscured and excluded from consideration through the ‘guilt’ frame.

(Offe 2014: 96–97)

The WBP is not fit to handle the duty to correct structural injustice. We are right to feel guilty about benefiting from others’ misfortune, but our responsibility is not exhausted by individualised contributions and compensations. As fellow citizens, we are obligated to contribute to the remediation of an unfair political structure. A move beyond a concept of justice based on a parity of dues, debts and credits is needed to analytically handle the problem of structural injustice.¹⁸

Political justice

In contemporary political discourse, justice is often thought of as the morally proper distribution of rights, duties, material resources, and opportunities understood as public goods or utilities.¹⁹ This focus on the distribution of goods in theories of justice risks blocking out the first question of justice, namely, the political question of how the goods were produced and allocated in the first place. There is a great difference between lacking certain goods and being deprived of them unjustly. There is also a great difference between allocating goods fairly and identifying injustices.²⁰ Put otherwise, a distributive understanding of justice, which allocates goods according to some ideal, moral pattern, misses what we owe each other as a matter of justice. In order to establish a distributive pattern in a fair way, an institutional structure that

¹⁸ The next section draws on Eriksen (2016).

¹⁹ These are so-called end-state approaches to justice (Nozick 1974).

²⁰ ‘The goods-fixated view of justice [...] for the most part ignores the question of injustice, for by concentrating on overcoming deficiencies of goods, it treats someone who suffers a deficiency as a result of natural catastrophe as equivalent to some who suffers the same deficiency as a result of economic or political exploitation’ (Forst 2011).

protects basic rights must be in place. The basic structure that determines which are justified claims and who is empowered to ensure justice must itself be just. Only then can a fair distribution of goods come about.

Further, a distributive understanding of justice, which treats political institutions as goods or utilities, as something that can be traded, exchanged and allocated, misses the deontological character of this basic structure. Basic institutions are not merely 'public goods', which can be divided and traded,²¹ but conditions and necessary presuppositions for being able to sort out and handle justice claims. They exist prior to distribution and 'the circumstances of justice'. The goddess *Justitia's* task is, then, not to dispense gifts or allocate shares, but, first of all, to institutionalise a fair system of rule.²² The political approach to justice is not only needed because rights can be up for grabs, but also because a just distribution of goods may be accomplished through the benevolent acts of a hegemon (a dominating agent), hence leading to paternalism and new forms of injustice.

When there is structural injustice, as the systemic wrongs of the Eurozone attest to, there are obligations according to a political concept of justice. They stem from the responsibilities generated by membership in associations, the acts of which have consequences for others' rights. There are political duties stemming from interdependencies and connectivity that affect the conditions for freedom and well-being. Thus, we may ask if not the right framework for addressing these questions is that of solidarity and not that of the wrongful benefits and the liability model of responsibility. Can there be collective responsibility and a duty of solidarity?

Arbitrary rule

Solidarity goes to the core of the problem of structural flaws, to the source of injustice and the obligations involved as it ascribes to the addressees the duty to repair unjust orders.²³ Solidarity captures the intuitive force of wrongful harms, but instead of demanding compensation, it demands that we join in collective action for justice.²⁴ But according to what criterion can there be a duty of solidarity?

There is a need for an alternative to the victim-focused decision criterion that applies when it comes to compensatory justice. In that system, we need to know who suffers, how much and why (with the unhappy side effect of inevitably marking some as downs). When dealing with claims to solidarity, there is a need for a structure-focused criterion, which does not have stigmatising effects. Solidarity is the building block of every democratic community, as it expresses a norm of equal membership. This

²¹ See Young (1990: 25) and Habermas (1996: 418–19).

²² 'The goddess *Justitia* does not come into the world to dispense gifts; her task is instead to banish arbitrary rule, i.e., domination' (Forst 2015).

²³ Here, 'The point is not to blame, punish, or seek redress from those who did it, but rather to enjoin those who participate by their actions in the process of collective action to change it' (Young 2006: 122).

²⁴ See also Jonas (1984).

foundational norm makes it possible for citizens to relate to others as fellows – compatriots and equals – and demands they take on collective responsibilities.

I suggest dominance as a criterion of structural injustice that triggers duties of solidarity. Dominance designates structural oppression, which undercuts democratic self-rule. It undermines compatriots' ability to see themselves as equal members of the polity. Those who suffer from dominance are subjugated and governed without justification. To be dominated is to be subject to arbitrary power or alien control. Citizens' autonomy is respected only when they are included as equal members of a self-governing association (Kant 1785/1996: 85). Hence, dominance does not merely appear as arbitrary interference in zones of (private) freedom (cp. Pettit 1997), but as hindrances to co-legislation as well. I understand dominance primarily as a question of political status, in terms of barriers to citizens' public autonomy and their ability to determine politically their destiny. Autonomy or political freedom entails relationships of mutuality and power bound by law:²⁵ 'In a legal community, *no one* is free as long as the freedom of one person must be purchased with another's oppression' (Habermas 1996: 418).

The crisis management of the Eurozone and the new fiscal governance provisions in the treaties and austerity policies curtail citizens' social and political rights by making it harder for governments to correct and compensate for unjust market outcomes. This undercuts the fair value of political institutions. Decisional exclusion and the pre-emption of choice resulting from the handling of the Eurozone crisis testify to the type of dominance that affects citizens' public autonomy. Because the Eurozone is a context of justice – as there are citizenship rights, associative political rights, and interdependencies that generate obligations – there is a moral duty to solidarity. Such a duty is imperfect, however.

The Paradigm of solidarity

As long as the European integration project could be portrayed as advantageous for everyone, as pareto improving, the citizens of Europe were not called upon in the name of solidarity. The portrayal of the EMU as a mutually beneficent arrangement, which had been persistent, was definitively erased with the Eurozone crisis. As social protest and political claims-making attest to, the financial crisis has rendered the integration project visibly moral. European integration is not a win-win arrangement and it is not merely a matter of joint convenience and choice; instead, it is a matter of collective responsibility – of justice and solidarity. Some are structurally suppressed and there are unredeemed moral obligations. However, solidarity is in short supply: social solidarity tends to stop at national borders (see Habermas 2012: 62). At the European level, there is only weak competence and limited resources available for socioeconomic justice, for redistribution across the borders. There are structural barriers to socioeconomic justice as there is no European liability. As mentioned, the

²⁵ The legal standing of the individual requires 'a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties [...] are to be guaranteed their fair value' (Rawls 1993: 5).

Eurozone lacks the fiscal instruments to redistribute income. Solidarity is, however, not an administrative category.

While justice is required by morality in order to safeguard the autonomy and self-respect of the individual and can be achieved through impartial laws, solidarity, which is also a moral demand, has another basis and logic. According to Kant, justice is formally determined, while solidarity is *material*. While justice raises an unconditional categorical claim, solidarity (like friendship) is conditioned by relationships and aims. Solidarity has to do with experiences of wrongs, felt commitments and a common destiny; it has to do with particular goals to be attained – to reduce the misery and enhance the wellbeing of a group. It relates to experiences of rights violations and injustice and the collective ‘we’ feeling that can be mobilised in a cooperative context. Solidarity is not a legal obligation (i.e. a perfect duty corresponding to a right) – rather, in the tradition from Hegel to Durkheim, it is seen as belonging to the domain of ethics and hence to an imperfect duty of beneficence. Like friendship it commits, but in a different manner. The duty of beneficence, according to Kant, stems from the claims of the deprived ones on the well-off ones to provide help, without which they will succumb (Kant 1795/1996: 328–29).

Solidarity is a question of the will of and the onus on compatriots to pay for each other’s misfortune, a will which depends on a common vision – a conception of the common good. Solidarity can neither be bought nor administratively enforced, as it springs from commitments to care for affected parties; from the common interests that can be articulated; from the virtues of cooperation and relief that can be mobilised. Solidarity is the *virtue* that is demanded when there is a shortage of material resources to satisfy pressing needs and legitimate interests (Steinvorth 1988: 69).

However, there is a difference between feeling responsible and being responsible. Solidarity is not an organic phenomenon resting on natural duties. Rather, it is artificially created and has a legal basis (Habermas 2015: 24). Therefore we should not see solidarity as merely an ethical category depending on civic virtues. Rather solidarity is a political category revolving around redeeming the unredeemed moral claim of equal citizenship. It refers to righting wrongs and harms through collective action. Acts based on solidarity are, then, not presupposing a pre-political *Sittlichkeit* or primordial values,²⁶ but a political context of struggle, claims-making and justification. Such a struggle for equality presupposes a basic structure of rights’ protection. Solidarity sustains the value of the victims and repudiates injustice. It invites a common struggle against injustice – to end the misery, hardship and disparity created by committed wrongs, dire conditions or natural catastrophes. It involves a specific moral motive of ensuring social cohesion and mutual recognition. In this context, the actor understands his action as help, which he believes he is obligated to provide (Wildt 1998: 212).

²⁶ See Habermas’ self-correction: ‘I no longer support the assertion that ‘Justice conceived deontologically requires solidarity at its reverse side’ because it leads to moralization and depoliticization of the concept of solidarity’ (Habermas 2015: 158).

What differentiates both ethical expectations and appeals to solidarity from law and morality is the peculiar reference to a 'joint involvement' in a network of social relations. That involvement grounds both another person's demanding expectations, which may even go beyond what law and morality command, and one's own confidence that the other will behave reciprocally in the future if need be. Whereas 'morality' and 'law' refer to equal freedoms of autonomous individuals, ethical expectations and appeals to solidarity refer to an interest in the integrity of a shared form of life that includes one's own well-being.

(Habermas 2015: 23)

In solidarity discourses, actors are called upon in their capacity as fellows – as compatriots, and companions – to do more than can be expected by norms of impartiality. However, solidarity is not a question of *supererogation*, viz. action beyond the demand of duty.²⁷ Solidarity is not merely a question of altruism. Prototypically, actors are called upon to help others in need though the establishment of a more just economic system, a better political regime, or a policy that is in the common interest. By helping the ones in need now, you can also be expected to be helped out yourself at a later point in time. There is a dimension of mutuality involved – not only in the sense that actors' extra efforts may be recompensed at a later stage, but also in the sense that actors who succeed in establishing a more robust political and economic regime will themselves profit from this in the long run.

Forward-directed duties

The concept of solidarity has undergone transformation. It is possible to conceive of solidarity from an evolutionary perspective, as it has developed from the classical ethical idea of civic friendship (Aristotle) via the religious idea of a universal element in the self – 'equality before God', in the Middle Ages – to the moment where it was politically transformed into *fraternité* – the universal brotherhood, 'equality before the law' – with the French Revolution (see Brunkhorst 2005). Throughout the 18th and 19th centuries, old forms of solidarity were replaced by new ones in the building of first the nation state and then the welfare state within the parameters of the democratic *Rechtsstaat*. The republic includes all of humankind in a rightful order. Solidarity concerns the struggle for equal citizenship. It aims at realising unredeemed obligations and shared values. The expansion from civic and economic rights to political and social rights is indicative of the struggle to banish dominance and ensure equality – recognition and equal membership in the polity. Solidarity is thus internally related to political justice and equity. Solidarity and justice should, then, not be counterpoised; they are part of the same system of virtues. It is not a question of either justice or solidarity (as Kohlers (2014) maintains), because a non-solidaristic society is not a just society. Solidarity and justice belong to the same group of virtues, but differ with regards to towards whom claims should be raised.

²⁷ For the concept of supererogation, see Eriksen (2015).

Solidarity does not invite us to look after our own interests and our dues, but to participate in the struggle for a better future for all instead. Whether or not we have benefited, or are in debt, we are obligated, as equal citizens, to abolish dominance and repair unjust structures.²⁸ Political obligations akin to those of solidarity are more limited than moral duties and are more extensive than enforceable legal duties. Political, associative obligations are more restricted than moral (cosmopolitan) ones that apply to all humans as demands on political institutions. Political obligations stem from membership in an organisation that cannot be avoided or is needed.²⁹ Claims to solidarity, which are directed towards persons (i.e. compatriots), aim to achieve political justice for subjected parties living under a common law. There is thus a close relationship between solidarity and political justice. However, political obligations go beyond legally enforceable rights as they call for new measures, new laws and the repair of the existing legal order. Thus, political obligations may differ from the obligations applying to the members of a 'given' community. There are *forward-directed duties* that apply to interdependent actors and their ways of coping with contingencies and conflicts. In that case they refer to the kind of solidarity that an intended community – a project under construction – requires.

We see this in the reciprocal and offensive character of struggling to discharge the promise of equal citizenship involved in the European unification process. In the protest, in the opposition to prevailing injustices, in the initiatives to establish a rights-based union and deepen integration (i.e. to take on social obligations) an ambition to abolish dominance and build a socially democratic European republic can be discerned. In one interpretation, it is possible to see the European integration project as one struggling to realise the promises of the French Revolution – of equality, freedom, and fraternity or *solidarity* (as we would say today) – through solidaric acts of *pre-commitment*.

The preconditions of a European democratic republic are not in place, according to the 'no-demos' thesis, viz. there is no European people, no common culture or common language, and no common civic-democratic infrastructure (see Grimm 2004). There is no common identity produced by a nation-like culture. Still, the initiators created institutional arrangements to foster such. This type of undertaking may rest on the thought that one cannot bemoan the lack of civic solidarity as long as the political institutions necessary to bring it about are not in place. What happened at the national level can also happen at the European level, i.e. supranational political institutions precede and create the requisite underlying solidaristic basis. Through the formative role of political institutions, through media and communication, a shared basis for collective action can come about. In other words, there may be no collective European

²⁸ Solidarity 'ascribes to me a duty to join in efforts to repair unjust social relations and restore equitable relationships. [...] Because solidarity does not trade in the language of quanta of unjust benefit, it does not confront me as a moral debtor. Thus, I am neither required to pay back in full what I owe, nor released from my obligations when I have done so. I am instead required to join the struggle' (Kolars 2014: 428).

²⁹ Political obligation is a special case of involuntary associational obligations: 'we are related to our fellow citizens in some special way that gives each of us special responsibilities to the others independently of any consent' (Dworkin 2011: 319).

identity, but in order to form it, decision-makers established common institutions. For example, the original common assembly (of the ECSC) decided to create a true European Parliament by proclaiming it. The European Parliament developed from the body initially labelled the European Assembly (1951) as follows:

In choosing to call itself a 'parliament', the Assembly was not so much pretending to *be* a parliament as clearly pointing out that it *wanted* to become one. The same logic lay behind the name change from European Assembly to European Parliament in the Single European Act: the Member States were not so much declaring that the Assembly *was* a parliament as effectively recognising that it *should become* one.

(Westlake 1994: 16)

A popularly elected parliament is intrinsic to the democratic republic and 'moderns' 'regard the republic as the institutional embodiment of an idea which unites humankind as a whole' (Offe and Preuss 2016: 12). Only parliaments have achieved the competence to speak for the people. The parliamentary principle has become the institutional embodiment of popular sovereignty, which paves the way for committed actors to take on new duties.

Along the same lines: even though the Eurozone is not 'an optimal currency area', authorised decision makers established the EMU, and calculated that it would spill over into a political union with a treasury. Creating the EMU attests to the forward-directed duties of solidarity, as the Eurozone crisis attest to. The economic meltdown makes it clear that a monetary union without political union is futile and undemocratic and makes a country fiscally fragile. The crisis also makes the need for solidarity evident in the functional sense: solidarity is needed to solve the Eurozone crisis. If all stood for one, all would be better off. However, there is no determinacy in the social world. As the reaction to the Eurozone crisis shows, creating the EMU was a risky undertaking.

On permissive laws

The crisis arrangement for the Eurozone does not leave the basic political structure of the European political order – of the Member States – intact. It affects, as is documented, the very basis of political autonomy and raises the question of political justice, i.e. the legitimation of political authority. To paraphrase Kant, one may say that actors whose conduct regularly affects others' rights, and who refuse to abolish an unjust order – the unregulated 'state of nature' – and bring about a rightful political-legal order, are collectively breaking their natural duty of justice (see also Waldron 2002). When people live close by and/or cannot avoid affecting one another's rights, they have a forward-directed duty to establish a rightful order – a state. 'Thus, any group of individuals whose acts regularly affect one another's rights and who do not currently have a set of legal and political institutions are obliged to create one' (Stilz 2009: 199).

However, how to come from an unjust political condition to a just political order? Kant, who is known for offering only a vision of perfectly just society opens, in fact, for the

moving of societies out of injustice and into an ideal prescribed by justice – a rightful political order – by considering empirical constraints. By introducing the category of *permissive law of public right* Kant made possible the integration between morality and political knowledge. Public right concerns the juridical relationship between a state and its own members (or between states) and involve ‘a permissive principle (*lex permissiva*) of practical reason’ (Kant (6:247), 1797/1996: 406). This principle authorises the temporarily delay of a necessary reorganisation of an unjust order when the ‘implementation of immediate reform would counteract the ruler’s duty to reform the legal order as a whole’ (Weinrib 2013: 108). True politics draw on empirical knowledge and prudent judgement of the circumstances under which the existing legal system can be brought into conformity with its own standard of adequacy.

Since the severing of a bond of civil or cosmopolitan union even before a better constitution is ready to take its place is contrary to all political prudence, which in this agrees with morals, it would indeed be absurd to require that those defects be altered at once and violently; but it can be required of the one in power that he at least take to heart the maxim that such an alteration is necessary, in order to keep constantly approaching the end (of the best constitution in accordance with laws of right).

(In Kant I. *Toward Perpetual Peace* (8:37) cited from Weinrib 2013: 130)

Permissive rights exempt action from necessity and permit the postponement of reform until conditions are favourable without losing sight of the end. The permissive principle justifies delays but not status quo. Solidarity operates within the sphere of moral reason, which permissive public right opens up. It does not raise a categorical claim of necessity but claims to a rightful order based on experience and empirical knowledge. That is, claims as to which hurdles must be overcome for realising equal citizenship. Experience and knowledge of dire social circumstances constitute the basis for legitimate expectations of collective responsibility.

In order to be responsible for harm, one needs to have contributed to causing it. There must be morally significant responsibility. One’s actions must have made a difference. With regard to the EMU, no individual member can be held responsible because no one in particular was crucial to its realisation or the consequences of it. The liability model of responsibility is problematic in such cases, because it leaves no one responsible for the wrongs. But the EMU and the harm it created did not come about on their own. Rather, it was created by a set of the Union’s members acting together, and the members are responsible even though they could not foresee the consequences. As a collective, they are responsible. Since the decision makers had some control of arrangements and since their acts have consequences for others’ rights, there are responsibilities and hence duties. By consenting to make the EMU, and later the Eurozone crisis arrangement, they have taken on obligations. Simply by joining, the members ‘have incurred a liability to the burdens required to meet the collective’s obligations’ (Stilz 2009: 189). Voluntary membership changes the moral reasons for action – it gives the members new *sui generis* reasons, as it brings about legitimate expectations in others. There are, so to say, involuntary collective obligations

stemming from membership in an organisation, the acts of which have consequences for political and social rights.

Conclusion

The economic meltdown of the Eurozone effectively demonstrates the common vulnerabilities and the degrees of affectedness and global interdependence that have been reached. The Eurozone has brought its members into a community of fate, in which all are dependent on all, and where some are profiting and some are suffering from the same economic regime. By creating or consenting to the EMU, the EU's members have taken on obligations. They have created expectations of collective responsibility. There are thus *reasons for solidarity*. European solidarity is not beyond the demand of duty. Mending the Eurozone's flaws has become a matter of justice.

The Eurozone is a distributive arrangement, and risk is redistributed along with the integration process, which has now brought the background conditions of justice to the fore. There is structural injustice and those that have made the monetary union and gained from it a duty to mend it. They are the addressees of the unredeemed moral obligations generated by the integration process. According to the political concept of justice, which revolves around the duties towards fair background conditions, they have an obligation to put the integration process back on democratic tracks.

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