

# From distributive to procedural justice. Justice as a constitutive value of public administration

Antonio SANDU, *Professor PhD Hab.,  
“Stefan cel Mare” University of Suceava & LUMEN Research Center, Iasi,  
Executive Director of Romanian Unit - UNESCO Chair in Bioethics,  
antonio1907@yahoo.com*

## Abstract

*The justice as an ethical value can be considered constitutive for contemporary administrative systems. These ones are asked to transpose into practice the ideal of justice in the community. The functioning of a modern state cannot be conceived without a series of institutions that would guarantee the achievement of justice. The legal system was established specifically to administer justice. Modern democratic systems felt the need for certain courts and extrajudicial procedures to create justice. The institutions required to implement the extrajudicial distribution of justice are part of the public administration, representing a central element of it. The model of a political system based on justice is a minimalist one; the role of the state is limited to making it possible for individuals to follow their own ideal of welfare. Opposed to justice, the ideal of welfare requests the state, and implicitly the administration, to ensure the individual the minimum conditions to live in that community. The minimal state centered on justice is the result of a modern paradigm with post-Kantian reverberations, which emphasize the rationality of human action. If the individual is rational, he only needs fair conditions in order to pursue his own welfare. The role of the administration is to ensure those conditions and to oversee the distribution of goods and services, as well as the distribution and redistribution of added value.*

**Keywords:** *justice, fairness, constitutive value, equality.*

## Introduction

Justice as an ethical value can be considered constitutive for contemporary administrative systems. They are asked to transpose into practice the ideal of justice in the community. The functioning of a modern state cannot be conceived without a series of institutions that would guarantee the achievement of justice. The legal system was established specifically to administer justice. Modern democratic systems felt the need for certain courts and extrajudicial procedures to

provide justice. The institutions required to implement the extrajudicial distribution of justice are part of the public administration, representing a central element of it. The model of a political system based on justice is a minimalist one; the role of the state is limited to making it possible for individuals to follow their own ideal of welfare. Opposed to justice, the ideal of welfare requests the state, and implicitly the administration, to ensure the individual has the minimum conditions to live in that community. The minimal state centred on justice is the result of a modern paradigm with post-Kantian reverberations, which emphasize the rationality of human action. If the individual is rational, he only needs fair conditions in order to pursue his own welfare. The role of the administration is to ensure those conditions and to oversee the distribution of goods and services, as well as the distribution and redistribution of added value.

*The Aristotelian perspective on the idea of justice*

Originally the thought of Socrates and Plato, the conceptual dedication of the idea of justice came from Aristotle. For Aristotle, it is necessary to make the distinction between distributive justice as fair sharing of goods, and corrective justice – amended – as a measure of correction and overcoming of injustice. Justice is considered by Aristotle as being a moral virtue, which includes concern for the common good. Other virtues, such as courage, generosity, and moderation, due to the orientation towards the Other, are components of justice. Through justice, the individual acts in the direction of the common good. Justice is a virtue by excellence<sup>1</sup> and at the same time, the excellency of the virtue, namely the point of maximum achievement. For Aristotle, the precondition of any virtue is represented by the intention and voluntary nature of the action. In the absence of these conditions, the action cannot be considered moral, neither can it be appreciated or condemned. For Plato, justice is seen rather as fairness, being the philosopher's privilege to know and apply the good within the city. Aristotle is detached from Plato's idea according to which justice is a good by itself, coming from the moral of self-improvement.<sup>2</sup> He waives the metaphysical reflection on the idea of good as a fundament of ethics. The idea of good as an abstract idea, therefore belonging to another world – as Plato considers it – cannot be an object of moral action, either in the relationships of individuals or at a political level.

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<sup>1</sup> Malcolm Schofeld, "Aristotle's Political Ethics," in *The Blackwell Guide to Aristotle's Nicomachean Ethics*, ed. Richard Kraut (Oxford: Blackwell Publishing, 2006).

<sup>2</sup> Charles M. Young, "Aristotle's Justice," in *The Blackwell Guide to Aristotle's Nicomachean Ethics*, ed. Richard Kraut (Oxford: Blackwell Publishing, 2006).

Justice from an ethical perspective is a virtue which is responsible for the good actions realized by individuals and the good they follow through their own actions. Beyond being an ideal good, justice is an actual good, achieved in a given situation by a certain individual. Aristotelian ethics, although theoretical, should be applied and applicable in concrete situations. The Nicomachean ethics is a guide towards virtue that the philosopher addresses to his son. The justice, in Aristotle's vision, has two major meanings: the first one being the total of all virtues the individual expresses in relation to the other, and in the other sense, justice is seen as a personality trait, virtuous by excellence, which enables the exercise of every virtue. In modern terms, the first form of virtue represents making justice, and is connected to the action, and the second one, the tilt towards justice of the moral agent being correlated with integrity and authenticity.

Justice, in its political sense<sup>3</sup>, is seen as being capable of being replaced by laws that should target both distributive and rectifying justice. We can therefore consider that Aristotle is a precursor of the idea of the state subject to the rule of law, but also of the modern vision of the public administration based on norms, and oriented towards the public good. State administration, as seen by Aristotle, needs both legislators and administrators, the equivalent of what are civil servants nowadays. Making justice is a function of the state, the idea of justice being political virtue par excellence. The purpose of any political and administrative organization is represented by doing justice understood as a supreme public good. We conclude that justice is a constitutive value par excellence for the public administration.

Delba Winthrop<sup>4</sup> shows that Aristotle failed to develop a comprehensive and sufficient theory of justice, which can post justice as the last fundament of any policy. Aristotle defined happiness as the practice of virtues, both moral and intellectual. The central subject of the policy is justice and nobility<sup>5</sup>. Delba Winthrop<sup>6</sup> shows that, given the close connection between ethics and policy in Aristotle, we can understand moral virtues as being those features that can be defined by nobility and justice. However, there are virtues that meet the characteristics of nobility and justice, but are opposed to the idea of public good. For example: the pride and greatness of the soul, which are characteristics of

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<sup>3</sup> Aristotle, *Nicomachean Ethics* (Cambridge: Hackett Publishing Company, Inc.; 2nd edition, December 1, 1999).

<sup>4</sup> Delba Winthrop, "Aristotle and Theories of Justice," *The American Political Science Review* 72(4) (1978): 1201-1216.

<sup>5</sup> Aristotle, *Nicomachean Ethics*.

<sup>6</sup> Winthrop, "Aristotle and Theories of Justice," 1201-1216.

nobility and justice of the individual, but are not components of public good. According to the author, Aristotle cannot build a theory of justice as a supreme virtue. In our opinion, it is not even the intention of Aristotle to build a theory that would link the ethics of interpersonal relationships with the ethics of policy. In the ethics of interpersonal relations, the main component of the individual's traits is his moral nature, with an emphasis on moral virtues (ethike). In political ethics, the intellectual (dianoethic) virtues prevail, and justice lies at the level of action and moral decision. What for Aristotle meant nobility was separated into two components, the first one being charity and its correlative being altruism in the relationship with the other. The second component of nobility is represented by integrity and is oriented towards justice in the area of public action. Public justice becomes equity. The charity, originally characterizing the private conduct under the aspect of justice as redistribution, returns to the public sphere as solidarity and practice of institutional welfare and social work<sup>7</sup>.

The modern theories, tributary to the Aristotelian vision, have centred on conceiving justice as mutual advantage and impartiality. For the first case – illustrated by Th. Hobbes, D. Hume, D. Gauthier – of a maximum importance is the fact to “cooperate with the others”, the agreement reached under the negotiation between the persons that are pursuing their own interests<sup>8</sup>. In the theories of justice as impartiality – as well as that provided by John Rawls<sup>9</sup> – the accent is on “principles” reasonable to be chosen, from which a public agreement can be reached, beyond the different positions of the participants.<sup>10</sup>

### *Equity as equality*

Social justice represents a key concept of contemporary political philosophy, being treated especially in the sense of distributive justice.<sup>11</sup> The philosopher operates a restructuring of the theory of social contract. The idea of social contract is brought from the area of legitimizing the political into that of ethically justifying the action, therefore constituting the theoretical framework of the idea of state

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<sup>7</sup> Antonio Sandu and Ana Caras, “Deconstruction of charity. Postmodern ethical approaches,” *Journal for the Study of Religions and Ideologies* 12(36) (2013): 72-99.

<sup>8</sup> Mattias Iser, “Recognition,” in *The Stanford Encyclopedia of Philosophy* (Fall 2013 Edition) ed. Edward N. Zalta, accessed may 4, 2016, <http://plato.stanford.edu/archives/fall2013/entries/recognition>.

<sup>9</sup> John Rawls, *A Theory of Justice* (SUA: Harvard University Press, 1971).

<sup>10</sup> Antonio Sandu, *Etică profesională și transparență în administrația publică* (București: Editura Didactică și Pedagogică, 2015).

<sup>11</sup> Rawls, *A Theory*.

generalized welfare. In Rawls' vision, the social contract takes the form of accepting mutually beneficial principles of justice by all citizens, in their quality of rational members of the society. Rawls' vision, of Kantian nature, presumes the rationality of the actors who take part in the ethical decision from positions of equality and autonomy. The contractualist society is based on justice.<sup>12</sup> The maximum moral standard that the society can reach is the fair distribution of justice.<sup>13</sup> Equity implies an equal distribution of values, either in the sense of goods and services, or in the subjective sense of benefit and loss.

John Rawls formulates two principles of justice as fairness:

1. Each person has the inalienable right to a set of basic freedoms, equal and compatible with the freedoms of others.
2. Social and economic inequalities, created in the society, must be compensated by the condition of fair equality of opportunity, and be of maximum benefit for the most disadvantaged members of the society.<sup>14</sup>

The theory of justice as fairness comes to equate the value of freedom with that of equality. As Rawls<sup>15</sup> explains in the article *Justice as fairness: political not metaphysical*, the theory of justice that he formulates does not claim to formulate a universal truth on the identity of the person and his essential nature. The theory must apply in the constitutional and democratic systems, being a political, not a metaphysical one. As a political theory, justice as fairness targets ethics outside the area of functioning of the political, social and economic institutions of the constitutional democracies. Rawls' theory wishes to be a guide of institutional functioning for the purpose of accomplishing the values of liberty and equality. Rawls therefore places fairness as an operational value of the democratic institutions meant to institutionalize liberty and equality.

Seen as constitutive values of constitutional democracy, liberty and equality show the necessity of the emergence and development of the state of right as a form of social organization. Starting from Rawls' distinction, we consider the value of justice as an operational value for the state subject to the rule of law, and at the same time constitutive for its institutions in the field of administration that are called to implement distributive justice. This is an example of what we call

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<sup>12</sup> Sandu, *Etică profesională*, 68.

<sup>13</sup> Leif Wenar, "John Rawls," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, (Winter 2013 Edition), accessed may 4, 2016, <http://plato.stanford.edu/archives/win2013/entries/rawls/>.

<sup>14</sup> Rawls, *A Theory*.

<sup>15</sup> John Rawls, "Justice as Fairness: Political not Metaphysical," *Philosophy and Public Affairs* 14 (3) (1985): 223-251.

levels of social reality that are the fundament of the axiological dialectics between the constitutive and operational values.

A first level of social reality that we identify, starting from Rawls' thinking,<sup>16</sup> is the constitutional democracy and the state subject to the rule of law, whose constitutive values are liberty and equality. The operational value guiding the functioning of the state subject to the rule of law is the distributive justice that explains the state's rules of functioning, while fixing its limits.

A second level of reality is that of the state institutions, represented by the public administration. On this level, the constitutive value is the justice, the public administration being asked to make justice, among other values such as public good.

The functioning of public administration implies a series of values in the same axiological field as justice, but established in the institutional plan in which the administration functions: equal opportunities and treatment, and fairness.

We subsume these values, at the same time, in the fields of both justice and integrity. This hierarchy of values is, and must be, an ethical one, not a metaphysical one – as Rawls<sup>17</sup> suggested. The ontology of the social levels previously mentioned is an act describing the ways of achieving the social construction of reality – political and social – and not the essentialist metaphysical primacy of any of the ideas.<sup>18;19;20</sup>

Rawls also emphasizes primary goods – including liberties and fundamental rights – absolutely necessary for the welfare of the individual. John Rawls shows that a just society is the one in which a series of principles and conditions are fulfilled in the distribution of goods and resources.

-The equal and maximum extended right of each individual to the total system of basic equal freedoms that would, at the same time, be a system of similar freedoms for all;

-The principle of fair equality of opportunities which entails potential equal access to positions and social opportunities;

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<sup>16</sup> Rawls, "Justice as Fairness," 223-251.

<sup>17</sup> *Ibidem*.

<sup>18</sup> Peter L. Berger and Thomas Luckmann, *Construirea socială a realității*, trans. Alex Butucelea (București: Art, 2008).

<sup>19</sup> Kenneth Gergen, *Social Construction in Context* (Londra: Sage Publications, 2005).

<sup>20</sup> Antonio Sandu, "Preliminaries to a Social-Semiotic Model of Communicative Action," *Postmodern Openings*, 6(2) (2015b): 59-77, accessed may 4, 2016, doi: 10.18662/po/2015.0602.05.

- The principle of difference is the position according to which the greatest benefit should be assigned to the least advantaged members of the society<sup>21</sup>.

Equality of opportunities is a substantial, not a formal equality. The principles are consistent with each other, since the society is fair when fully accomplishing the principle of equal freedoms. The principle of equal opportunities is therefore achieved only as far as making equal freedoms is permitted, and the principle of difference is satisfied only after the maximum fulfilment of the first two.<sup>22</sup>

*Perspectives on social justice. Social justice as lack of oppression*

According to a definition formulated by Young,<sup>23</sup> the characteristic of social justice is the lack of any oppression and social domination. Social justice aims to eliminate from the framework of society the five faces of oppression: exploitation, marginalization, lack of power, cultural imperialism and systematic violence.

Exploitation is the use of individuals' work for the purpose of making profit without a fair compensation for their work. Exploitation occurs even when work is paid, but at an unfair value compared to the added value produced. Young's perspective is a post-Marxist and anti-capitalist one. In order to compensate for any inequities in the working relations, the social state should establish a minimum value of work – minimum wage – and establish a public policy in the area of work that would involve the rights of the employees and their social protection. An interesting discussion is proposed by Young,<sup>24</sup> starting from the exploitation of unpaid contractors. The example given by the author is that of miners in some African states; they are not paid when, without being responsible for the fact they have not mined anything valuable, because they could not find a new vein. Basically, in the area of oppression, we include independently contractual work relations, the subcontracting type and the payment depending on results. Although the payment depending on results can be a source of motivation of the employee, when low results are penalized, this method of retribution becomes a source of inequity. The recent legislative changes adopted in Romania redefine, as dependable work, a series of activities of authorized individuals who have contractual relationships with a single employer. This is justified from the

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<sup>21</sup> Rawls, *A Theory*.

<sup>22</sup> Eugen Huzum, "Dreptatea socială," in *Concepte și teorii social-politice*, coord. Eugen Huzum (Iași: Institutul European, 2011), 59-83.

<sup>23</sup> Iris Marion Young, "Five Faces of Oppression," in *Oppression, Privilege, & Resistance*, eds. Lisa Maree Heldke and Peg O'Connor (Boston: McGraw Hill in Boston, 2004).

<sup>24</sup> Young, "Five Faces".

perspective of reducing this source of inequity. The idea of minimum wage or subsistence provided by the state that would ensure minimum resources to all citizens, and which would replace other forms of social care, leads to the diminishing of inequity which occurs between employees and the self-employed by establishing social benefits.<sup>25</sup> The universal minimum wage allows any beneficiary to satisfy their minimum needs, therefore reducing the dependence on wage labour and vulnerability in relation to the employer.

In our opinion, even though all citizens receive the same income, which leads to equal opportunities, inequity cannot be solved if the funding source of the basic income comes from the redistribution of added value. Redistribution is justified only by applying the concept of solidarity, and is not morally justified in the absence of subsidiarity since misfortune by accident would not be compensated. The minimum subsistence income which eludes subsistence generates inequity by depriving the working individual of the results of his work, randomly redistributed, and is not based on the principle of subsidiarity and compensation for misfortune. We bring the same criticism to the idea of the existing minimum wage in the Romanian legislation, which circumvents the subsidiarity,<sup>26</sup> and also induces an injustice against those whose salaries are close to the minimum guaranteed income. Compared to the beneficiaries receiving this minimum income as benefits, the employees receiving incomes close to the minimum are disadvantaged, being considered not to be practically remunerated for their work. Minimum basic income can be thought as fair when it is paid from the state's own revenues, coming from the state's holdings in commercial societies, or by other ways that do not involve the redistribution of revenues from state taxes.

Marginalization is a second form of inequity in the sense of oppression, discussed by Young.<sup>27</sup> Marginalization represents pushing certain groups to the social periphery and excluding them. Marginalization as a form of oppression is in general related to discrimination. It is fought in democratic countries by anti-discrimination policies, and by promotion of social inclusion. For the ethics of the public servant, it is important to fight marginalization by promoting equal

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<sup>25</sup> Dani Rockhoff, "Bani la liber pentru finlandezi. Guvernul Finlandei anunta intentia introducerii venitului de baza universal de 800 de euro lunar," *HotNews.ro* (2015), accessed may 4, 2016, <http://economie.hotnews.ro/stiri-finante-20653808-bani-liber-pentru-finlandezi-guvernul-finlandei-anunta-intentia-introducerii-venitului-baza-universal-800-euro-lunar.htm>.

<sup>26</sup> Law no. 416 from July 18<sup>th</sup>, 2001, on the guaranteed minimum wage. Published in the *Official Gazette* no. 401 from July 20<sup>th</sup>, 2001.

<sup>27</sup> Young, "Five Faces".



opportunities and treatment. Inequity by powerlessness represents the lack of power of certain categories of people or social classes. In Young's vision<sup>28</sup>, the lack of access to power is a fundamental source of injustice, which translates by the limitation of the development of the individual's own capacities. The strongest injustice, promoted by inequity through the lack of power, is the serial oppression. The marginal and vulnerable groups are subject to a parallel process of self-vulnerabilization and self-marginalization,<sup>29</sup> being agents of the perpetuation and transfer of oppression.

From the perspective of administrative ethics, fighting the phenomenon of inequity by powerlessness is represented by promoting the participation of citizens in both the political and administrative decisions. A particular form of inequity by lack of power is represented by the culture of silence. The individuals that are subject to such form of oppression internalize their status-role of dependent persons, naturally inferior to the dominant classes.<sup>30</sup> Reducing and eliminating the culture of silence is achieved through awareness of the oppression and by imposing certain policies of transparency and stimulation of the civic, political and administrative participation of the citizens.

### *Justice as recognition*

Another definition of justice is correlated by Axel Honneth<sup>31</sup> to the idea of recognition, or the lack of it, of aspects such as: emotional, legal and social ones. This model shows that all injustices are identified and felt in everyday life as a lack of knowledge, either of value, or of social contribution, with or without humiliation or lack of respect for personal dignity and integrity. For Honneth<sup>32,33</sup>, the conflict referring to distribution, and in general to justice, represents the symbolic fight with regard to the legitimacy of some or other of the cultural devices and social instances that determine the value of the activities of

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<sup>28</sup> Young, "Five Faces".

<sup>29</sup> Vasile Miftode, *Tratat de asistenta sociala. Protectia populatiilor specifice si automarginalizate* (Iași: Lumen, 2011).

<sup>30</sup> Young, "Five Faces".

<sup>31</sup> Alex Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge, MA: MIT Press, 1995).

<sup>32</sup> Alex Honneth, "Redistribution as Recognition. A Response to Nancy Fraser," in *Redistribution or Recognition? A Political-Philosophical Exchange*, ed. Nancy Fraser and Alex Honneth (New York: Verso, 2003), 110-197.

<sup>33</sup> Alex Honneth, *Disrespect: The Normative Foundations of Critical Theory* (Cambridge: Polity Press, 2007).

attributions and social contributions.<sup>34</sup> The distributive conflicts hide a symbolic form of fight for knowledge.<sup>35;36</sup> The idea of recognition is based on the value of dignity<sup>37;38;39</sup> and respect, expressing the fundament of the moral itself. The contractualist definition of respect, formulated by Scanlon,<sup>40</sup> is the action in accordance with the principles that cannot reasonably be denied by others. Respect characterizes the relationships with the others, being the motivation of the individual to do what is morally correct.<sup>41</sup> The idea of respect is correlated to that of knowledge of a constitutive value, inherent for an individual, organization or social institution. Respect towards human dignity aims to recognize the value of each human being by its very belonging to humanity. This capacity to acknowledge the inherent value in a person, organization or institution is called appreciativity.<sup>42;43</sup> The appreciation of the value goes beyond respect and esteem, being most fairly described by the idea of recognition. Recognition of values implies a responsibility towards it in the manner in which Levinas<sup>44</sup> establishes the relationship with the Other.<sup>45</sup> Recognition in Honneth's opinion<sup>46</sup> institutes the relationship of power towards the Other. Applying recognition to the distributive justice<sup>47</sup> shows the difference between that and its components of esteem and

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<sup>34</sup> Honneth, *The Struggle*.

<sup>35</sup> Huzum, "Dreptatea socială," 59-83.

<sup>36</sup> Petre Mareş, "Redistribution and Recognition – Two Spheres of Social Justice," in *Transdisciplinarity and Communicative Action*, eds. Ana Frunză, Tomiță Ciulei, Antonio Sandu (Italy: MEDIMOND-Monduzzi Editore International Proceedings Division), 431-435.

<sup>37</sup> Immanuel Kant, *Întemeierea metafizicii moravurilor* (Metaphysics of Morals) (Bucureşti: Humanitas, 2007).

<sup>38</sup> Thomas Michael Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998).

<sup>39</sup> Thomas Michael Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge, MA: Harvard University Press, 2008).

<sup>40</sup> Scanlon, *What We Owe*.

<sup>41</sup> Mattias Iser, "Recognition," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (2013), accessed may 4, 2016, <http://plato.stanford.edu/archives/fall2013/entries/recognition/>.

<sup>42</sup> Antonio Sandu, *Appreciative Ethics. A Constructionis Version of Ethics* (Germany: Lap Lambert, 2012).

<sup>43</sup> Tojo Thatchenkery and Carol Metzker, *Appreciative Intelligence: Seeing the Mighty Oak in the Acorn* (SUA: Berrett-Koehler Publishers, 2006).

<sup>44</sup> Emmanuel Lévinas, *Infinity and Totality: An Essay on Exteriority* (Pittsburgh: Duquesne University Press, 1969).

<sup>45</sup> Antonio Sandu, *Social Construction of Reality as communicative Action* (UK: Cambridge Scholars Publishing, 2016).

<sup>46</sup> Alex Honneth, "Recognition as Ideology," in *Recognition and Power: Axel Honneth and the Tradition of Critical Social Theory*, eds. B. Van den Brink and D. Owen (Cambridge: Cambridge University Press 2007), 323-347.

<sup>47</sup> Honneth, "Redistribution as Recognition."

respect.<sup>48</sup> Recognition towards the other as a value constitutes the prerequisite in the sense of fairness. Justice as recognition means not only the simple valuing, but also affirmative action for fulfilling the value of the other. At the level of applied ethics in the administrative professions, justice as recognition will bring a series of operational values, among which are: promoting the interest of the beneficiary, esteem and respect, and not least, care for the quality of public services provided.

Nancy Fraser<sup>49 50</sup> starts from Honneth's theory<sup>51</sup> with regard to the fight for recognition, and shows that justice implies both recognition and retribution. Fraser's suggestion<sup>52</sup> is that instead of taking a transforming approach to oppression, an affirmative practice is preferred. Transformative practices are identified by deconstruction – which is specific to the postmodern paradigm. This form of deconstruction is associated with lack of respect towards the values and practices of different social groups – an idea exemplified by the gay community. The transformative deconstructive perspective<sup>53</sup> is centred on the deconstruction of the dichotomy between gay and heterosexual. This deconstruction of sexual identity leads to the streamlining of gender identity. The affirmative perspective that we ascribe to the transformative society means that instead of deconstructing gender identity, in order to make the distinction between straight and homosexual superfluous, it develops affirmative identifiable practices for the sexual minorities and policies of accepting multiculturalism. Accepting the other implies, affirmatively, tolerance and the right to difference.<sup>54</sup> The right to difference does not represent an abdication from someone's own identity and their own system of values, but a recognition of the value of the other, in the context of postulating the axiological plurality.

Nancy Fraser<sup>55:56</sup> defines participative parity as a series of social arrangements meant to ensure:

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<sup>48</sup> Iser, "Recognition."

<sup>49</sup> Nancy Fraser, "Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation," in *Redistribution or Recognition? A Political-Philosophical Exchange*, eds. Nancy Fraser and Alex Honneth (New York: Verso, 2003a), 7-109.

<sup>50</sup> Nancy Fraser, "Distorted Beyond All Recognition. A Rejoinder to Axel Honneth," in *Redistribution or Recognition? A Political-Philosophical Exchange*, eds. Nancy Fraser and Alex Honneth (New York: Verso, 2003), 198-236.

<sup>51</sup> Honneth, "Redistribution as Recognition."

<sup>52</sup> Nancy Fraser, "From Redistribution to Recognition? Dilemmas of Justice in a «Post-Socialist» Age" 212 (1995): 68-93.

<sup>53</sup> Fraser, *From Redistribution*, 68-93.

<sup>54</sup> Sorin-Tudor Maxim, *Toleranța. Dreptul la diferență* (București: Editura Didactică și Pedagogică, 2004).

<sup>55</sup> Fraser, "Social Justice," 7-109.

“1) a distribution of material resources that would ensure independence and ‘voice’ to all members of the society;

2) cultural institutional patterns that would ensure to all members of the society equal respect and equal opportunities in order to reach social esteem.”<sup>57</sup>

### *Operational justice. Egalitarianism*

Contemporary ethicists raised egalitarianism to the status of an ethical principle built around the idea of equality, an entire theory referring to social justice. By equal opportunities we understand the distribution of social positions based on performance, in a society that created the conditions according to which, regardless of the social class of the individuals, all citizens have the same talent and will to use and be capable of benefiting from equal possibilities to access those functions and positions.<sup>58</sup>

Another theory of justice, called justice as justification, is formulated by Nozick<sup>59</sup> and assumes the protection of negative rights to life and integrity, liberty, non-coercion and property. The same theory provides the right to distribution of properties in society. According to this theory, property is legitimate when it was acquired based on the principle of justice in transfer only from someone who, in turn, is entitled to that property. Eugen Huzum highlights that Nozick’s principle regarding acquisitive justice is based on the theory of John Lock, according to which property is instituted justly upon an object which was not previously possessed<sup>60</sup> and upon which the one who wants to make it his property expresses an action. Once property is established it legitimately can be transmitted only on a voluntary basis. Taking possession of goods from nature, through exercising something upon them, is legitimate and justified only if they were not previously possessed, and their taking into possession does not prejudice anyone.<sup>61</sup>

Nozick’s principle of justice criticizes the idea of distributivism when it is not based on voluntary agreement. The only legitimate redistribution is that based on doing justice as a restorative act. This theory can be the base of the idea of restitutive justice, by replacing the retributive idea with that of justified redistribution. The Chance Egalitarians follow the reconciliation between social distributive justice with individual responsibility.

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<sup>56</sup> Fraser, “Distorted Beyond,” 198-236.

<sup>57</sup> Huzum, “Dreptatea socială,” 59-83.

<sup>58</sup> Sandu, *Etică profesională*.

<sup>59</sup> Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

<sup>60</sup> Huzum, “Dreptatea socială,” 59-83.

<sup>61</sup> *Ibidem*.

The intuitions based on the egalitarian theory of justice and injustice aim at:

- Misfortune by option, as social disadvantage suffered by individuals, as a result of their own choices or actions for which they are responsible, does not constitute an injustice and does not call for compensation;

- The disadvantages due to blind chance that do not depend in any way on the choices of the individuals, and are not under their control, constitutes injustice and imposes compensation by other members of the society.

Nozick<sup>62</sup> is concerned by the amending size of justice. Creating welfare was possible by doing injustice in different historical periods. Historical injustices can be compensated, but the process of compensation must not create other injustices. Although the Nozick's principle<sup>63</sup> is generally applied to international relations, or the relations between social classes with the purpose of reducing the disparities of power between the collective social actors, the principle of corrective procedural justice can be transposed into administrative ethics as an obligation of the public servants to establish clear repairing procedures that would limit inequities due to the cognitive vulnerabilities of the citizens. A negative example in this regard is represented by the lack of transparent policies and efficiencies in applying the remedial measures by giving back properties in Romania. Applying remedial measures was not transparent, nor accompanied by a clear ethical policy that would enable procedures of efficient decision-making on restoring properties.

Society has the duty to compensate the results of uncontrollable lack of chance, supporting those members that are not responsible for their own failure. This theory can be critical, starting from the idea that the need to eliminate social oppression, or the need to develop a community of citizens in a relationship of equality with the others is no longer taken into account. Another criticism is a moral and paternalist attitude of this system, which refuses to assist the victims of bad luck by option.

### *Conclusion*

Justice in all its forms: distributive, procedural, and remedial, represents a constitutive value for the functioning of contemporary administrative systems. Establishing justice can no longer be exclusively left in the area of legal power. This power has corrective and remedial competences, and is only partially distributive in contentious situations. Administration of justice in the

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<sup>62</sup> Nozick, *Anarchy*.

<sup>63</sup> *Ibidem*.

administrative field must constitute a priority of the state of right, which, by the public policies promoted, comes to meet the citizens' rights to ensure justice and fairness in the relationship between citizens and the state. Doing justice implies a series of ethical operational values, among which the most significant are: fairness, equal opportunities and treatment, transparency, and facilitation of public participation.

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