

Salient ethical issues for intervention against violence

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1. Introduction

Since September 2013 the CEINAV project has been exploring the cultural premises underlying different approaches to intervention against violence in four European countries (Germany, Portugal, Slovenia and the United Kingdom), and is seeking to illuminate ethical issues in the context of cultural encounters within and between these countries. Parallel to the empirical research (focus group discussions in multi-professional workshops in 2014, interviews with women and with young people who have experienced intervention in 2015), one theoretical task was to survey the ethical theories as they relate to intervention, and to compile ethical dilemmas that arise in practice.

The task at hand was first to examine ethical theories as they relate to intervention against violence, and to give particular attention to the ethical issues of rights and discrimination arising from interpretations of the state’s duty to protect as embedded in policies and intervention procedures. It must be said that ethical theory has not often dealt with these issues, and conversely, the debates in intervention and protection have not generated a great deal of ethical theory.

The present paper now also attempts to put together systematically the ethical issues and dilemmas that have been found in the empirical work of the project so far (see the CEINAV working papers <http://tinyurl.com/ceinavworkingpapers>), and relate them to the aspects of ethical theory that seem most useful. After the interviews have been carried out and analysed, this work will be expanded drawing on the knowledge gained from hearing the diverse voices of those who have experienced intervention, leading to a “summary of theory and ethics” (foreseen for October 2015).

The overall goal of CEINAV, to which this theoretical work will contribute, is to develop guidance towards respectful and responsible intervention, highlighting dilemmas and challenges to the “moral sense of practice” and proposing transnationally meaningful ethical foundations for intervention, to be discussed in each country, disseminated and written up in the final report in August 2016.

Although there is a broad and many-faceted range of approaches to ethics, “textbook ethics” since the 1950s and reinforced by the wide recognition of John Rawls work on *Theory of Justice* (1971) have followed an established view that the moral assessment of social institutions should be associated with the term “justice”, while the term “ethics” applies to the moral assessment of the conduct and character of individual and collective agents. Ethics in this sense seems too narrow a scope for the aims of the CEINAV project, as intervention against violence is located at the intersection of social institutions and individual (especially professional) agents. Furthermore, the overall context of the HERA programme¹ “Cultural Encounters”, reflected in the CEINAV aim to

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understand cultural premises of intervention practice, cuts across the distinction between institutions and practices. Thus, “ethics” will be understood as comprising both levels.

An additional prefatory note is needed. Ethical theory focusses largely on clarifying **what** should be done, either institutionally or by individual or collective actors. The central concern around intervention is better framed by the question: **How** can the “right thing” be done in such a way as to create greater safety from victimisation, more freedom and agency for those victimised, and less danger of violence? As will be seen, this question is anything but trivial, since institutional frameworks and measures taken by various actors in the hope of “righting wrongs” can prove ineffective or even harmful if done in the wrong way.

We have taken the following steps towards identifying ethical issues and dilemmas²:

- (1) A first draft (systematic) collection of ethical dilemmas – Dec. 2013
- (2) An overview of ethical theories that might be relevant to intervention - Feb. 2014
- (3) A list of key ethical dilemmas compiled at a Core Research Team meeting, with an addendum locating them in the systematic collection (March 2014)
- (4) Suggestions in the methodological guide for workshops (April/May 2014)
- (5) Compilation of ethical dilemma from memos for the three forms of violence being studied in the project: child physical abuse and neglect (CAN), domestic/ intimate partner violence (DV), and trafficking for the purpose of sexual exploitation (TSE) (July 2014)
- (6) Discussion of ethical theories and issues with associate partners in a five-day working seminar in Porto (notes and some taped sessions)
- (7) Clustering of ethical dilemmas based on the 12 draft working papers with (Nov. 2014).

In the following, these papers are referred to by document number in the above list as needed.

2. Relevant ethical theory

The ethical issues discussed in the above documents seem to call for

1. A theory of justice. It should enable us to weigh the claims of individual rights against each other, and of individual rights against the claims of social justice for the many;
2. An inclusive theory of citizenship that gives recognition to the basic needs of every person in the territorial reach of a state, and includes respect for group differences;
3. An ethic of care or contextual ethics. It should set a framework for attending to the needs of concrete persons while weighing these against the limits of the caring obligation, as well as attending to the potential of care relations to be oppressive;
4. An ethical approach to integrating perspectives of justice and care;
5. An ethic of professional or institutional intervention in the lives of others without their request or consent or without their knowledge, addressing the paternalism problem;

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² In moral philosophy, there is a long tradition of debate on whether true moral dilemmas can exist, some arguing that it will always be possible to decide which obligation should prevail. We have decided to use the concept regardless of the abstract possibility of an ideal resolution and the pragmatic reality that decisions are made and people have to live with them. An ethical dilemma presents a choice that must be made between two mutually exclusive courses of action, each of which is perceived to rest on a moral obligation that carries significant weight for the actor confronting the dilemma. We also speak of moral conflicts and of difficult decisions.

6. An ethics of responsibility or responsiveness in the sense of an obligation to listen and respond to persons we cannot understand in advance.

It becomes evident that we will need to construct the ethical foundation for intervention from elements of different theories.

A further challenge is raised by our decision to work from a human rights perspective. Ethical theory and moral philosophy do not generally accept human rights, as they have been formulated in politically negotiated proclamations and conventions, to be a given, any more than they derive their arguments from divine law. That would be begging the very questions their discipline is meant to answer with reasoned argument, for example: What constitutes a just society? A decent society? How to know what is right and wrong? Thus, in working with ethical theories to ground an ethical foundation for intervention against violence, we cannot simply refer to international law any more than we can refer to national law as the indisputable source defining what is good or right. We must locate human rights in the theories that we draw on, but this is not the place to reconstruct how each theory arrives at fundamental rights, as many (but not all) of them do.

Furthermore, we must consider the critiques that fault human rights discourse for being overly individualistic and obscuring from view structural relations of power: “the concept of rights alone may not be able to do the ‘moral work’ that it needs in order to provide a complete ethics” (Robinson 2011: 49). While the CEINAV project cannot deal with the full range of global inequality, the decision to study three forms of violence that take place in the context of relationships or intimate relations does challenge an exclusive focus on (individual) rights and freedoms. Intervention frameworks and strategies that, in essence, seek to encourage or enable women or children to lay claim to their individual rights, putting aside other claims, may misconstrue or fail to respect the nature of their involvement, of which entrapment is one dimension, but may not be the whole.

3. Dilemmas and issues in the context of ethical theory

3.1 Theorising justice for a liberal democracy

The predominant theories of justice define it in terms of universal principles, equality and reciprocity. Justice in this sense is one way of looking at human rights, placing “liberty rights” (no-one shall be subjected to...) as the fundament³. Writing in the liberal tradition, John Rawls (1971) presents a picture of justice for a liberal society that he terms ‘justice as fairness’; this amounts to a theoretical framework of the legitimate use of political power. Taking the central liberal ideals of the freedom and equality of citizens, he constructs an account of the arrangements of social and political institutions which he claims is *fair*. His explicit interest is in theorising principles of justice for the narrow political sphere of life, and not in formulating a general theory of right conduct. Nevertheless, ethical theory has been deeply influenced by this approach.

The duty of the state to **protect women** against gender-based violence is based on the thesis that this violence (NOT all violence) is a form of discrimination, grounded in unequal power relations in society. In acting to fulfil this duty, the state is restoring to women (as a class) a status equal to that of men. The state cannot, at the same time, in justice treat women as less able than men to make decisions about their own lives, or violate other basic rights. When such measures are taken (e.g. information sharing without consent, taking women to a shelter against their wishes, or placing them under some kind of supervision), the ethical legitimacy must be drawn from other grounds than those of justice and non-discrimination. We will return to these issues.

The duty of the state to **protect children** from harm is perhaps more complex. Justice could require that all children should equally have the right to grow up in an environment that protects them from harm, meets their developmental needs, and supports their physical and emotional flourishing. Thus,

³ Alya Khan contributed to this chapter with an assessment of the theories of Rawls and Habermas and of the care-justice debate between Gilligan and Kohlberg.

allowing some children to suffer deprivation or harm in their families could be seen as a form of discrimination. However, the UN Convention on the Rights of the Child (CRC) is not framed in terms of inequality and discrimination, and on the other hand, ethical theories of justice have given little or no attention to children at all. The most influential philosopher of a liberal theory of justice, John Rawls (1971/1999), declared that parents can be trusted to do what is best for their children and thus justice can be theorised for adult citizens. This is a consequence of defining justice as “fairness”, and postulating that “fair” rules are those that every reasonable person would agree to if he or she did not or could not know what his or her own situation would be when the rule is applied.

[There is also a language issue here. Rawls equates justice with fairness, and this equation seems to be intuitively meaningful among English-speakers. The latter concept has also spread into numerous other languages, often untranslated, partly as an influence of Empire and perhaps more due to its international (mis-)use in competitive sports. Most European languages also have a concept of justice, and it does not mean exactly the same as “fairness” where the latter term has been adopted. In German literature, the iconic figure of Michael Kohlhaas symbolises pursuit of “*Gerechtigkeit*” against authorities and choosing to be an outlaw, even to be executed rather than compromising his demands. There is also some question about whether legal proceedings could be considered a means of *Gerechtigkeit*, or whether they rather serve to restore social peace and order.]

A second major influence in theorising the just society has been the proceduralist view of democracy (Jürgen Habermas) in which truth and justice are the outcomes of free and reasoned deliberation by autonomous adults. While Rawls restricts his theory to the basic social arrangements of a just society, such that everyone would agree to them in an imaginary social contract, in the deliberative theory agreements on arrangements are conceptualised as ongoing negotiations in which citizens can bring any concerns or issues important to them into the discourse. Norms are valid if all affected persons could agree as participants in rational discourse, assuming them to be free agents, neither coerced nor dependent on others. While feminists such as Benhabib (2002) have added the proviso that all who would be affected by the consequences must be *enabled* to participate in a *real* discourse founded on universal respect, egalitarian reciprocity, and (with regard to culture) voluntary self-ascription, the underlying concept of the autonomous individual presenting rational arguments is maintained. Relationship ties do not enter the picture.

In his “classic” book “Ethics and the limits of philosophy”, Bernard Williams notes that such theories “require in principle every decision to be based on grounds that can be discursively explained (1985/2006: 20), and in summing up, writes that much of modern ethical theory “is governed by a dream of a community of reason that is too far removed...from social and historical reality and from any concrete sense of a particular ethical life” (220). Despite these limitations, ideas such as a social contract to which all could agree or a deliberative process in which all those affected could participate is not merely dreaming, but extrapolates principles that are regularly brought to bear in political and legal discourse about justice in Western democracies. Such an ideal of justice based on equal rights may be necessary, but is probably not sufficient for our purposes, as the victims of violence are, due to that very circumstance, not free agents in the sense of these theories. We will look at other ways of theorising justice (and injustice) below.

In our context, without reconstructing the philosophical foundations of a just society, we may assume that a just society confers **rights on individuals**, and if we take human rights and children’s rights as defined in international conventions to represent (albeit imperfectly) a consensus on what those rights should be, we can connect to the first set of ethical dilemmas that we collected in CEINAV. And regardless of critical thought on these theories of justice, issues of individual rights were evidently significant for professionals, as the working papers show.

The 2013 CEINAV paper said: Some ethical issues can arise directly from the human rights/children’s rights framework for intervention, raising the question of how “practical concordance” within the holistic body of human rights can be achieved. The examples that follow are now drawn from the workshop discussions; our other documents are referred to by document number in the above list.

- a) One victimised individual often has **conflicting** (or divergent) **fundamental rights**. The CAN workshops in Germany and in Portugal referred to a dilemma between the right of the child to live in his/her family, and the child's right to be safe from harm in a developmentally beneficial environment. In all countries, in the DV workshops dilemmas were discussed where the woman's right to self-determination stood in opposition to her right to be safe from gender-based violence. For TSE this emerged most strongly in Germany and Slovenia. A cross-cutting dilemma for practitioners was: How far and how long should agencies accept that the woman or the child is in danger of serious harm when she/the family refuses offers of help?⁴
- b) The **rights of two or more individuals** can stand in conflict. "Balancing conflicting rights" was specified as an ethical issue to be addressed in the workshops [see doc. (3) and (4)]. In CAN this appears as conflict between the parental right to raise children according to their chosen values, versus children's rights, including protection from all forms of violence. With DV the woman's right to self-determination concerning her own relationships has to be balanced with the child's right not to be exposed to violence (this was a strong theme). Furthermore, with DV the conflict is potentially triangular: the woman's right to end an abusive relationship in safety (and to have no contact), the father's right to child contact, and the welfare resp. best interests of the child, including the child's right to be heard. Conflicting individual rights seem less relevant to TSE, but the UK concept of a "**duty of care**" can be understood to allow or even require agencies to override the rights and wishes of an individual victim in order to secure the rights of other victims.
- c) Individual **rights** can come into in conflict with societal or state considerations of essentials of **public interest**. This came up quite strongly with regard to TSE, as the right of the victim to decide not to cooperate with police stands in opposition to the interest of the state in prosecuting and stopping trafficking. This conflict also emerged in regard to DV, but there were differences by country context as to whether the interest of the state primarily concerns prosecution or protection (preventing continuation). Another conflict between individual rights and public interest is exemplified when statutory agencies compile and share personal data on victims of crimes (or even minor offences) on the premise of a public interest in having the data available, or in the UK, under the concept of "public protection". This is not only a question of privacy rights; some professionals expressed concern that routine data-sharing (in the UK) or bureaucratic routines (in Germany) can endanger the victim by revealing information to the perpetrator.
- d) Especially with violence in close relationships or the family, the victim has a right to choose **not to testify**, while the criminal justice system has a duty to **investigate and prosecute** crimes. Victims of TSE have the right to decide (at least during an initial reflection period) whether to cooperate with the police; they can be obligated to testify in court, but some CJS professionals considered this ethically unacceptable as being a form of re-victimisation. Professionals in a number of workshops spoke about victims of TSE and DV **not cooperating** with prosecution even after making a complaint, and expressed to a greater or lesser degree reservations about criminal investigation of suspected CAN. Professionals in Germany and Slovenia expressed strong views that prosecution is frequently not in the interest of the victim, and some even framed the decision to prosecute as a serious ethical dilemma.
- e) Finally, it is not enough to declare that everyone has rights; in a just society, these rights would be enforced (otherwise they may become meaningless). The **obligations of the state** can be **in conflict** with one another, as exemplified in the German constitution,

⁴ From a justice perspective, it is assumed that the agencies are offering the best that they can do, given the legal frameworks, resources, and professional knowledge that they have, and that a victim or family that rejects what they offer will be lost to intervention.

which lays down a duty to give special protection to marriage and the family as well as a duty to protect citizens from violence. With CAN some workshops saw a conflict between the duty of the state to prosecute and punish abusive parents and the CRC (Art. 3) provision that (a) the best interests of the child always be the primary consideration, and (b) the state should provide guidance and support to parents/carers. With TSE, the workshop guidance suggested discussing tensions among the duties to impose sanctions against traffickers, protection of victims from danger or harm, and enforcement of immigration and residency laws. Practitioners were not much inclined to unfold these tensions on the structural level, but did place normative framings of practice in relation to them. These tensions and contradictions suggest that constructing arrangements of a just society may be less easy than it seems in these theories when attention is given to the widespread phenomena of interpersonal violence.

3.1.1. Defining justice for victims

The idea of a just society also raises the question of what constitutes justice for those who have suffered harm, but there does not seem to be a body of ethical theory discussing what **justice for victims**, either for women or for children, would mean. Especially for domestic violence, descriptions of victims' dissatisfaction (or non-cooperation) with the criminal justice system abound, but these findings have rarely led to reconsidering the concept of a just society.

Justice can mean, very simply, enforcement of (universal) rights by punishing those who violate them (often phrased as "bringing the perpetrator to justice"). In North America the interest of a victim of domestic violence in justice has often been taken to be synonymous with her wish to see the perpetrator punished (Hagemann-White et al 2015); that the vast majority of women do not pursue this course is usually explained in terms of psychology and given no ethical relevance. Yet it is not self-evident (nor empirically well-confirmed) that court-imposed sanctions serve as a deterrent, or a safety measure, or secure the rights of those who have suffered harm. Our workshop discussions evidence considerable uncertainty on this count. Judith Lewis Herman writes that "for many victims, even a successful legal outcome does not promise much satisfaction because their goals are not congruent with the sanctions that the system imposes. The victim's vision of justice is nowhere represented in the conventional legal system" (Herman 2015: 575).

The observation that victims of violence by known or close persons are often disappointed with (or avoid) criminal prosecution has been presented as a strong argument in favour of "restorative justice" (often presented as originating from practices of indigenous groups; Strang & Braithwaite 2002⁵). Strong claims have been made for a collaborative community-based approach (rather than a solely punitive one) that will empower victims and re-integrate offenders, the goal being to repair the harm done by the offence. A vast array of publications have debated these claims in recent years, restorative justice has been introduced in many jurisdictions, and the UN Economic and Social Council adopted "Basic Principles" to guide the use of restorative justice programs in 2002. Yet as Chris Cunneen and Carolyn Hoyle agree (even when taking opposite positions in the debate in their 2010 book), in practice this approach has been introduced almost exclusively for dealing with youth offenders and available only for "low-end" crime, replacing such measures as reprimands and warnings in the UK, for example. While there is some evidence from different studies that victims of more serious offences may be more satisfied with the outcomes of alternative proceedings, there is little clarity about what "justice" in these contexts means. Only a small number of programs have piloted restorative approaches to domestic violence while giving careful attention to the accompanying issues of safety and power inequality.

Cunneen argues that the new enthusiasm for restorative programs does not contradict, but complements the increasing use of harsh punitive measures as part of being "tough on crime". He sees these twin trends as part of a politics of "responsibilisation": With restorative programs it becomes the responsibility of the local community and even the parents (and not the state) to deal

⁵ Kathleen Daly has analysed this claim to reviving indigenous practices as a typical 'origin myth' (Daly 2002).

with young and first-time offenders; while those who continue to offend or commit more serious offences are made individually and unconditionally responsible for their offences and punished without regard to the circumstances that may have shaped their actions.

Outside the mainstream of restorative justice for youth offenders, there are authors and projects exploring what justice could mean for victims of gender-based or family-context violence. Judith Herman (2005) concludes, from her empirical study of this question, that victims above all seek acknowledgement of the facts of the crime and of the harm done, and vindication, that is, a clear condemnation of the offence that can transfer the burden of disgrace from victim to offender. Most were not interested in punishment, but would prefer exposure of the perpetrator, to deprive him of undeserved honor and status, and also speak of their need for measures that would ensure safety for themselves and for other potential victims. Justice, in their view writes Herman, “was neither restorative nor retributive in the conventional sense” (2005: 597). With sexual and domestic violence it is not the relationship between victim and offender that needs healing, but that between the victim and her community. A restorative justice model that relies on traditional community standards “cannot be counted on to do justice to victims because public attitudes towards these crimes are conflicted and ambivalent at best” (598).

Projects that have sought to address domestic violence with approaches such as “transformative justice” (coming from Quaker-based organisations, see Nocella 2011), or the “Cultural Context model” (a community-based DV intervention model from the US, see Almeida et al 2005) offer alternatives for victims who would not pursue criminal justice, addressing accountability and peacemaking. Kathy Daly (2002) has discussed the limits of such approaches and argues that restorative justice must be concerned “*first* with vindicating the harms suffered by victims (via retribution and reparation), and then, *second*, with rehabilitating offenders” (2002: 84).

More recently, Susan Herman (2010) has proposed that justice for victims of crime should not only be understood as conceptually quite distinct from justice for perpetrators, but also recognised as a crucial dimension of a just society. Her concept of **parallel justice** is based on the premise that, alongside holding offenders accountable for their crimes, “society has a separate obligation to repair the harm experienced by the victim” (55). Regardless of whether an offender is ever identified, prosecuted, or convicted, “all victims are entitled to a separate path to safety and justice, one that does not replace, but runs parallel to, the criminal justice process” (53). Victims need to be safe, they need to recover from the trauma of the crime, and they need to regain control of their lives (4), and society has an obligation to meet these needs as soon as a crime is reported. This proposal has a far wider scope than all policy and law initiatives defining gender-based violence or violence against children as a crime, since the vast majority of crimes never end up in court, so that rights of victims that are tied to criminal proceedings have no meaning for most victims.

The problem of whether criminal prosecution (and retribution) takes sufficient account of the needs of victims was quite present in our workshops. We might hypothesise that the professionals are wrestling with ethical issue that has been insufficiently theorised or acknowledged: For example, when is it ethically justifiable to involve victims in criminal proceedings when they are reluctant or apprehensive, and it can even be predicted that the proceedings may do them further harm? The workshops did not enter into alternative concepts of justice in any depth, if at all, but some of the issues that arise here can be named briefly:

- a) Powerful agencies that can grant benefits or impose sanctions (need to?) tend to cultivate a “culture of disbelief”, this stands in opposition to victims’ elemental need for **acknowledgement** of the violations perpetrated and the harm that was done to them.
- b) Justice in criminal court is concerned with retribution and penalties, this stands in opposition to victims’ need for **vindication**: expose the perpetrator, clearly and publicly condemn the offence, and transfer the burden of disgrace.
- c) Restorative justice as a community-based approach focusses on **re-integrating** the perpetrator, while it is the victim who needs to be re-integrated into her community.

- d) **Parallel** justice (independent of criminal proceedings) should begin as soon as a crime is reported, and address needs of victims to be safe, to recover from the trauma, and to regain control of their lives. However, it is not always immediately evident who is victim and who is perpetrator of some crimes.

3.1.2 The rights of children in the context of liberal theory

On the question of what abused children might recognise as justice, ethical theory seems to be silent, despite a growing body of evidence that children are highly vulnerable to (violent) crime. Within the rights discourse, ethical dimensions emerge when discussing how far the rights of children are the same as, or different from those of adults. Recently, Christoph Schickhardt (2012) has examined how liberal democracy theory from Locke to Rawls has dealt with (or failed to deal with) children as rights holders, and undertakes to remedy this lack. He argues convincingly that children have a moral status (as rights holders) fully equal to that of adults, with the same normative weight and the same claim to respect and consideration. At the same time, however, from a developmental perspective they have specific needs and interests giving rise to different rights, such as the right to an education that will further the development of their capacity to judge what will serve their present or future welfare. To the extent that children have not yet developed the capacity to make responsible decisions about their best interests (defined as comprising their present and future happiness and their present and future personal autonomy), it can be necessary and justified to intervene against their express wishes. This raises the question of how the relevant capacities can be evaluated, to which Schickhardt has no satisfactory answer. For ethical theory with regard to children, it is his conclusion that concerns us. Despite his decided stand on a foundation of liberal rights theory, he argues that “best interest of the child” is an evaluative, not a normative category, and cannot be simply transferred into the language of rights. Thus, we will return to his argument in the section on integrating the perspectives of justice and care below⁶. Here the point to be noted is that even a strong and clearly elaborated argument for children’s rights does not seem to offer a concept of what might be justice from a children’s perspective when their fundamental rights are violated.

The story line for the workshops on child abuse and neglect did not offer much occasion to discuss the child’s right to have a voice in the decisions that affect him, as the child was quite young and the his wishes were only mentioned concerning confidentiality. In the domestic violence workshops, however, custody and visiting rights after a separation with a history of violence were felt to be significant, as well as the issue of potential child endangerment if the abused woman does not make the decision to separate. Hearing the child rarely came up in the latter context. Ethical issues were:

- a) When ought (or must) the child be heard concerning an intervention that will affect his or her life, and what weight should be given to the child’s views? (For discussions of the challenge of actually listening to children see Houghton2006 and Eriksson 2012)
- b) How to evaluate the capacity of a child to assess his or her best interest (i.e. his or her maturity, understanding, self-awareness, etc.) in a situation involving violence or neglect?

3.2 Social justice, theorising injustice, and the good society

Alongside the issues of individual rights in a just society, there is a body of ethical theory oriented to **social justice**, challenging the individualist concept of society and concerned with the relations among groups. Migration, minorities, and structural exclusion all call into question the models of a just society in which all those affected by a norm or a regulation have a voice in deliberations, or are able to make themselves heard. Over the past 20 years, one major stream of discussion on social justice and ethical theory has debated the alternative paradigms of economic redistribution (with a long tradition in justice discourse), understood to mean seeking to overcome structurally unequal access to material resources and the accompanying exclusion from social participation, versus

⁶ Regrettably, Schickhardt does not reference any of the main authors or positions from feminist ethics, nor acknowledge their prior work and that of a wider stream of ethical theory identifying the failure of mainstream liberal democracy theory to take account of human dependency. The title of his book seems best translated as “*An ethical theory of children’s rights*”

recognition (put forth as a paradigm by Charles Taylor), understood to characterise the struggles of social groups for social relations and legal frameworks in which they can achieve self-realisation in terms of their own identity. This controversy has been usefully explicated in the jointly authored (albeit sharply controversial) book by Nancy Fraser and Axel Honneth (2003).

Beginning from their shared premise of equal rights and equal autonomy for all members of society, Fraser frames misrecognition as “status subordination” (221) and sets against this the principle of *participatory parity*, against which social justice can be measured, while Honneth defines the goal of justice to be “the most *intact possible identity formation*” (176) and brings in the principle of mutual recognition (which may include esteem for a cultural minority’s constitutive practices, way of life and values) as the means of reaching that goal. Fraser understands the recognition dimension of social justice to concern status equality, not intact identity. While Honneth develops his ideas from an ethical theory of the good life, Fraser seeks to avoid appealing to ethical arguments. Honneth draws on historical studies to argue broadly that perceptions of injustice are regularly associated with experiences of social humiliation and disrespect; the moral order of society must be understood as “a fragile structure of graduated relations of recognition” (137), so that distribution conflicts are always struggles for recognition. Placing recognition at the centre assigns importance to the demand of social movements for cultural recognition of their collective identity, and to a greater or lesser extent, authors sharing this focus may conclude, with Kymlicka (1995), that cultural communities may legitimately claim collective rights. This is a precarious position with regard to stopping violence within the family, as cultural rights tend to be claimed especially with regard to the family sphere, often with the corollary that women and children should accept the decision-making power of a male “head” of the family or of the clan. This may explain why cultural rights did not emerge as a significant perspective of intervention professionals.

In a challenge to both of the above paradigms, Judith Shklar (1990) has argued that moral philosophy and political theory have given too little attention to **injustice**, having taken for granted “that injustice is simply the absence of justice, and that once we know what is just, we will know all we need to know” (p.15). By looking only at justice, theories fail to address issues such as the sense of injustice, or the difficulties of identifying the victims of injustice.

Iris Marion Young argues that concepts of social justice have been too strongly oriented to the unequal distribution of social goods, such as income, resources, positions, or jobs. In her view, injustice should rather be conceptualised in terms of oppression and domination. In this way, she avoids notions of welfare rights (or individual rights to goods and services), and remains in the sphere of fundamental freedoms, or liberty rights. In her view, central elements of social justice – power, rights, opportunity and self-respect – cannot be understood as a problem of distribution, as they do not consist of “things” of which one can have more or less, but have a process nature. Moral agents, whether individual or institutions, thus have an ethical obligation to concern themselves with ensuring that no-one is subjected to domination. She proposes – and here she has links to both Nancy Fraser and Axel Honneth – a “politics of difference” involving group representation, “an ideal of politics as deliberation in a heterogeneous public which affirms group differences and gives specific representation to oppressed groups” (Young 1990: 260). Note, however, that Young is not basing her ideal on fixed ethnic, cultural, or other (perhaps gender) groups, but on the concept of “affinity groups: “Affinity names the manner of sharing assumptions, affective bonding, and networking that recognizably differentiates groups from one another, but not according to some common nature.... Group identity is constructed from a flowing process in which individuals identify themselves and others in terms of groups, and thus group identity itself flows and shifts with changes in social process” (172). With this “relational understanding of difference” Young strongly suggests that social movements protesting against oppression and domination are the most relevant voices. (Honneth challenges this linkage as giving voice only to those who already have a voice).

The notions of group identity, group representation, and social justice as respect for differences are central to the literature on multiculturalism, yet the open-ended and fluid concept of “affinity groups” seems better able to avoid reifying cultures and/or ignoring the internal power structures

that may exist within religious or cultural minorities. Spivak employs the concept of *synecdoche*, a type of metaphor in which a part can stand for the whole. It allows a (conscious) choice enabling collective claims without an encompassing identity; when synecdoche fails, culture becomes reified (see footnote 6). Notably, while the workshops did discuss “other” cultural norms as obstacles to effective intervention, the question of group representation seems not to have come up at all, and claims of certain groups to self-government were described out of practical experience, but never brought up as potentially legitimate. On the contrary, claims of culture or religion, when they collided with intervention norms (for example, claims to regulate family matters according to internal norms of the group) were strongly rejected as soon as violence was recognised. Thus, I have not pursued these theories here; they may prove relevant for interpreting the interview material.

Miranda Fricker (2007) has suggested an approach to analysing injustice that does not depend on a prior identification of group identity or the ability of groups to make claims. Her concept of “**epistemic injustice**” is developed from her interest in the moral dimension of “practices through which knowledge is gained, or indeed lost”, practices that are “played out by subjects that are socially situated” (p. vii), that is, the participants stand in relations of (social) power. She looks at ethical aspects of two basic everyday epistemic practices: conveying knowledge to others by telling them, and making sense of our own social experiences.

Fricker distinguishes two kinds of epistemic injustice: *testimonial* injustice and *hermeneutical* injustice. The former relates to how far what someone tells us is taken seriously or believed, since face-to-face communication rests on the spontaneous attribution of (a greater or a lesser degree of) credibility to the speaker. The hearer reacts through an “unreflected alertness to the many prompts and cues” relating to the speaker’s trustworthiness, comprising the two aspects of assumed sincerity and competence (p. 80). Testimonial injustice occurs when the speaker is given less credibility than would otherwise be the case due to prejudice related to social identity. It is “a kind of injustice in which someone is *wronged specifically in her capacity as a knower*” (p.20). When it is systematic, that is, the credibility deficit follows a person through different dimensions of social activity, a range of further injustices are likely to ensue; but the primary injustice is being degraded (wrongfully perceived as not trustworthy) *qua* knower and thereby symbolically degraded as not fully human. After describing the multiple harms that such exclusion from the community of competent or trustworthy participants in the exchange of knowledge can generate, Fricker sketches a concept of the “virtue of testimonial justice”, grounded in a moral attentiveness to correct for prejudices, include one’s own stereotypes that may be unconscious. Thus, while testimonial injustice is rooted in social relations of power and group identity attributions, it is committed on a daily basis by individuals, and thus implies potential for ethically reflective individuals to contribute to reducing it.

Hermeneutical epistemic injustice exists when social groups are unable to participate fully in those social practices by which collective social meanings are generated (p. 152). Fricker’s emblematic examples are experiencing sexual harassment at a time when no concept for this existed, or having homosexual desires at a time when only constructions of sickness, perversion and sin were available for construing these feelings. She defines hermeneutic epistemic injustice as “having some significant area of one’s social experience obscured from collective understanding owing to a structural identity prejudice in the collective hermeneutical resources” (p.155). This marginalisation damages the subject’s faith in his or her own ability to make sense of the world.

This concept intersects with Gayatri Spivak’s description of subalternity, which for her is “imbricated with the idea of non-recognition of agency”⁷. Referring back to Marx’s analysis of class (and his distinction that a class ‘in itself’ may not be a class ‘for itself’), she writes “Because of the absence of

⁷ “Agency presumes collectivity, which is where a group acts by synecdoche: the part that seems to agree is taken to stand for the whole. I put aside the surplus of my subjectivity and synecdochize myself, count myself as the part by which I am metonymically connected to the particular predicament, so that I can claim collectively, engage in action validated by that very collective.” When this does not occur, “difference slides into ‘culture’, often indistinguishable from ‘religion’. And then the institution that provides agency is reproductive heteronormativity (RHN). It is the broadest and oldest global institution.” (Spivak 2012: 436-437).

infrastructural institutions, which are the condition and the effect of class-consciousness, 'they could not make their class-interest count' to have what they are saying and doing be recognized as such" (Spivak 2012 p. 432). Subalternity is a position without identity; Fricker would presumably call this hermeneutical injustice.

Unlike testimonial injustice, hermeneutical injustice "involves no culprit", no perpetrator. "The relevant gap in hermeneutical resources has genuinely reduced the communicative intelligibility of the speaker" (p. 169), so the issue of culpability does not arise in the same way. Nevertheless, Fricker writes: "the phenomenon should inspire us to ask what sort of hearers we should try to be in a society in which there are likely to be speakers whose attempts to make communicative sense of their experiences are unjustly hindered." (p. 168) The virtue called for involves "a capacity for indefinitely context-sensitive judgment" (p. 171), a "more pro-active and more socially aware kind of listening", "listening as much to what is not said as to what is said" (p. 171-72).

The concept of epistemic injustice, while operating with a rather abstract terminology, seems highly relevant to key issues of the CEINAV project and potentially useful for framing ethical foundations for an inclusive intervention practice that responds to diverse voices. While Spivak, taking a global view of relations of oppression, defines subalternity as the complete exclusion from social mobility or agency (so that immigrants from the Global South living in European cities are not, in her view, subaltern), Fricker offers a view of gradations of exclusion from agency and of silencing, positions that can change over time both individually and collectively. If epistemic injustice is an awkward term for discussions with practitioners, it seems promising as an approach to "cultural encounters" within Europe.

There are alternatives to focusing primarily on justice/injustice. In comparing his concept of a "decent society", as one whose **institutions do not humiliate people**, with the concept of a "just society" according to Rawls, Avishai Margalit explains that his discussion of institutions "is in general on a lower level of abstraction than Rawls' principled discussion" (Margalit 1996: 277). Describing how institutions may humiliate groups of people, denying them rights or respect, he points out that, by deriving his concept of a just society from a hypothetical original contract according to principles to which every reasonable person ought to agree, Rawls excludes consideration of "nonmembers" and consideration of encompassing groups⁸ within the society, such as religious communities, that may have power structures within them, as well as failing to consider how procedures for distributing social goods treat people, whether with respect or not. The decent society, by contrast, requires an inclusive concept of citizenship that makes no distinction between "members" and "nonmembers" but extends respect to include anyone under its jurisdiction.

Concern for potential and/or real injustice are an important thread in the workshop material.

- a. Issues of social justice in these theories concern **minorities** that are exploited, marginalised, disempowered and withheld fundamental recognition (Young frames this as "cultural imperialism"); they may be and often are exposed to systematic violence. The literature on the experience of BME⁹ women with intervention has repeatedly pointed to systematic violence against the minority group as a whole as a reason why victimised women avoid calling the police (for the US see Sokoloff 2005). The workshop participants generally did not bring up the problem of structural or collective violence against the minority group as a whole as an obstacle to seeking help, but possibly the story line offered as a stimulus to discussion did not favour raising this issue. The recurring ethical dilemma was the tension between respect for cultural differences and ways of life and enforcing the law and the social values that demand non-violence. Some of the workshop discussions were strongly influenced by a language of "othering", contrasting between "us" and "them", while in other workshops participants called attention to such language

⁸ "An encompassing group is a competing group in the sense that anyone belonging to it cannot in principle belong to another encompassing group of the same type" Margalit 1996: 177.

⁹ Black, Minority and Ethnic women; a range of abbreviations are in use in the UK in particular.

and offered critical self-reflection as a corrective. There was also mention of dealing with the material conditions of poverty as a reality to be considered when assessing the situation of a woman or a child (and for trafficked women, as the reference point from which they evaluate their situation).

- b. The possibility that institutions may **humiliate** people, either those subjected to violence, or those who belong to minorities, appears in the workshops when the dilemma concerns whether intervention may make the victim's situation even worse, or more pointedly, when criminal proceedings systematically demolish the credibility of the victim as witness. This was especially strong with respect to trafficking, where the considerable profits may enable perpetrators to pay for teams of aggressive defense lawyers. But it also appears with DV, and represents a fundamental dilemma around the state's duty to prosecute and punish perpetrators and the inalienable rights of any accused to defense, which often means undermining the testimony of the victim-witness. Although there are various provisions that aim to mitigate this, with criminal proceedings the victim ceases to be a victim and becomes (merely) witness to a crime; this can be experienced as humiliating. Secondary victimisation through institutional and intervention procedures emerges as a problem in different forms, depending on the specific weaknesses on the intervention system, but often linked to the priority given to criminal prosecution.
- c. Indications of **epistemic injustice** emerged in the workshops when discussing the obstacles to reaching victims, who were often described as "not knowing" "not having a victim consciousness", being "ambivalent" or accepting violence as "normal". Especially in the DV workshops, but also with respect to TSE and to CAN, a number of professionals expressed their perception of a higher level of violence against women and against children and a cultural acceptance of such violence in some minority groups. Ethical and practical dilemmas were typically framed (across all three forms of violence) in terms of the victim's wishes, what the victim (or the family) wants, or as an effort to influence those wishes by "telling them" about the danger they risk or about rights, rather than asking how intervention actors might draw on the victims' knowledge to frame more effective intervention. While there was a great deal of sympathy for the emotional burdens and barriers to seeking help, and some reference (especially concerning families with CAN) to the resources that victims and their social networks have, victims were not often framed as knowers with credibility or authority.
- d. Social justice also becomes an issue with regard to TSE when agencies and professionals must weigh their assessment of danger to an individual woman against the probability that traffickers, if not stopped, will continue to abuse and exploit many more women (justice for one vs. justice for many). This intersects with the ethical issues that can arise when **agencies or professions have different mandates** and procedural requirements – when, for example, physicians, health care workers or counsellors have a confidentiality duty, while the police have a duty to investigate cases of abuse or exploitation. (This dilemma does not disappear when there is a legal requirement to report suspected violence, since professionals can "choose" not to ask pertinent questions, avoiding the "knowledge" that would obligate them to report.) Failure of inter-agency information sharing for all forms of violence was sometimes ethically challenged as injustice, on the grounds that some identifiable victims receive support and protection while others do not. However, these disparities in access to help or services were not framed as a problem of minorities.
- e. Injustice was perceived by professionals in the tendency of policy and practice on DV and TSE to put all the **burden of changing** the violent situation on the victim and giving far less attention to perpetrators, especially since the latter, whatever the laws, are only rarely (significantly) sanctioned by criminal justice, while the victim is under scrutiny and her every misstep documented. Since the great majority of TSE victims and DV victims are

women, it is justifiable to see this as a case of gender inequality/ injustice. By the same token, the growing tendency to use the possible endangerment to a child as a lever to influence women's choice to end a relationship in which DV has occurred can also be classified as gender-based social injustice (and also as humiliation, since the intervention casts doubt on her competence or commitment as a mother). Only rarely is there mention of requiring a father to take responsibility for his violence and enter a programme, for example as a condition of granting him child contact.

3.3 Contextual ethics, ethics of care, respect, trust

This heading groups together ethical theories that are less abstract and offer guidance for recognising and responding to the needs and the situated perspective of real people, "taking account of subjectivity" (Lorraine Code) or of "the lives that people can actually live" (Amartya Sen). The commonality of these theoretical approaches is some notion of a "relational self". Margaret Urban Walker (2007) presents the most systematic philosophical position of this group, contrasting an "expressive-collaborative model of practices of responsibilities" as against the dominant "theoretical-judicial model" in moral philosophy with its project of "codifying a compact core of unsituated, purely moral knowledge". She argues that morality is fundamentally interpersonal and embedded in social relations, and consists of practices, not theories, more specifically, practices of assigning responsibilities that "implement commonly shared understandings about who gets to do what to whom and who is supposed to do what for whom" (2007:16). Rather than attempting to universalise, her model "invites detailed and situated descriptions of the expectations and negotiations surrounding assignments of responsibility" (2007:17).

While practices of care are an intuitively recognisable prototype of being in and through relationships, they are not the only possible models: trust, recognition and respect can also represent interdependence. If trust is impossible, care or recognition withheld, the apparently autonomous individual can "melt down". Such theories tend to include discussions of the practices and experiences that bring forth awareness of interdependency, that is, they describe social conditions under which the values that they propose as universal are most likely to thrive. They are also explicit about certain "basics" of human nature (Sevenhuijsen 2004 calls this a "weak ontology"), or basic needs to make human flourishing possible (Nussbaum 2011 promotes a list of ten central Capabilities for which every decent political order should ensure an "ample threshold level" for all) and about the values that follow from these. While this lays them open to challenges¹⁰, they critique theorists such as Rawls and Habermas for having a specific, but unjustified view of human nature (that of the rational, autonomous person who can participate competently in public debates and will make decisions based on self-interest).

Ethical issues around ensuring the welfare of a child cannot, for the most part, be framed in terms of justice as deliberative democracy; and Immanuel Kant's solution to the conflict between inalienable human freedom and unavoidable coercion in raising children – that the child will agree in retrospect to what was, at the time, imposed without his or her consent – is a dubious proposition even in milder cases, as Ziegler (2014) has shown in a very cogent analysis for paternalism¹¹ in social work generally. The concept "best interests of the child" might seem (by its framing) to link into the "rational agreement" frame (via the concept of "interests"), but when the discussion moves to "welfare" and "endangerment", there is an implicit assumption of caring about and caring for children that this group of theories seems better able to handle. Children do not fall simply into the category of autonomous individuals, nor into the category of oppressed groups, although certainly strong elements of legitimate domination and of epistemic injustice persist in how children are treated by both private and institutional actors.

¹⁰ For example, when the lack of theoretical attention to the vital necessity and the practices of caring is explicitly linked to gender bias of the dominant theories, redressing that bias with an ethic of care has raised concerns that women are being essentialised as naturally more caring than men.

¹¹ In view of the predominance of women in social work the term "maternalism" might be more appropriate; however, "paternalism" keeps in focus the traditions of masculine authority that still shape institutions and laws in Europe.

While universalist theories of justice imagine the self and the other in the abstract as the “generalized other”, Seyla Benhabib argues for considering context with the idea of the “**concrete other**” or situated self¹². She argues that the classic measure of reciprocity in ethical theory – that I would wish the other to make the same decisions towards me if I were in the same situation – presupposes that I know enough about the other to recognise how he or she is situated. This calls for an open-ended dialogue: “It is only in the course of the moral conversation that we can learn those aspects of the otherness of the other which the other wants us to respect and/or to take into account in our deliberations” (Benhabib 1994: 180). Thus, there are two central elements to this approach to ethics: an understanding of all persons as **relational** and interdependent, capable of experiencing autonomy or dependency under various circumstances, and a precept that the person in a situation of dependency be **enabled to communicate** his or her needs as far as possible.

Annette Baier (1994) concludes, from the inadequacy of abstract theories of justice to meet real dilemmas and the possible limitations of a focus on care and caring, that a comprehensive moral theory could be based on the concept of **appropriate trust**. Trust differs from reliance in being dependent on good will – reliance can be mistaken, but trust can be betrayed (and can be withheld). It presupposes vulnerability of the one who trusts, and a virtue of being trustworthy in the one who is trusted. While her approach may not be satisfying as a general ethical theory, being explored in the framework of moral philosophy on an exemplary case basis, it is striking how often the professionals in some workshops underlined the need to build and maintain trust for effective intervention. Trust seemed far more salient than, for example, informed consent. With child protection, the dilemma of breaching a child’s confidentiality in order to safeguard the child from abuse was very much an issue of potential loss of trust. And with all forms of violence, it was often argued that without trust (often linked to confidentiality or to gaining consent) the victim will withdraw from the intervention system entirely and be lost to all efforts to help.

The most elaborated arguments for a good society that recognise interdependence and relational selves are to be found in the literature on the **ethics of care**, itself rather multifaceted. While the early literature developing the concept of an ethics of care in a normative framework centred on describing what constitutes good caring, when and how there is a moral obligation to provide care, and substantiated its arguments through the experience of women with caring, this framework encountered a range of critiques from within feminism. The increasing delegation of care to migrant and minority women called into question a discussion predominantly from the caring experiences of white middle-class women. In the more recent literature the concept of care ethics has broadened. Rather than idealising care and promoting the values inherent in women’s caring, a more sophisticated theory of care ethics now works from the premise that human life is sustained through relations of responsibility and care, and that morality and moral subjects necessarily exist in relationships. The task of ethical theory is thus “a critical moral ethnography” (Robinson, 115, referring to Walker), analysing how care and responsibilities are organised in a specific context, taking a “narrative, not a principled approach to moral judgment” (102).

Walker (2007), while seeing herself as part of a stream of moral theories that have been moving away from the ideal of a “pure core of moral knowledge separable from the particular features of local social lives” and giving “broader consideration to human needs and the demands of shared life with an emphasis on plural values” (20), seeks to take up “the transforming insight of feminist ethics” (21) as well. By identifying gender bias, feminist critiques have shown that “moral philosophers have in fact represented...aspects of the *actual* positions and relations of *some* people in a certain kind of social order, ...where the availability of these positions depends on gender, age, economic status, race and other factors that distribute powers and forms of recognition differentially and hierarchically” (22). From the feminist perspective, it becomes possible to see that “reproducing uncritically one’s specific position as the norm is an *exercise* of one’s privilege that at the same time reinforces it” (60). While the feminist work on the ethics of care was (perhaps uniquely) positioned to make this connection transparent, it was also inclined to generalise about women. For Walker, it is

¹² In my view, Benhabib „straddles the fence“ between the relational self and the autonomous participant in deliberation.

also too narrow a framing in that there are many other relations of trust or responsibility or responses to vulnerability.

Other authors have also sought to broaden the framework of care. “The ethics of care starts from the recognition that care is a moral practice, a disposition, a daily need, and a way of living. In opposition to individualism and neo-liberalism it acknowledges vulnerability, interconnectedness, dependency, embodiment and finitude as basic characteristics of human life. It develops a set of values and virtues about how to deal with this in a potentially wide range of practices, from child care and care for the elderly, to psychiatry, economy and international relations.” (from 2012 interview with Selma Sevenhuijsen: <http://ethicsofcare.org/interviews/selma-sevenhuijsen/>)

Against the charge that an ethic of care can only deal with interpersonal relations, and that it merely switches from idealising masculinity to idealising femininity, a number of authors have given deeper consideration to developing “the recognitions of care” more broadly. From close analysis of care practices Joan Tronto develops a **political ethic of care**, seen as complementary to and enmeshed with justice, and differentiates the four elements of care as: caring about, taking care of, care-giving, and care-receiving. From these arise the four ethical dimensions of care: attentiveness, responsibility, competence, and responsiveness (Tronto 1993: 127). Sevenhuijsen adds to these a fifth ethical dimension of trust: “Trust should in this perspective be conceptualized as (the possibility) of entrusting ourselves to the care of others. It implies that caretakers take goodwill, reliability, transparency and accountability as leading values of their caring practices.” (Sevenhuijsen & Švab 2004: 37).

If the point of departure of these analyses is still the “face-to-face interaction between carer and cared-for” (Held 2006: 32), authors such as Walker and Fiona Robinson are discussing issues of international relations as well, and are increasingly insistent that a critical ethics of care (or, for Walker, of responsibilities arising “from our contact or relationship with others whose interests are vulnerable to our actions and choices”, 2007:113) must interrogate the structural conditions and relations of power that determine who will do caring and under what conditions. Based on “an image of care that recognizes responsibility and responsiveness to particular others as positive expressions of both masculinity and femininity” (Robinson 2011:81), these authors explore, for example, the global “care chain” in which women from income-poor countries migrate to income-rich countries to provide childcare, housework, or sex, leaving behind massive deficits in the provision of care. They analyse how the concept of “human security” since its introduction in the UN in 1994, while seeking to redirect the security discourse towards the protection and empowerment of people, failed to comprehend that crucial aspects of human security “cannot be realized in the absence of robust, equitable, well-resourced relations and networks of care” (59). This structural approach, looking not only at who does caring but also at who does not – at how care is raced, classed and gendered and structured by the post-colonial global power inequalities –, connects care ethics with masculinities and violence. Although this implication is rarely mentioned, recognising that care practices can be hierarchical and oppressive also opens a door to understanding the construction of subordinate childhood (especially in the Global North) and the multiple forms of violence against children.

Much of the literature on care tends to “valorize the perspective of carers over those being cared for”, as Tom Cockburn (2005) points out in discussing how the ethic of care can be applied in the children’s’ rights context. He argues that this has left little room for the voice of those cared for, or for developing the idea of a caring relationship. He advocates caution in adopting a feminist ethic of care that focusses on needs, since in a needs-based framework it is the more powerful – families, experts and service providers – who define what needs are to be met. As a corrective to this tendency he reminds us that children are not simply recipients of care, but active agents, often caring for younger siblings, sick or disabled or elderly family members, or doing caring in schools or communities.

The idea of an ethics of care has been challenged from the viewpoint of **postcolonial theory**, most strongly by Uma Narayan, who pointed out that the colonial project not only idealised the

autonomous citizen of liberal society, but at the same time included a notion of a civilizing mission for the welfare of the colonised populations (Robinson 2011: 110 ff) – famously idealised by Rudyard Kipling in his 1899 poem “The White Man’s Burden: The United States and The Philippine Islands”. An ethic of care that fails to analyse the nature of the interdependencies and relationships involved could become complicit in the agenda in which the dominant group sees dispensing human rights as its manifest destiny in an unconscious extension of colonialism (Spivak 2002). Robinson addresses these critiques by assigning to a critical ethic of care the task of “coming to terms with current patterns of domination, dependence, and interdependence” in the context of both historical and contemporary relations of political economy” (Robinson: 2011: 115). This challenge will arise for CEINAV when we begin to interpret the interviews with women and young people from specific minorities.

Aspects related to contextual and care ethics emerged in a variety of ways during the focal groups with professionals, some corresponding to key ethical dilemmas that Tronto identified as arising from care practice. More broadly, the professionals’ discussion of intervention often touched on issues of vulnerability and of relationships. However, it must be noted that, while care ethics strives to place relationships at the centre, too little conceptual work has been done to capture the interactive process, not only where children are concerned. “Assessing needs” for example, presents a unilateral framing of how needs come to be recognized, understood and responded to. As CEINAV moves towards the goal of listening to the voices of the recipients of care, support, or protection, some of these issues will need to be re-framed.

- a) **Assessing needs** appeared most clearly as a dilemma between applying criteria that are too abstract or too concrete, with the underlying power relations hidden. We presented this dilemma in all the workshops with question “what might lead you to try and discover whether this might be violence” and by asking about the threshold for intervention. In our methodological guide, this is framed as the dilemma between being expected or even obligated to act as if the presence of violence can be simply “known”, versus the fact that every third-party labelling of DV/CAN/TSE is an interpretation that can be contested by any and all parties to the situation [doc (3) and (4)]. The idea that many professionals might come into contact with a possible victim but not attend to signs of violence was suggested by our stories and came up more than once with the different forms of violence. A recurring dilemma was how to decide if the actions and their context should be considered violence: When is a slap a criminal act? Is this a situation of domestic violence or just one of “bad living”?
- b) Tronto describes the challenges of **involvement and distance**, and this heading seems to fit the dilemmas of intervening too early or too late, doing too much or not enough. These were particularly salient for intervention when violence is occurring within the family or the household, both for DV and for CAN. This could also be seen as a dilemma between professional engagement on the one hand, and the danger of over-identification on the other. It comes across rather strongly with child protection in Germany, where working closely with the family was valued highly as essential to helping the child, so that intervention without parental consent emerges as a dilemma with multiple dimensions. In Slovenia as well, the question of when to intervene was particularly salient with CAN, and in both Slovenia and Portugal the question of when to involve the police (rather than working in a counselling mode) was seen as a very difficult decision. Especially with child abuse and neglect, the need to understand the family and its background was described even while decisive action and sanctions were being called for.
- c) Building **trust** between the victim/ the family and the professional is described as essential to effective intervention for all forms of violence, and in various workshops was articulated from the perspectives of all groups of professionals, by police and prosecutors as well as social workers or health professionals. It recognises the need for relationships that support non-violence as the key enabling condition for victims or families to engage

with intervention and/or act to end violence. The need for **proof** on the one hand, to justify allocating rights and resources, and the urgency of **safety**, on the other, can both undercut the process of building trust. There is a tension between trust-building and the duties of various agencies: This can appear as a conflict between a “culture of belief” among first responders (including sometimes specialized police) and a “culture of disbelief” in the agencies that decide on entitlements of all kinds.

- d) Equality vs. **paternalism**: Tronto points to the fact that inequality is inherent in care: those in need of care (protection, support) are at that moment unable to care for themselves; there is always the danger that they may be perceived as possessing “less” than full and equal humanity and lose their autonomy. We suggested that the workshops discuss the right of the victim to be heard and the victim’s wishes to be considered, and the professionals were specifically asked to discuss when to act without consent or against the wishes of the victim. Mandatory reporting and information sharing were listed as key issues that should come up, and in a number of workshops, this led to very intense reflection on where the threshold lies for such actions. In the German DV and TSE workshops, there was agreement on acting without consent when there is an imminent threat to the life of the victim, in Slovenia, acting without consent was considered at an earlier stage, but beset with doubts about whether such action might make the situation worse or the assessment of situation be mistaken; in the UK, many professionals bracketed out any possible dilemma by referring to their legal obligation and policy frame, and the threshold question was scarcely mentioned, while in Portugal, insecurity about legal duties was widespread due to multiple changes in legal regulations.
- e) From the point of view of practices of distributing responsibility, professionals are in a very difficult position when moral understandings are not **transparent** or sufficiently intelligible to enable them to have any confidence in what their mandate expects of them. Especially in Slovenia, professionals in child protection, but to some extent also those dealing with DV, were apprehensive of incurring blame whether they take action or not, felt that guidelines were not clear, or feared consequences for themselves in case of unjustified intervention. In Portugal there was also uncertainty about when professionals, but also about when police, should intervene without being excessive. In both countries fear of threats or retaliatory actions from the family, the husband or the father could inhibit intervention. A consequence of obligations not being intelligible is the dilemma of following the rules in a hyper-regulated society vs. “walking on the edge of law” to protect the victim at all costs; this is linked to the dilemma of balancing involvement and distance.
- f) Policies and procedures are generally defined with regard to **individuals** (individual incidents, individual victims or perpetrators). At the same time, professionals described at various times how victims are embedded in close **relationships** and social networks that may be cultural, religious, or transnational. It is thus (sometimes) understandable for (many) professionals that victims resist protection measures that isolate them or paths of action that ignore or cut the ties they have to others. As Robinson points out, overcoming violence requires rebuilding (nonviolent) networks of care and responsibility, it is never just a matter of leaving or ending the battle.
- g) Linked to the frequent failure of policies to consider relationships is the lack of effective intervention approaches to enable perpetrators of domestic violence to change their behaviour. Indeed, because these approaches are underdeveloped and could not be presumed to exist in all four countries, no professionals from that field were invited to the workshops. In that sense, the research teams mirrored the reluctance of intervention systems to take up this problem.

Interestingly, Tronto does not develop the concept of care-receiving to discuss whether there is any kind of ethical duty to accept care. While the key element “responsiveness” refers to the response by

those to whom the care is directed, Tronto only elaborates this around the duty/capacity of care-givers to listen and be open to the responses of the care-receivers, and to be aware that the vulnerability of the one needing care confers power on the care-giver that can be easily abused. The caring relationship thus appears one-sided. It would be possible to reflect on whether, in an interdependent social world, there might be an ethical obligation to accept care if offered with tact, humility and respect. The precondition would, of course, be overcoming the silencing of the disempowered groups and fully recognising the one in need of care as having knowledge and authority to speak and be heard.

A number of professionals in the workshops expressed hesitation about deciding what is best for another person. "Paternalism", understood negatively as a diminished perception of the victim based on the professional conviction of knowing what is good for the other, is not much elaborated in the working papers. However, some concerns were expressed in DV workshops such as "enabling women to make the right choice" or "women unable to consider the welfare of the child in their decisions about violent relationships"; and both with regard to DV and TSE, some women were described as entrapped in a culture and unable to recognise violence as such. Such perceptions tend to frame the inability to escape violence on their own initiative as a deficit of the women rather than as symptom of the situation or a mark of the power of violence. Parents from a minority background whose methods of child-rearing were considered abusive were regarded as not knowing or not understanding that what they did was violence; but more strikingly, some professionals saw little reason to hear the child before deciding on their intervention. The impulse, or an explicit professional duty to act "in the best interests" of the victim (see below) is definitely present in the frames that were extracted during data analysis of the focal group discussions and described in the working papers.

3.4 Integrating perspectives of justice and care

As our conversations with practitioners make clear, interventions against violence involve practices that attend to the needs of those suffering abuse while being at the same time concerned with justice. While both Tronto and Sevenhuijsen wish to see an ethic of care connected to an understanding of justice, rather than replacing it, I have chosen to discuss Onora O'Neill (1996) because she also offers an alternative conception of justice.

O'Neill critiques the liberal theories of justice that claim liberty and/or equality can be the fundamental universally valid principles. The notion that all important decisions will be made by rational discourse free of either coercive pressures or of any argument from special interests has too little traction in reality for her. On the other hand, she argues against the tendency of the past 25 years to argue justice issues solely from the perspective of rights, in particular, from universal human rights. "Any principle that defines a right also by implication defines some obligation." (O'Neill 1996: 128). And: "Unless obligation-bearers are identifiable by right-holders, claims to have rights amount only to rhetoric." (229) Neglecting obligations leads to further problems: When practical reasoning takes rights to be its sole foundation and fails to raise the question of corresponding obligations, it conceals and marginalises virtues that are obligations without rights. These are, for example, virtues that can be considered a duty of all to society, such as honesty, but are not owed to anyone in particular. In our context, conscientious and ethical professional behavior are essential to any system of intervention, and if the police in a given country are notoriously corrupt or remain stubbornly ignorant, there is little to be gained (and probably much harm to fear) by requiring them to intervene in situations of domestic violence or child abuse. But these "essentials" are not duties that are specifically owed to victims of violence, nor can one imagine declaring it a human right to have an honest and well-qualified police. Beyond more general virtues such as these, however, obligations can become more specific.

If we think in terms of obligations – and surely intervention to stop violence must involve specific obligations of specific actors – then justice "can only be realized by establishing one of many differing possible sets of burdensome special relationships" (p.134). Institutionalisation, however, "disrupts

any simple match between obligations and rights, even for liberty rights. ... by dispersing obligations, and sometimes rights across a plurality of agents, officials and institutions” (135). Thus, defining rights and obligations requires both a theory of justice that defines universal rights that all individuals should respect and states should enforce, as well as specific rights.

O’Neill argues that a theory of justice needs basic principles that have a broad scope and provide an orientation for more specific principles applying to more restricted domains. Principles can only be universally valid “if agents can take it that they are principles for all in the relevant domain of ethical concern.” No principle can be universal if its universal application would make it categorically impossible for some agents to act accordingly. “It follows that no principle of injuring others ... can be universalized.” (163). This does not mean that no-one will ever be injured or prevented from acting, but that just institutions and practices cannot be based on a *principle* of injury. An example might be a society based on slave labour, in which the principle of slavery allows slave-owners to exercise coercion and violence on a group who are disabled from similar actions.

On this basis, O’Neill proposes a theory of justice based on **rejection of injury**, whether direct or indirect, including injury to, for example, the natural environment on which lives depend. “A commitment to justice must be expressed by rejecting avoidable direct and indirect injury” (168). This comes close to Margalit’s principle of non-humiliation, but is perhaps wider in scope. Indeed, it is possibly too wide, since definitions of what is an avoidable injury can depend on what someone feels entitled to.

O’Neill also argues that “justice is not enough”, because it fails to address vulnerability and dependence and the related rights and obligations. Unlike liberty rights, welfare rights must be institutionalised to be real. If a liberty right is violated (injury done), there are violators who can, in principle, be called to account. If a welfare right is not fulfilled and no institutions have been tasked with meeting them, there is systematic unclarity about who has violated the right, and where a claim can be lodged. Institutions respond to human vulnerability in specific ways. Social virtues of care and concern are essential, but necessarily selective. Whereas justice is based on rejection of injury, social virtues are based on rejection of indifference and neglect. The latter provide a link to political concepts of an ethic of care as social practice.

Beginning from a strict libertarian perspective of individual autonomy, Christoph Schickhardt (2012) asks when it is justified to intervene in the interest of the present or future welfare of a child (or any other person who might be unable to make a competent decision). To use age as a criterion would be simply discriminatory. Such interventions require an evaluation of the degree of autonomy and competencies of the child relative to the concrete situation and issue at hand. While he fails to provide the postulated objective, scientifically founded method of assessing this, and cannot offer an overarching normative principle, he develops a set of fifteen context-sensitive “Tendenzregeln” (perhaps best translated as practical “maxims”) for making justifiable decisions. They begin with the avoidance principle: If there are alternatives available, such as information, enlightenment or dialogue to convince the child why an expressed wish is not in his or her best interest, these should be preferred even if they require time and effort. Such practical maxims are relationship based and take account of the specific personality and situation of the child, suggest active listening and respect, thus meeting many of the criteria of an ethic of care. They reflect a realization of the limits of a rights framework while preserving the fundamental concept of rights.

Such dual approaches to ethics are useful when considering dilemmas arising from professionals’ conflicting duties of justice and care, and these seem to be painful dilemmas for many practitioners in different positions. If rejection of (direct or indirect) injury is the foundation of justice, and if this is in some sense intuitive for our professionals, then they must feel a strong obligation to take action when they have reason to think that someone is being injured. This could explain, in part, why the participants in the workshops often began talking about intervention in advance of enough information to give a clear picture of what is going on (phase 1 of our stories gave only sparse and ambivalent indications of possible violence). At the same time, each professional has specific

institutional obligations (the police duty to avert danger can also be seen as an obligation of care or helping, and is sometimes referred to as such), as well as limits to what they can do. In reviewing their possible interventions, we have seen – among the practitioners who volunteered their time and engagement for our project! – a very high level of care and concern, and if they themselves did not have the mandate to act, they turned their minds to thinking who could start an intervention sequence. But this concern frequently led them to wrestle with the possibility that an intervention towards justice (against injury) could, under a care perspective, actually make the situation of the victim worse.

Ethical dilemmas in our discussions that can be seen from this theory perspective:

- a) Should parents who use violence to discipline a child be **prosecuted** (on principle, or perhaps to convey to the abused child a clear and authoritative message that what was done was wrong and not his or her fault), or should the parents be educated and **supported** to learn better ways of parenting, thereby preserving the affective bond? If there should be prosecution, when and on what grounds should that decision be made? Only when the violence and the failure of support makes it necessary to remove the child from the family, or sooner, or later? If supporting parents and the family has priority, how long should the professional wait before taking stronger measures? These questions emerged in the CAN workshops in all four countries, although in different ways. With trafficking, the situation seems at first quite different, since it is seen as a serious crime requiring repressive sanctions in all four countries, but here, too, the question of priorities arises. Not only does the victim typically face threats of grave harm to herself or her family in her home country if she cooperates with prosecution; if she is living in fear, her testimony is likely to prove useless in court. Thus, not only NGOs but also police and the justice system may ask whether helping the victim or prosecuting perpetrators are their primary duty.
- b) Is a strict **confidentiality** duty of support services and health services justified by the importance of building and maintaining trust, or should the victim of violence be seen as a person in need of care and unable to care for herself, and inter-agency cooperation be sought in order to be able to **deliver care**? This dilemma involves balancing a victim's autonomy against the (often pressing) need to act. What about justice for victims (see section 3.1)? The concept of "parallel justice" and repairing the harm seems to fit well with building trust and respecting the process in which a victim gradually finds her way (in the German DV discussion this is expressed with the frame "separations take time", and with CAN, giving support the time it needs for families to change their behavior).
- c) How can professionals in the areas of social or health care or education, if they have a duty to report violence to police, weigh the **danger** of permitting injury to occur by not reporting against such **obligations** as that of competence (relying on their professional experience and "gut feeling") and responsiveness (listening to the victim's own perception of her needs)? If obligations of ensuring welfare are necessarily specific to various professions and institutions, what protocols or regulatory frameworks are needed so that personal autonomy is respected but institutional co-ordination can succeed?

3.5 Ethics of professional / institutional intervention

Advocacy ethics have been proposed by Micha Brumlik for the issues around intervention in the lives of others for their own good, if necessary without their consent and even without their knowledge. This is a classic concern of pedagogy, but it also emerges in the discussion of interventions against violence. Brumlik argues that such intervention is justifiable when the individuals concerned are not competent to make responsible decisions about their own lives – either developmentally not yet able, or temporarily unable, or no longer able to do so. Note, however, that ethical theory needs to delineate very clearly when intervention without consent is permissible; according to Brumlik, this is the case when the intervention is needed to maintain a minimum of physical and mental integrity

and human dignity. But for practitioners facing indicators of violence within the family (for example, when a child has “marks” after being hit) intervention without consent may start quite a bit sooner.

In a recent paper on “unsolicited help”, Holger Ziegler (like Brumlik) points to the unavoidable necessity of defining legitimate paternalism¹³ in social work intervention, and not only there (it is, for example, a major topic in medical ethics). The question is not whether it is ever justified to act for the good of another, but what the criteria are that permit this. Ziegler (2014) argues that a paternalist intervention is justified when it is functional here and now (not in some imaginary later time) for the autonomy and freedom of the person at whom it is directed. Such intervention must be centred on the dignity and self-respect of the recipient, not in terms of any normative construct of how their lives ought to be led, but strictly in terms of enabling them to actually pursue the choices that they value. There is a narrow corridor in which such unsolicited help is legitimate: when it is necessary to preserve or restore personal integrity, so as to make it possible for them to exercise their autonomy. Thus, someone who is kidnapped and locked in a cellar should receive unsolicited help, because she does not have the possibility of exercising a choice to stay or leave; but a woman who leaves a shelter to return to an abusive man does exercise a choice, although perhaps under multiple constraints.

Depending on age and circumstances, children are generally presumed not to have the autonomous power to make choices in key areas of their lives, although Emma Katz (2013) has analysed how much of the debate and policy on the harm to children who witness domestic violence constructs children as passive objects of their mothers, and fails to recognise significant dimensions of agency, autonomy and dignity in how children deal with such situations. Schickhardt underlines the necessity of evaluating in each situation how far the child in question has developed the capacity for personal autonomy relative to the specific issue. Zoë Clark (2014) analyses the inner tension and perhaps contradictions within the Convention on the Rights of the Child as it wavers between protection of the family and rights of children as actors with autonomy and dignity. While Art. 12 gives the child who is capable of forming his or her own views the right to express these and have them given due weight, as well as the right to be heard in any administrative or judicial proceedings that affect the child, Art. 3.1 lays down that in all actions concerning children, the best interests of the child shall be a primary consideration. As Clark points out, the CRC has no clarifying provision on how decisions on what is best for the child should be balanced with the child’s own views. Moreover, in the following Art. 3.2, the state is obligated to take the rights and duties of the parents or guardians into account, and in further articles the state protection of the child’s wellbeing is explicitly mediated through the family.

In the DV workshops, there were indications of a tendency to instrumentalise the protection of children from witnessing domestic violence to pressure women to leave an apparently abusive partner. This was exemplified in a debate between a social worker arguing that every woman who comes to a refuge with a child should be reported to the child protection agency, and the head of a shelter pointing out that women who come to a shelter have, in doing so, acted to avert a danger to the child. In the UK, it was noted that a common lever to ensure that women made the “right choice” for themselves was to invoke child protection, but there are many indications that this is a trend in other countries as well. In such cases, intervention is not triggered by an assessment of the actual risk to the child, but by a normative idea about how women ought to live. Advocacy ethics would consider this illegitimate.

With regard to advocacy ethics – that is, deciding whether to act for the good of the person in danger of harm - we have discussed the following ethical dilemmas:

- a) The **duty of the state** to control and sanction violence can lead to measures that stand in opposition to **rights of the individual victims** of that violence, who are not radically

¹³ There is a widespread tendency, both in social work and in feminist literature, to use the word paternalism as an unquestioned negative value judgment. The term is, of course, patriarchal in origin, but the challenge it poses has to be taken seriously. Within the framework of a fully developed ethic of care, alternative concepts may emerge.

incompetent to express wishes and make decisions about their lives. Given that victims in a situation of violence may not be able to make many choices, the challenge is then to determine what intervention will support the autonomy of the victim, not reduce it by imposing a concept of the good life. In the workshops, this dilemma took several forms. There was concern that an intervention without consent could make the situation worse, but also discussion the injustice of forcing the victimized woman to leave her home. As just noted, referral to child protection services as a tool to steer women towards what are considered the right choices was rather strongly represented in some workshops, but also challenged as a controlling intervention that can even be said to carry forward the dynamics of abuse.

- b) When and how is the state obligated to exercise due diligence, for example in mandating the **sharing of information** between agencies, and when is this duty limited by other fundamental rights of the individuals involved? Information sharing without consent means setting aside the **rights to privacy** and to data protection in the presumed best interest of the (presumed) victim of violence. The ethical question concerns the kind and degree of endangerment that can justify such actions with regard to adult citizens (with CAN it is the parents of an apparently abused child whose rights are encroached on for their own and the child's good). This has become particularly "fuzzy" since a very broad concept of violence and abuse is in wide use. Indeed the overall impression from the working papers is that many professionals in the four countries are not provided with, or are not aware of, criteria for the threshold that justifies unsolicited help or intervention without consent. This may be because the threshold is not well defined (or, if defined, not sufficiently communicated to practitioners), or that the official definition cannot be reconciled with professional self-concepts and traditions, or with emotional responses and perceptions from practical experience.
- c) Linked to this: **Normative principles** can come into conflict with the principle of individual **autonomy**, which implies the right to choose with regard to interventions into personal life, and the right to have a voice, to be heard, and even to refuse offers of help. The professionals all recognised in the stories we gave them their own repeated experience with women or parents who did not accept help, refused to lay a complaint or to testify against a partner who has been violent, or reject offers of advice and support. This appeared with particular emphasis when discussing cultural, ethnic or religious minorities, who were sometimes described as not knowing the rights of women or of children, sometimes as thinking that violence is normal (due perhaps to cultural norms condoning domination or harsh discipline). While victims were likely to be portrayed as entrapped in a cultural or extended family community that they do not dare to question, professionals sometimes saw themselves confronted with a religious or ethnic community that respects only its own laws and internal authorities. At the same time, the dilemma of trying to help victimised women who refuse to cooperate with prosecution was described as overwhelmingly present in the majority population as well.
- d) Finally, some workshop participants noted that rules requiring information sharing and interagency cooperation, as well as clearly laid out procedures to be following in case a suspicion of violence arises, may be tailored to protect the agencies and the professionals more than to protect the victims of violence. This is a well-known phenomenon in organisational sociology, that organisations tend to translate their explicit purposes and goals into internal ones.

3.6 Ethic of responsibility

This area of ethical theory was discussed in the earlier working paper with regard to postcolonial theory (Boaventura de Sousa Santos, Drucilla Cornell, Gayatri Spivak) and postmodern ethics (Zygmunt Baumann, Emmanuel Lévinas). The working papers from the discussions of professionals

offer relatively few points of intersection with these theories. This is, of course, in part because these theorists argue on a rather high level of abstraction. They may well become highly relevant to the interpretation of the interviews, since their key theme, in different ways, is the failure of the human rights discourse and of much ethical theory to listen for, and respond to silenced voices and submerged knowledge, which is the declared purpose of the CEINAV interviews. Thus, elaboration of this section is deferred until a later version of this paper.

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