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How just is transportation justice theory?

The issues of paternalism and production

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abstract

The topic of justice has increasingly attracted attention from transportation scholars, and a variety of perspectives and approaches are employed to study this topic. Arguably the most elaborate and sophisticated theory is put forward by Karel Martens in his 2017 book “Transport justice”. We start with a critical reading of Karel Martens’ work which is based on the work of liberal philosophers such as Richard Dworkin. While Martens makes several telling points, we explore how debates in the justice literature apply to the case of transportation, and may question aspects of transportation justice theory. In particular we discuss the issues of (1) the paternalistic treatment of people below the accessibility poverty line, and (2) the production and planning of transportation services. Two cases are used to inform this theoretical discussion, on the one hand, the Transportation Justice movement in California, and on the other, the “basic accessibility” debate in Flanders (Belgium).

Keywords: transportation justice; public transportation; accessibility; ethics; social justice

1. Introduction

The publication of the book “Transport justice: designing fair transportation systems” (Martens, 2017) can be considered a landmark in the literature on justice, ethics and transportation. Previously, several papers have been published on the topic inspired by the work of philosophers such as Martha Nussbaum and Amartya Sen (Beyazit, 2011), Michael Walzer (Martens, 2012), and others (Pereira et al., 2017), and a number of books discuss related topics and subtopics including the ethics of transportation project appraisal (van Wee, 2011), and the link between transportation and social exclusion (Lucas, 2004; Moseley, 1979; Raje et al., 2004). What makes Karel Martens’ book on transportation justice unique is that it offers a systematic attempt to develop a substantive theory of transportation justice. His main source of inspiration is Ronald Dworkin’s theory of equality of resources, while the work of other philosophers such as Walzer and Rawls is used to make clear why we need a theory of transportation justice. In short and using the words of Walzer (1983, p.xviii) on Rawls, with whom he had mostly disagreed, “No one writing about [transportation] justice these days can fail to recognize and admire the achievement of” Karel Martens.

In line with the literature on transportation and social exclusion, Martens (2017) sees transportation poverty and a lack of accessibility as the main problems to be addressed by transportation policy since people need a sufficient level of accessibility to participate in society. The main aim of his book is to provide a theoretical, philosophical and moral basis for transportation policy, and this is accompanied by a critique of current policy paradigms and practices which give an insufficient answer to the accessibility poverty issue. For example, in an early paper he criticized cost-benefit analysis and transportation modelling, and argued in favor of need-based models as an alternative for approaches based on the concept of demand (Martens, 2006). He also states that while numerous tools and techniques have been developed -but not always applied- to integrate environmental sustainability in transportation models and related instruments,¹ the equity or justice dimension has received less attention. We agree that the topic of justice and transportation deserves more attention. However, as we will argue in this article, theories of transportation justice themselves can also be scrutinized since justice itself is a contested concept. In particular Anderson’s critique of Dworkin’s work on justice is used to assess the “just” character of transportation justice theory, and two issues seem to be especially relevant for the transportation case, i.e. paternalism and production.

The next two sections introduce Martens’ theory of transportation justice and discusses some potential criticisms. Subsequently, two cases are presented in which justice-based arguments were used to design and criticize transportation policy. These cases are used to explore whether and how issues put forward in the wider academic literature on justice are present in the context of transportation, and to explore the links between, on the one hand, abstract concepts and reasoning, and on the other, debates on concrete transportation policies and practices. In particular, we identified and discuss the issues of paternalism and production, and this forms the basis for the Discussion and Conclusion Section.

2. Two spheres of transportation justice?

The first four chapters of “Transport Justice” (Martens, 2017) substantiate the claim that the topic is relevant and that the analysis of transportation fairness is not just an aspect or case of justice in general, but deserves a treatment of its own. The relevance is made clear by opening the book with a reference to the Transit Equity or Transportation Justice movement in Los Angeles, by the observation that theories of justice are a-spatial and thus tend to ignore mobility, and by a critique of traditional transportation planning noting that investments are to a large extent motivated by predictions of the future growth in transportation demand of already highly mobile population groups.

In order to make clear that transportation and accessibility need their own principles of justice, Martens (2012, 2017) builds on Walzer's (1983) concept of Spheres of Justice. Walzer does not follow the example of scholars such as Rawls who search for one fair and just distributive system; instead, he argues in favor of autonomous spheres governed by particular norms. For example, the distribution of health care and education ought to be independent from one's success in the market sphere, and the distribution of political mandates should not take into account factors like physical health, family ties, or personal wealth. Goods should be distributed in a separate sphere when the social meaning of the good is distinct from that of other goods, and these social meanings are not pre-given but historical in character. According to Martens (2012), accessibility -the transportation good- has a distinct social meaning and thus needs its own sphere of distribution governed by its own principles. However, Martens disagrees with Walzer and states that the proper distributive principle cannot "be identified by analyzing the shared understandings of members of society [...] Rather, [...] it is necessary to invoke analytical theories of social justice, such as those developed by Rawls and Dworkin," (Martens, 2017, p.44).

Martens' view of the good to be distributed, accessibility, seems not to be fundamentally different from other transportation scholars who emphasize access to activity locations and highlight that this is determined by the interaction between personal (e.g. being disabled), areal (e.g. the spatial distribution of housing and jobs) and organizational characteristics (e.g. opening hours and public transit timetables). The focus is thus not on mobility per se, but on access, on the ability to get somewhere; and income is only one factor that affects the level of social inclusion of persons (see e.g. Farrington, 2007; Levine and Garb, 2002; Preston and Rajé, 2007). In the remainder of the paper we focus less on accessibility, and more on the view on distribution put forward by Martens.

The core of Martens' theory of transportation justice is based on Dworkin's theory of equality of resources (Dworkin, 2000), and Martens employs the same example as Dworkin of a group of immigrants on a deserted island where resources are not yet distributed. In order to obtain a just distribution, each immigrant receives 100 clamshells as a currency to be used in a series of auctions. Each immigrant receives the same amount of clamshells since the first principle of ethical individualism is the principle of equal importance, and according to Dworkin a market procedure such as an auction is required to take into account the difference in preferences and life plans among people. The second principle is the principle of special responsibility, meaning that the success of a human life, which depends on the appropriate use of the resources obtained in the auctions, is the responsibility of "the person whose life it is" (Dworkin, 2000, p.5). The auction system is not purely individualistic since "people decide what sorts of lives to pursue against a background of information about the actual cost their choices impose on other people" (Dworkin, 2000, p.69) and thus "pay the true cost of the lives they lead," (ibid., p.76). However, the success in life also depends on luck: some persons are born with more talents than other, or are, or have become, handicapped. In order to deal with this luck factor, Dworkin introduces a hypothetical insurance market in which persons can use some of their clamshells to insure themselves against bad luck. This imaginary insurance market is used as a basis to define a kind of income tax to be used to help those struck by bad luck for which they cannot be held responsible. Martens translates this in a model with two domains, a domain of justice (based on the insurance market) and a domain of free exchange.

Martens (2017) describes the domains as follows. In the domain of free exchange, the distribution of accessibility is based on market principles. In practice, this implies self-financing as is discussed in the congestion charging literature which is based on the principle of marginal social cost pricing (Roth, 1966; Verhoef and Mohring, 2009). In line with the urban economics literature (Alonso, 1967), Martens also includes the housing market since the location of activities impacts the level of accessibility, and in the bidding procedure, persons make a trade-off between residential location and the transportation costs resulting from this location choice. Once, due to brute bad luck, persons fall below a particular threshold

of sufficient accessibility, they enter the domain of justice. For these persons, a Dworkinian hypothetical insurance market defines the compensation they receive for their lack of accessibility. In other words, this theory of transportation justice delivers a moral basis for public subsidies for transportation based on analytical thinking, and points to "the moral obligations of persons vis-à-vis each other" (Martens, 2017, p.144), concluding that "members of society only have obligations vis-à-vis each other in the domain of insufficiency." (ibid., p.215). Martens (2017) acknowledges that he develops a substantive normative theory which remains largely silent on democratic deliberation and decision-making (which is a point of critique also put forward by Sheller, 2018). Nevertheless, he sees his empirical work on accessibility (e.g. Chapter 9 in Martens, 2017) as input for democratic decision-making and maintains that a key task for democratic deliberation is defining the accessibility sufficiency threshold.

Turning back to Walzer (1983), the two domains in the theory of transportation justice could be seen as two distinct spheres of justice since the domain of free exchange is governed by the market principle of self-financing, while the domain of justice is characterized by a different logic, i.e. an insurance against brute bad luck. This interpretation assumes that spheres are '*defined by principles*' (den Hartogh, 1999, p.495), and that there is '*one principle for each sphere*' (ibid. p.501). In contrast, Martens seems to put forward the idea that the transportation sphere is defined by *what* is distributed, and not by the distributive principles. These different interpretations lead to different outcomes since in Walzer's view, justice and complex equality require strong fences to protect spheres of justice from the invasion of other spheres. In Martens' (2017) domain of free exchange, money clearly dominates and everything is up for sale, and, given that there is a link between the domain of justice and the domain of free exchange in terms of what is distributed, it is not clear how the domain of justice is protected from the invasion of a market logic. However, there might be a more fundamental question, do we need two different principles for distributing accessibility?

3. The issues of paternalism and production

The idea of a domain of justice which can be found in both Dworkin's (2000) and Martens' (2017) theories is a common concept in postwar academic egalitarian thought. Elizabeth Anderson (1999) is critical of this emphasis of what she calls "luck egalitarians" on (1) the compensation of the impact of undeserved bad luck, and on (2) the distribution of divisible and privately enjoyed goods. Although Dworkin (2000), and with him Martens (2017), stress the importance of equal concern, responsibility and also liberty, their theories violate these principles when seen from the perspective of Anderson. Liberty is only guaranteed in the market, and the freedom of persons with bad option luck or brute bad luck is significantly reduced and the help for the latter is paternalistic. Regarding equal concern and respect, Anderson (1999) argues that these are negatively affected by the distinction made between the two domains since the persons in the domain of justice have to accept an inferior status in exchange for humiliating, stigmatizing aid. Furthermore, in its evaluation of whether a person is responsible for its bad luck, the state may make intrusive judgements and might argue that the bad choices made in the domain of free exchange are a result of a lack of talent and brain power. For Anderson (1999) this fusion of capitalism and the welfare state, for which Dworkin (2000) accepts the label "Third Way", combines the worst of both worlds. The concept of a domain of justice populated by the innately inferior reminds Anderson of stigmatizing Poor Law thinking, a regime based on pity instead of compassion. With this, compassion is compatible with dignity, but pity is not since it involves a comparison with someone who is considered superior.

When paternalism means that some institution is assumed to know better than affected parties where the interests of people lie, and is therefore mandated to organize part of their life and steer people's choices -as in the libertarian paternalism proclaimed by Thaler and Sunstein (2003)- then paternalism is at odds with the conception of democracy as "collective self-determination by means of open discussion

among equals” since self-determination requires a more active role of citizens, especially when their liberty is limited in a significant way (Anderson, 1999, p.313, see also Jones et al., 2010). In other words, when an institution decides to build or redesign a particular road, imposes parking norms, or invests in transit inspired by a substantive theory of justice or a welfare-maximizing calculation, it may act paternalistically if people are not substantially involved in the decision-making process. Apart from the unequal relationship implied in paternalistic aid and the definition of a group as (accessibility) poor deserving help, the marginal position of open, public discussion in Dworkinian insurance markets and some other substantive theories of justice may lead to paternalistic policymaking. What we call the issue of paternalism relates to these aforementioned remarks.

Regarding the second issue –production- Anderson (1999) argues that Dworkin does not give convincing arguments why a hypothetical market, based on a comparison and valuation of individual tastes and preferences, defines what we owe each other and what we are morally obliged to give to others. The idea of a domain of free exchange seems to suggest that production is an individual matter and that self-sufficiency is the norm. In contrast, Anderson conceptualizes society and the economy as a system of cooperative production where virtually nothing is produced by a single person, where no one is able to live independently, and where you need others to be free, hence she adopts a relational perspective (for the case of transportation, see e.g. Vanoutrive and Zijlstra, 2018). Such a relational perspective implies that citizens ought to be able to justify how much they take from the goods and services produced in society, and how they contribute to their production. This justification should be free from intrusive judgements in line with the arguments concerning paternalism. Also for Walzer justice is not restricted to distribution but includes production since “People conceive and create goods, which they then distribute among themselves.” (Walzer, 1983, p.6). Following the requirements of democratic equality, production and distribution are not delegated to an idealized domain of free exchange, but subject to democratic deliberation. Both Anderson and Walzer also highlight that markets are not free from domination, predatory practices, and exploitation, and that more attention should go to egalitarian political movements, the end of (political) oppression (Anderson), and social struggles and conflicts in which dominance is contested (Walzer).

In summary, this discussion identifies two main topics for debate within Martens’ approach: paternalism towards those in the domain of justice, and production of the transportation good. In the next section we present two cases of transportation justice struggles and movements to inform the discussion of the theory related to these topics based on the fierce criticism of this type of distributive justice theory found in the literature.

4. Two cases of transportation justice debate

The previous section offers a discussion of issues with the general theoretical framework on which Martens’ theory of transportation justice is based. However, what is not yet clear is how these issues might appear in the context of transportation. To this end, this section introduces two cases to explore how concepts of paternalism and production are approached in debates on transportation. We thus follow the suggestion made by Anderson and Walzer, and also by authors such as Young (1990) and Soja (2010), to pay attention to social struggles, and social and political movements.

The two cases were chosen because they demonstrate interesting events or debates in transportation justice, and they provide distinct views on the role of public transportation and the legal and financial structure for supporting public transportation. The first case, the Transportation Justice movement in California, is a well-documented, landmark case (especially the Los Angeles one) that provides insight into the ideas promoted in the Transportation Justice movement. Note that Martens’ (2017) book starts and ends with a reference to the Transportation Justice movement in California. The second case, the “basic

accessibility” debate in the region of Flanders (Belgium), also received attention from Martens since he believes that the Flemish policy of “basic mobility” comes close to his view of a social justice approach to transportation (Jeekel and Martens, 2017).

For each case, we provide some context needed to interpret them, and also to take into account that “the boundaries between phenomenon and context are not clearly evident” in the study of cases (Yin, 2002, p.13). Subsequently, we demonstrate how the issues of paternalism and production might be translated and addressed in the context of transportation. This was done on the basis of document analysis and participant-observation. As is often the case with social and political movements, a variety of opinions is expressed by leading actors in different media and, as a consequence, we cannot claim that every “member” of a movement shares the same ideas. Nevertheless, the chosen opinions and statements are fairly representative for the respective cases, although we in the first place search for theoretical issues, and not representativeness.

4.1 The Transportation Justice Movement in California

Context - The Transportation Justice movement in California developed from the Environmental Justice movement and stems from the broader Civil Rights movement in the US, as detailed in Sanchez et al. (2003) and Gordon (2015) (for an overview of documents, see Table 1). In California, there is no right to transportation or accessibility, however, there are rights to free movement, to basic services (Baldwin, 2006), and to the benefits of funding spent on public services (Gordon, 2015). Because most transit services in California are public, many transportation justice efforts have focused on fair use of funding in public transportation. This is exemplified in the landmark case of Labor/Community Strategy Center v. Los Angeles Metropolitan Transportation Authority (MTA) (the Bus Riders Union case). For years, the MTA had focused funding on the construction of suburban railways to relieve growing commuter traffic in the highway system. However, 94 percent of the MTA’s ridership was on buses, and this included many transit-dependents. Those who used the buses in Los Angeles often had two to three hour commutes in crowded or standing conditions, and this led many to believe that more funding should be shifted from rail to buses. Two activist groups, the Bus Riders Union and Legal Defense Fund were also able to show that 71 percent of MTA’s budget was being spent on only 6 percent of riders (on rail) who were predominantly white (Reft, 2015). In 1996, a court decision limited the fare increases MTA could impose on bus riders and also required increases in bus service (Grengs, 2002), and this was considered a major success for the bus riders in Los Angeles (Soja, 2010).

However, in 2001 a Civil Rights related decision in a different arena made cases similar to the Bus Riders Union case more difficult to win (Sánchez et al., 2003). Perhaps partly as a result of that decision, much of the recent work of transportation justice groups has focused either on specific transportation funding measures or on improving land use and transportation planning at a broader scale. It has focused on raising awareness around various structural issues, such as job-housing imbalance and the lack of community involvement in transportation decisions. The movement currently is a coalition of many partners advocating for a variety of improvements to the transportation system in California, and more specifically in the most urbanized areas of Los Angeles and the San Francisco Bay Area. Many of the partners advocate for transportation equity to be included in considerations for future planning, with the climate planning effort being noted as a good opportunity (TransForm, 2018).

Paternalism – While the Los Angeles case was successful in having funding redirected from suburban rail to buses, users had to make a case for racial bias in order to receive better treatment (Reft, 2015). Accordingly, activists in the Bay Area point to the disadvantaged status of particular groups to make claims

to secure additional funding. For example, one document states that “funding priorities at all levels of government [...] favor automobile use over transit” (POWER et al., 2012, p.2) which is challenging for “the urban poor, the working class, the lowest income communities of color, the elderly, high school students, and the disabled” (POWER et al., 2012, p.15). A different example of funding is the Americans with Disabilities Act which requires most public and private transportation agencies to make systems accessible to those with disabilities or to provide “equivalent accommodations” (Gordon, 2015, p.182). Initially for this law to be passed, advocates needed to show that those with disabilities were disadvantaged in terms of access. What both of these examples have in common is that they show a paternalistic approach to providing and improving transportation that requires groups or individuals to prove disadvantage in order to receive benefits. However, they show two different approaches to providing sufficient accessibility (Soja, 2010). The first example required the agency to spend comparable funding on individual users. The second example requires meeting basic needs of individuals even if this means additional funding spent on those who are disadvantaged.

Production – Groups related to the transportation justice movement point to the unfairness of both the production of the transportation and land use system in general, and the organization and planning of transit services in particular. According to Walden and Wong (2004), the public transportation systems in urban areas in California have been consistently underfunded since the 1940s as people and investment moved to the expanding suburban areas. Because of this, residents in urban areas have been dealing with service cuts and fare increases which still continue today. While this has taken place, advocates contend that those “most impacted by the region’s transportation planning and investment decisions – low-income communities and communities of color – have been missing from the table” (Urban Habitat, 2017, n.p.). They also cite many examples of successful community investment that took place in the 1960s and 1970s which showed low-income residents that they did not “have to have policy done to them, that they could organize themselves to have power to influence decisions” (Joe Brooks, quoted in Walden and Wong, 2004, p.17). These groups address the broader regional transportation, housing and economic issues, but also criticize specific concerns of the public transit system. Advocates claim that politicians divide transit users and transit riders by attributing service cuts to union contracts, rather than recognizing the vast amount of resources that go to subsidizing automobiles or capital projects and the subsidy restrictions on transit operations (POWER et al., 2012). The service cuts also meant less work for bus drivers and maintenance staff, both of which were important well-paying jobs for people from communities of color (POWER et al., 2012). This indicates that the debate is not restricted to the distribution of accessibility, but includes aspects such as labor conditions and other elements related to the production of transportation services.

4.2 The “basic accessibility” debate (Flanders, Belgium)

Context - The second case is the “basic accessibility” debate in Flanders (Belgium) which followed the announcement by the Flemish government of the replacement of the concept of “basic mobility” by “basic accessibility” in 2014 (Vanoutrive and Martens, 2015). The coalition partners reached an agreement to form a government on 22 July 2014, and the policy note on Mobility and Transportation followed in October 2014. The change of the name of the policy, at first sight semantic, immediately generated protest and on 15 October 2014 a conference was organized in Brussels where several civil society actors criticized the rather vague plan of the government. On 8 January 2015 these organizations protested in front of the office of the minister of mobility, and in April 2015 a vision text was published by the “Supporters of Public Transportation”, an ad hoc coalition consisting of trade unions, the Flemish Passenger Association, the Flemish Council of the Elderly, the Flemish Youth Council, the Network Sustainable Mobility and several other civil society organizations. Besides, the “basic accessibility” reform

has been discussed in several fora, such as the Flemish parliament, and the Flemish Mobility Council, which produced written advice in 2015, 2016 and 2017 (MORA, 2018).

In order to understand why a policy reform labelled “basic accessibility” -which seems conceptually related to much theoretical thinking about transportation justice- generated opposition from “progressive” civil society actors, one needs to go back to the implementation of the 2001 Decree on Basic Mobility. This decree acknowledges that mobility is needed to guarantee full participation of everyone in society, and that is why Jeekel and Martens (2017, p.11) state that this decree “perhaps comes closest to what we envision [...] the beginnings of a social justice approach to transport”. The main initiators of the policy of “basic mobility” were the Flemish social democrats, and in the subsequent years political opponents criticized empty or lightly loaded buses, the detours made to serve remote bus stops, the cheap or free tickets for particular population groups, increasing subsidies and the low level of cost recovery of around 15%. In short, basic mobility and public transportation have become a symbolic matter in political debates, and the struggle over “basic accessibility” needs to be interpreted in this context. The content of a report on “basic accessibility” commissioned by the public transit provider De Lijn (Sweers and Dufour, 2015) and the government strategy on public transportation provision from December 2015 (Vlaamse Regering, 2015) are clear examples of an increased emphasis on market principles. With this, where demand is too low for a regular bus service, proposals are made to replace existing on-demand services of the regional public transportation provider by all kinds of “tailor-made” taxi services, community busses and other initiatives (for an overview of documents, see Table 1).

The key idea in the original Flemish “basic mobility” policy is that everyone has a right to mobility, and that a lack of transportation opportunities should not be a barrier to inclusion. In practice, the 2001 “basic mobility” decree introduced maximum distances to bus stops and minimum levels of services for different types of residential areas, and thus focused primarily on the role of the public transit provider De Lijn, and on the level of the system (Martens in van den Toorn, 2015). With the announcement of the abolishment of “basic mobility”, the Supporters of Public Transportation (2015) criticize in their vision statement the austerity measures in the domain of public transportation, and warn that social groups including the unemployed, elderly and sick will be hit hardest. For them, participation in society is the key aim of “basic accessibility” and they recognize the limitations of the rigid norms of the Decree on Basic Mobility, and the narrow focus on residential areas and bus transportation. Individual accessibility needs take a central position in the vision statement and these form the basis for individual legal accessibility rights.

Paternalism – Turning now to the issue of paternalism, we point to some opinions relevant in light of the distinction between those with and without sufficient accessibility. According to Mareels (2003), affiliated with the Flemish social democrats, public transportation is a public service essential to participate in society and has, as a consequence, to be financed by fiscal means, overconsumption being the only reason to deviate from the zero-tariff. All social groups can make use of such services since it would be, according to him, ridiculous to provide these services only to the least affluent, and thus not to tax payers who finance public services. Note that Flemish social democrats publicly defended the idea of free public transportation in the first half of the 2000s, while this idea gradually lost its appeal. Landuyt (2004), another social democrat, develops a similar line of reasoning claiming that the government should guarantee access to necessary services such as health, education, housing and transportation. Interestingly, Landuyt states that free public transportation for all implies that users do not need to be screened before making use of the service.

Production – For Landuyt (2004) a policy based on free services is seen as an alternative to the market whereby it is a government task to build a fence between the market sphere and free public services provided on the basis of solidarity. In 2012, the sustained critique on the low levels of cost recovery was considered a serious threat to the principle that the price of tram and bus tickets was deliberately kept

low, and the gradual shift in focus from basic mobility to network management based on economic demand was considered another example of the application of private sector logic (Vervinck and Roegiers, 2012). In the Flemish Supporters of Public Transportation trade unions play a key role. Although the Supporters ask uniform pay and working conditions, the Supporters could not agree on the role of a strong public transit provider which would imply a stronger bargaining position for the unions. Instead, the Supporters agree with the government that the public transit provider De Lijn should in the first place be a kind of 'movie director' that directs, but not necessarily carries out, operational activities, and the Supporters of Public Transportation does not seem to raise fundamental objections to the establishment of 15 regional transportation partnerships which might fragment opposition. Some members of the Supporters seem to be enthusiastic about innovative, private sector or citizen initiatives to solve particular accessibility problems, which is feared by the unions as a road to privatization.

5. Discussion and Conclusion

Karel Martens (2017) starts and ends his book on transportation justice with a discussion of the Bus Riders Union case in California. A court decision stated that it was unfair that the inner-city transit-dependent poor had to rely on an underfinanced, inferior bus system while a large part of the budget went to suburban rail which mainly serves the wealthy. Martens shares the view, along with the Transportation Justice movement, that the long, unreliable and for many, expensive commutes of the transit dependent poor in overcrowded buses are unfair, but he seeks justice in his substantive theory of transportation justice. In his view, justice is not about a non-discriminatory distribution of public funds over population groups inspired by civil rights thinking, but about guaranteeing a sufficient level of accessibility for all in most circumstances. This implies that transportation policy brings the accessibility poor above the sufficiency line, that the necessary budget is generated by a coercive tax, and that transportation for those with sufficient accessibility is not subsidized but self-financed by users. On the basis of theoretical writings, we identified two issues which could also be found in the context of transportation as the cases illustrate.

First, we pointed to the issue of paternalism. Transportation justice theory distinguishes next to that part of the population that has the means to buy sufficient transportation services, a group without these means, the accessibility poor, which consequently fall in the domain of justice. It is a hypothetical question whether members of the Transit Equity movement would accept a, presumably, better transit service for those with less success in the job market, if the accessibility rich could self-finance far better services and residential locations. It is one thing to draw the attention to the transit-dependent poor, but another thing to let them accept an inferior status. The claim in California for "Affordable, accessible and reliable transit for all" (POWER et al., 2012, p.3), makes one think of the Basic Mobility discourse in the region of Flanders, where it was argued that subsidized public transportation is a public service for all. One of the key examples used in the literature on distributive justice are the disabled, and the disability movement repeatedly refused to accept an inferior status, i.e. being hit by brute bad luck (Anderson, 1999). In the case of wheelchair lifts on public buses, which might offer a service inferior to paratransit, the disability movement campaigned for dignity, meaning that the disabled ought to be seen as regular citizens, and not as the pitiful disabled (Attoh, 2017). Paratransit tends to isolate the disabled from the mainstream of transit interaction, which might involve both positive and negative experiences. This illustrates that the issue of stigma (Anderson, 1999), which was discussed in more general terms in Section 2, may also be present in the case of transportation.

Second, there is the question of the production and planning of transportation services, and the overall transportation and land use system. At a general level, it is questioned whether self-financing should be the norm, and transportation subsidies for the accessibility poor a social correction. Furthermore, the

introduction of self-financing in the domain of free exchange, might change spatial patterns, and the disadvantaged population groups will probably not end up in the most wanted neighborhoods. Note that transportation justice theory is critical of the subsidies for roads and cars that have promoted sprawl, however, the theory accepts spatial sorting on the basis of preferences and talents. It remains unclear why success in the domain of free exchange, the market, is the basic principle to distribute accessibility. To illustrate, some actors in Flanders explicitly stated in a Walzerian fashion that public transportation provision should be protected from the invasion of market processes. Also Sheller (2018) is not convinced by the combination of a free market liberalism with state subsidized egalitarianism to provide for those in need.²

Relatedly, bus transportation and public transit are often used as synonyms, and in practice, the accessibility poor often rely on bus transportation use while the accessibility affluent make use of other transportation modes such as road and rail (which are generally oversubsidized according to transportation justice theory since the theory does not allow subsidies for those above the sufficiency line). This is not necessarily the case since wheels to work programs subsidize cars and motorbikes for the poor (Fol et al., 2007) and buses can also be used by middle class riders. Martens' (2017) theory does not establish a link between travel mode and the accessibility status of people, and leaves open by which means and modes the accessibility poor are brought above the accessibility poverty line. However, the fact that in practice, the two domains align with particular modes produces a struggle between users and supporters of various modes for financial support as well as for use of right-of ways at particular times. This leads to a question of whether the results demonstrated in the Los Angeles case are the natural consequence of the common view that transit is a welfare service, and if a more thorough application of Martens' theory would improve the justice of the system, and would reduce the social polarization between modes of transportation.

This contribution focused on, in our view, the most problematic issues in transportation justice theory, but this does not imply that other concepts and themes are irrelevant. For example, the idea and concept of rights is worth further attention. In the theory of transportation justice the government imposes a tax on those that do not fall in the domain of justice, and the accessibility poor have a moral, but presumably also a legal, right to a sufficient level of accessibility. The Transportation Justice movement is clearly embedded in the Civil Rights movement and the relevant legal framework impacts their strategy, although broader issues are mentioned as well. In the region of Flanders, the 2001 decree on Basic Mobility remains a point of reference, and the vision statement of the Supporters of Public Transportation argues in favor of an individual legal right to mobility. Legal rights have been instrumental in political struggles as the case of the Transportation Justice movement illustrates, but the individualism and the restriction to legally defined arenas of struggle can reduce the level of empowerment (Blomley, 1994). There is room for further research on the role of legal rights in the context of transportation justice and related political struggles.

Finally, the starting point of the present paper is the book "Transport justice: designing fair transportation systems" (Martens, 2017), a contribution that will be hard to ignore in research on transportation, ethics and justice in the coming years. The work deserves credit for focusing attention on the relation between transportation and justice, for revealing the injustices present in popular policy paradigms and tools, and for emphasizing the problem of accessibility poverty. However, the theory of transportation justice presented in the book shows shortcomings. Its answer to the question of how much accessibility citizens owe each other is that the government raises a tax to be used to compensate those who due to brute bad luck cannot buy sufficient accessibility in a self-financing transportation and land use system. The theory falls short of explaining why the outcome in the domain of free exchange is fair, and how those in the domain of justice can be considered fully-fledged citizens in a system that makes a distinction between

the unfortunate and the self-sufficient. Furthermore, the production of transportation services and goods is largely ignored, which may be considered an essential part of a theory of justice, and which may point to the illusory character of self-sufficiency. A more relational perspective would emphasize that people need others to be mobile. Any conceptualization of transportation justice thus needs to take into account that citizens conceive and produce transportation services, which are then distributed among themselves, preferably in a dignified and democratic manner.

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Table 1: Key documents used for the cases

Documents used for the Transportation Justice case (California)

Reflections on Civil Rights in transportation	Sanchez et al., 2003 Baldwin, 2006 Gordon, 2015
Los Angeles MTA court case	Grengs, 2002 Reft, 2015
Transportation justice movement	Walden and Wong, 2004 Snyder, 2009 POWER et al., 2012 Urban Habitat, 2017 TransForm, 2018

Documents used for the Basic Accessibility case (Flanders)

Reflections on the policy of “Basic Mobility”	Mareels, 2003 Landuyt, 2004 Vervinck and Roegiers, 2012
Policy change: towards “Basic Accessibility”	Sweers and Dufour, 2015 Vlaamse Regering, 2015
Reaction against policy change	Supporters van het openbaar vervoer, 2015

Notes

¹ Note that some sustainable mobility policies might have detrimental effects from an equity perspective by taxing or banning polluting vehicles used by less affluent population groups and by subsidy systems for green transportation modes which mainly favor middle and higher income groups (Boussauw and Vanoutrive, 2017). A moralizing sustainability discourse that portrays the poor as irresponsible polluters has been instrumental to generate seemingly “green” but perhaps unjust outcomes out of the sustainable mobility project (Green et al., 2012; Reigner, 2016). We refer the reader to other contributions to this special issue for a more detailed discussion of the tension that sometimes arises between sustainable mobility policies and the social justice agenda.

² Note that Sheller (2018) encompasses virtually all political and social struggles and injustices in her theory of “mobility justice” since the “mobility” aspect in her theory is an ontological and epistemological starting point (society is mobile, hence sedentary theories should be replaced by mobile theories). In contrast, we here focus on a particular debate over the organization of transportation services, and while we acknowledge that other, non-transportation elements are relevant, we do not discuss an overarching theory of justice.

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