

Justifications in Europe's Area of Freedom Security and Justice Space

*E Herlin-Karnell*¹

The European Area of Freedom, Security and Justice (AFSJ), despite being momentarily in the shadow of the financial crisis, continues to cause challenges for the EU with the increased terrorism threat; the current migration and refugee crisis; and growing nationalistic powers across Europe. The AFSJ policy area offers a fascinating example of a clash between individual-based due process concerns and security driven preventive measures, and where the EU is currently carving out its security agenda. The AFSJ deals with, inter alia, security issues; border control; anti-terrorism law and crime, and hence embodies a new and sensitive field in the EU: one which is currently being transformed from largely being an isolated justice and home affairs space, to that of a European hub. Yet, while in recent European integration discourse it is fashionable to speak of a 'justice deficit' (e.g. De Burca et al, Neyer) without a deeper analysis of what it means to speak about 'justice' in the AFSJ, any account of its actual meaning seems however bound to fail. Justice, then, is the new key to understanding the survival of the EU venture.

The idea of this project is to expand on two notions borrowed from political theory domain and translate them into the EU constitutional legal context while discussing their relevance for EU security regulation. Specifically, I will use the notions of justice and justification, classic concepts in contemporary political theory debates (e.g. Forst) and extend these into the realm of the AFSJ as a question of constitutionalism (e.g. Kumm, Harel). The book does this by linking the question of justice to what kind of justification the citizens and the member states can reasonably demand as the EU project expands in security related matters.

¹ University Research Chair and Professor of EU Constitutional Law and Justice at VU University of Amsterdam. Email: e.herlinkarnell@vu.nl

