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The Practice of Equality

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Rainer Forst presents his approach to justice as a kind of dialectic advance on earlier Kantian and Hegelian conceptions. But as we all know, dialectical advances always prepare the way for their own overcoming. This chapter unpacks some of the potential latent in Forst's work for a further dialectical advance in our thinking about justice and invites him (and others) to embrace it. But it makes this invitation somewhat hesitantly, keeping in mind Ralph Ellison's warning about dialecticians in the 'Prologue' to *Invisible Man*: 'Beware of those who speak of the *spiral* of history; they are preparing a boomerang. Keep a steel helmet ready.'¹

In the introduction to *The Right to Justification*, Forst situates his own work on justice alongside those who, like Iris Marion Young, picture justice as a matter of relationships rather than distribution.² Because advocates of relational approaches to justice have been primarily focused on contrasting their work with those within a distributivist paradigm, they have been less attentive to a division within the relational approach itself. In particular, the focus on relationships as the subject matter of justice can be understood impersonally or intersubjectively. One of the most exciting features about Forst's work on the right to justification is that it provides the materials to make this distinction plain. By speaking of justice in terms of justification, he offers a handy way of thinking

¹ R. Ellison, *Invisible Man*. New York: Vintage, 1995 (orig. pub. 1947), p. 6.

² R. Forst, *The Right to Justification*, trans. by J. Flynn. New York: Columbia University Press, 2012. Young's initial criticism can be found in I. M. Young, *Justice and the Politics of Difference*. Princeton: Princeton University Press, 1990.

of justice as an activity rather than a state of affairs, something we do rather than something to bring about. He thus opens the door for the fully practical conception of justice that this chapter explores. I situate such an approach, point to some of its features and implications, and then consider why, despite its many attractions, Forst might be hesitant to accept my invitation.

Two pictures of justice³

Both distributive and relational pictures of justice conceive of injustice in terms a form of arbitrariness. They disagree, however, about the domains in which arbitrariness is a threat to justice. The distributive picture takes justice to require the non-arbitrary distribution of goods, so that each subject of justice has what is rightly hers. So understood, the distributive picture of justice is consistent with any number of theories of justice, depending on how we specify the set of relevant goods to be distributed, the criteria for determining rightful versus arbitrary claims, and the proper recipients of the goods, as well as what, if any, concerns of justice extend beyond questions of distribution. As this list of issues suggests, the distributivist picture of justice has been the dominant picture in recent political philosophy, shared by so-called luck egalitarians, many people who take themselves to be working downstream of John Rawls and those working out a capability approach to justice.⁴ In contrast, what I call the ‘relational picture of justice’ conceives of injustice in terms of arbitrary rule, of relations of domination and subordination.⁵ On this picture, as Forst puts it, ‘the

³ I take the title from Forst’s lead essay for this volume.

⁴ Luck egalitarians include Richard Arneson, Brian Barry, Jeremy Waldron, Ronald Dworkin and G. A. Cohen. Those advocating a capabilities approach include Amartya Sen and Martha Nussbaum. Forst discusses some of the shortcomings with these views in *The Right to Justification*, chs 8 and 11 as well as in the lead essay of this volume.

⁵ Prominent advocates of the relational approach to justice among contemporary political philosophers include Catherine MacKinnon, Iris Marion Young, James Tully and Elizabeth Anderson, as well as Forst. On some readings, Jürgen Habermas, Axel Honneth and John Rawls are also relational justice theorists, though Rawls is most often placed in the distributivist camp (though not by Anderson, Forst or myself).

first question of justice is the question of power,⁶ and so the primary questions a theory of justice concerns itself with is not directly who gets how much, but who decides and how?

Forst follows other advocates of relational justice in motivating his relational picture via a criticism of the distributivist picture, thereby developing that picture around a set of contrasts.⁷ Let me note three of them. First, the distributivist approach makes the subjects of justice basically passive recipients rather than active agents. It pictures the just distribution of goods as what John Rawls calls a matter of 'allocative justice': handing out a fixed quantity of goods to a fixed set of recipients, with no attention paid to the role of the recipients in the production of the goods to be distributed.⁸ Distributive justice, so conceived, is not a matter of regulating cooperative schemes, but of handing out products. In contrast, a relational approach to justice treats the subjects of justice as active agents, who stand in various relations to one another, whether as participants in a cooperative scheme, fellow co-authors of democratic law, or enmeshed in social structures of domination and subordination.

Second, justice as conceived by the distributivist picture has no tight connection to democracy. That is, unless we add political participation or certain political rights to the list of goods to be distributed, and specify that the proper distribution of these goods is universal and equal, democracy is not conceptually necessary for distributive justice. If we could figure out the right formula for a just distribution and the

⁶ Forst, *The Right to Justification*, p. 195.

⁷ See, for instance, the lead essay in this volume, as well as C. MacKinnon, 'Difference and Dominance: On Sex Discrimination', in *ibid.*, *Feminism Unmodified*. Cambridge, MA: Harvard University Press, 1987, pp. 32–44. Young, *Justice and the Politics of Difference*; I. M. Young, 'Structural Injustice and the Politics of Difference', in A. S. Laden and D. Owen (eds), *Multiculturalism and Political Theory*. Cambridge: Cambridge University Press, 2007, pp. 60–88; R. Forst, 'First things First: Redistribution, Recognition and Justification', *European Journal of Political Philosophy* 6(2007b), 291–304; and E. Anderson, 'What's the Point of Equality?', *Ethics* 109(1999): 287–337.

⁸ J. Rawls, *A Theory of Justice*, rev. edn. Cambridge, MA: Harvard University Press, 1999a, pp. 76–7. This is admittedly an overly crude characterization. Theorists working within this picture will often attend to questions of production and political voice by classifying these as further goods to be distributed: the good of meaningful work or leisure, the good of political influence or the powers and prerogatives of various offices.

appropriate social levers to pull to bring it about, then we could achieve justice by leaving that distribution in the hands of a machine or a dictator. And even if we add equal rights to political participation to the list of goods to be properly distributed, we end up with a conception of democracy as primarily a voting scheme, rather than a more full-blown form of collective self-government. In contrast, the relational approach to justice draws a strong connection between justice and democracy. If injustice is primarily a matter of some arbitrarily ruling over others, then it looks like full justice requires that people share collectively in governing their society, so that no individual or group rules over any others.

Third, in order to make something into a proper object of justice within the distributivist picture, it must be conceived of as a distributable good. So if political power or a set of rights or social positions are to be treated as objects of distributive justice, we must imagine them as goods, so that we can talk about bundles of rights, equal access to or voice in political decisions, or the various ingredients necessary to shape a good life. What gets lost in such descriptions is the value that comes from, as Rawls puts the point, being able ‘to face one another openly’, of standing in reciprocal, recognitive and respectful relations to one another.⁹

We can sum up these contrasts by saying that whereas the distributivist picture of justice treats justice as a matter of relative or absolute standing, the relational picture treats justice in terms of the relationships we stand in to others. Note that treating justice as a matter of standing rather than relationships does not preclude analysing some among the goods that are to be distributed as positional goods, goods whose value is dependent on who else has them and how much they have. The difference, then, is not whether or not you pay attention to relationships, but what kind of relationships you pay attention to. The distributive picture attends to relationships like ‘having more than’ or ‘being further up the queue than’. In contrast, the relational approach

⁹ J. Rawls, ‘Justice as Fairness’, in *Collected Papers*. Cambridge, MA: Harvard University Press, 1999b, pp. 47–72 at p. 59.

focuses on relationships like ‘being a friend to’ or ‘being under the dominion of.’¹⁰

The debate between these two pictures of justice is by no means over and done with, and there is a fairly important question as to how or whether these two pictures can be fruitfully combined. But as it is not here that I wish to enter the discussion, I take it as given that there are sufficiently good reasons to abandon a distributive picture for a relational one.

Two pictures of justification

In an effort to show why both pictures are pictures of *justice*, Forst claims that each involves overcoming a form of arbitrariness: the arbitrary distribution of goods versus arbitrary rule. In so framing the matter, he occludes the fact that ‘arbitrary’ is not a univocal concept, and that how one understands arbitrariness colours one’s picture of justice. It is not that Forst is insensitive to the need to analyse the idea of arbitrariness. In fact, much of what I want to highlight in Forst’s work involves his particular analysis of what arbitrariness involves. But he is not as clear or explicit as he might be that he is taking a particular view of arbitrariness, one that is not merely a result of adopting a relational picture of justice. To bring out the possibilities within the relational picture we can contrast two senses of arbitrariness. Being arbitrary involves being without reason, without justification. So the two senses of arbitrariness turn on a distinction between two pictures of justification.

Consider a teacher who justifies a course of study to her students by explaining that this is what the state mandates or what she, qua expert, has decided is the best way to learn. She justifies her action by grounding it in a system of thought, rules, or authority that she takes to hold, regardless of whether the person to whom she is justifying her actions also accepts these premises. I am going to call this kind of justification ‘impersonal’ to

¹⁰ On the importance of recognizing that some goods are positional, even within a distributivist picture, see H. Brighouse and A. Swift, ‘Equality, Priority, and Positional Goods’, *Ethics* 116(2006), 471–97.

have a name for it, but I'm also going to ask you not to read too much into the name. The key for me is that this sort of justification involves securing a kind of warrant from the universe or the existing social structure that what one is doing is rational. A picture of justification as impersonal can be appropriately humble and fallibilist, and so can leave room for criticism of a particular line of justification. It need not (and rarely does) define justification as what those in power say. Nevertheless, one important feature of impersonal justification is that it does not make the validity of justification in any way dependent on uptake from the one to whom the justification is offered. So, our teacher may have misunderstood the statutes or be relying on outdated and disproven pedagogical theories, and if so, her justification of her decision will fail even if no one recognizes this fact. But barring these kinds of mistakes, she can, secure in her justification, fail to take seriously her students' criticisms of her decisions without rendering those decisions arbitrary. In such a case, she is likely to point out that their failure to follow her directives is a sign of their immaturity, and the strength of their resistance an indication of their lack of self-control and full rationality. If her justification is valid, then their failure to accept it is a sign of their failings, not her injustice.

But there is another way we might understand justification: as essentially intersubjective. Intersubjective justification is justification *to* those ruled, rather than in virtue of its grounding in some theoretical apparatus that others may not accept or understand. It is this conception of justification that Forst adopts. It is one that John Rawls also clearly articulates: 'justification is argument addressed to those who disagree with us, or to ourselves when we are of two minds. It seeks to convince others, or ourselves, of the reasonableness of the principles upon which our claims and judgments are founded.'¹¹ Justification of this sort aims at uptake from the one to whom it is offered, and modulo several qualifications that we can ignore for the moment, only succeeds when it is accepted as adequate.¹² It is this dependence on acceptance that makes

¹¹ Rawls, *A Theory of Justice*, p. 508.

¹² Attentive readers will note a slippage in modality here, from what is acceptable to what is accepted. I will come back to this below.

justification a practice of equality and reciprocity as well as a means of overcoming arbitrariness. To treat you as an equal, one whose words and concerns matter as much as my own, I must be able and willing to justify what I do to you in this second sense. If, relying on an impersonal picture of justification, I try to dismiss your rejection as a sign of your irrationality, as the teacher above does, then I fail at this intersubjective activity of justification. That doesn't mean that my justification can't advert to inequalities in knowledge or expertise or the need for some to make decisions for others. But it does mean that these considerations have to be ones that those to whom I offer my justifications accept as grounds for allotting decision-making power unequally. Put another way, a necessary feature of engaging in this practice of intersubjective justification is being responsive to those to whom you are offering justification.

Our teacher might shift to this second kind of justification by elaborating her original justifications: by explaining why her greater knowledge of the subject allows her to see why this approach will make it easier to learn, although her students' lack of knowledge at the moment makes it impossible for her to explain what she knows to them. Note that in offering a justification of this sort, the teacher is asking her students to trust her and perhaps reminding them of why she is trustworthy rather than baldly asserting her authority to make these decisions without challenge. Her justification will thus succeed only to the extent that her students find her trustworthy. Whether they find her trustworthy may depend on their previous interactions with her, and her responsiveness to them, considering the fact that they are particular individuals and not merely abstract placeholders or possible test scores or disciplinary problems to be managed.¹³ Note also that in this kind of example, it is really the intersubjective activity of justification and not the prior fact that the reasons the teacher adverts to are good ones, or that the students see them, on their own, as good.

¹³ The generation of trust in hierarchical authority relationships deserves at least a whole other paper. Although I think engaging in the practices of justification that the paper discusses is one way to generate trust, I am not claiming it is the only or even the most important way to do so.

Philosophers have not always fully appreciated the importance of the difference between impersonal and intersubjective pictures of justification for thinking about justice. One reason for this is that to see clearly the deep differences between them requires situating intersubjective justification within a picture of the very activity of reasoning that is different from the one we are used to working with. If, as we are used to, we think of reasoning as an end-driven activity of basically problem-solving, then it will be tempting to think that what ultimately makes even intersubjective justification successful is that it adverts to a set of reasons that are, independently, there, and not dependent on the response of those to whom the justification is offered. In order, then, to picture intersubjective justification as truly intersubjective, we need to situate the practice of offering justifications that are answerable to others within a larger practice of offering and evaluating and responding to reasons, of reasoning, seen not as an activity of problem-solving, but as an activity of interacting with and being responsive to, others. On such a social picture of reasoning, what is essential to an activity being reasoning is not that it follows rules of calculation or the manipulation of formal rules and symbols, but that it is a form of interaction with others that is reciprocal and respectful. In other words, we have to think about the activity of reasoning as a way of neither commanding nor blindly deferring to others, but of treating them as equals, as people whose words and ideas and points of view matter and to which our own actions are answerable. Although there is much to be said about how to understand reasoning on this picture, for our purposes it is enough to note that excellence at reasoning in this sense

¹⁴ For a much fuller discussion of this picture of reasoning, see A. S. Laden, *Reasoning: A Social Picture*. Oxford: Oxford University Press, 2012. The picture of reasoning developed there makes reasoning a much more capacious category than standard pictures do. In particular, it does not exclude certain forms of interaction that depend on affect or emotion, and so by focusing on the place of reasoning in being and becoming equal I do not mean to exclude such activities. That said, however, I also don't mean to say that the only form of interaction that makes us equal is reasoning, even broadly construed, nor to deny that the capacity to reason in my sense may require other forms of capacity that are best not thought of in terms of reasoning, such as an ability to be emotionally open, and not gripped by various fears. I am grateful to Maggie Schein for discussion on this point.

is manifested in someone being reasonable.¹⁴ That is to say that a skilled reasoner on this alternative picture of reasoning is someone who is fully responsive to the people with whom she talks and relates, rather than someone who is particularly skilled at maneuvering within formal and symbolic systems. This kind of reasoning requires a set of skills that are not always associated with reasoning. The skills include listening to and understanding others, allowing their words to matter, as well as, when appropriate, being able to trust others, which may require being open to being vulnerable to them.¹⁵ They also include being trustworthy and manifesting that trust-worthiness, which may include being open about our own limitations and partialities and forms of blindness.¹⁶ Reasoning with others is thus a way of showing them respect, of recognizing them, and thus taking seriously their differences from us in a positive way and not as grounds for their exclusion or dismissal. In other words, reasoning with people in the sense gestured above is one, perhaps the central, practice of the kind of justice that Forst's work pictures.

Justice as a practice of equality

This distinction between pictures of justification provides a different way to distinguish pictures of justice. If justice requires that our relationships to one another include a right to justification, then our picture of justice will depend on whether we have impersonal or intersubjective justification in mind. And what I now want to ask is: What does an account of justice that is both relational and intersubjective look like? How does it differ from a conception that rests on relations that are impersonally justifiable? One set of answers to that question is to be found in the essays of *The Right to Justification*, but I want to bring out some further implications of this view that Forst does not, although I believe he would be willing to accept at

¹⁵ For further discussion of the place of trust and vulnerability in reasoning with others, see A. S. Laden, 'Negotiation, Deliberation and the Claims of Politics', in Laden and Owen (eds), *Multiculturalism and Political Theory*, pp. 198–217.

¹⁶ J. Tully, 'Diversity's Gambit Declined', in C. Cook (ed.), *Constitutional Predicament*. Montréal: McGill-Queen's University Press, 1994.

least those worked out in this section. In particular, I want to make clear how, on a picture like Forst's, justice itself becomes a practice, something we do rather than something we aim for or try to bring about.¹⁷ And I want to say a bit about what that practice might look like.

First, notice how an intersubjective relational picture of justice shifts our view of equality. Although each picture of justice we've been discussing is championed in the name of egalitarianism, each conceives of equality differently. The debates I have in mind here are not about equality of what, but over the more fundamental question that Catherine MacKinnon asks: 'What is an equality question a question of?'¹⁸ And once again, the debates on this point between the distributivist and relational pictures of justice are somewhat familiar, but occlude a third possibility. We can see the salient differences by thinking about how each yields different lessons about what we need to teach and learn in order to realize a more equal society. On the distributional picture of justice, equality is a matter of mirroring. That is, one of the criteria for a distribution being non-arbitrary is that it mirrors some more or less natural feature of the population among whom it is distributed. Most often, this mirroring move involves citing something that all targets of distributions have in common (we are all human) or disputing that some difference (race, gender, class, etc.) is morally relevant, by showing that it is, in Rawls's words, 'arbitrary from a moral point of view'.

What is significant in this approach to equality is that it starts from a premise about the world or about people that is taken as a given.¹⁹ The kind of underlying equality that the distributive picture of justice begins

¹⁷ In this, it returns in a sense to Rawls. See C. Korsgaard, 'The Reasons We Can Share', in *ibid.*, *Constructing the Kingdom of Ends*. Cambridge: Cambridge University Press, 1996, pp. 275–310; T. M. Scanlon, 'Contractualism and Utilitarianism', in B. Williams and A. Sen (eds), *Utilitarianism and beyond*. Cambridge: Cambridge University Press, 1982.

¹⁸ Most recently in, C. MacKinnon, 'Making Sex Equality Real', in *ibid.*, *Are Women Human?*. Cambridge, MA: Harvard University Press, 2006, pp. 71–6 at p. 74; but see also C. MacKinnon, 'Difference and Dominance: On Sex Discrimination', in *ibid.*, *Feminism Unmodified*. Cambridge, MA: Harvard University Press, 1987, pp. 32–44.

¹⁹ At least, in the short term. We can accept that some or all of these factors are affected or even constructed by social institutions and practices in the long run and yet still adopt this mirroring conception, as long as we don't conceive of being equal as itself a way of acting with others, and thus something constituted by what we do here and now.

with is a prior fact, not one that comes about as a direct result of the social processes in question. The question that remains for policy and the design of social institutions is whether or not our society adequately responds to this pre-social fact. On such a view, we may need to learn and to teach others that and how we are already equal, and how that fact is or is not properly treated by our social institutions, but there is nothing for us to do that might be described as making each other equal.

On relational pictures of justice, equality is understood as a result of standing in certain kinds of relationships (reciprocal, non-dominated). Whether we stand in one kind of relationship or another is not a natural or pre-social fact about us, but is a result of how our society is organized and how we act within that organization. While a large part of what determines our possibilities in the short run is a result of social factors that may well be beyond our individual control, there are also plenty of ways that we shape our relationships through how we and others act within them. So, what we need to learn on this picture is that we should be equals and what sorts of changes in our society might bring that equality about. In other words, the pursuit of justice on this second picture involves, in the words of the Canadian Constitutional Court approvingly cited by MacKinnon, 'promoting equality'.²⁰

If we shift all the way to a relational picture of justice with an intersubjective picture of justification at its core, our conception of equality shifts again. Although we still think of equality in terms of relationships not marked by arbitrary rule, our attention is brought to how those involved in these relationships act towards one another: Are they prepared to offer justifications to one another and do they take themselves to be bound by the uptake or rejection that their justifications meet? Our focus here is not so much on which kinds of

²⁰ For further discussions of the importance and robustness of this form of relational equality, also called democratic equality, see Anderson, 'What is the point of equality?' and J. Cohen, 'Democratic Equality', *Ethics* 99(4), (1989), 727–51. Both argue that a focus on democratic equality has robust implications for distributional schemes in part because of the expressive value of those schemes, and thus what justifying them to our fellow citizens might entail. In so doing, they also rely on an intersubjective picture of relational justice.

relationships to bring about, but how we relate to one another within those relationships. How we relate to one another will, of course, be conditioned and shaped by the institutional structures within which we live. No amount of good will and equal regard will make it possible for the slaveowner to treat his slave as an equal. But equality is not here exhausted by our place within various social structures. Part of what determines whether I am equal to others is my interactions with them. I can act in ways that are servile towards or contemptuous of some or all of my peers, students and fellow citizens, or I can learn to treat them with respect as equals. Which of these I do shapes to what extent a basic right of intersubjective justification is realized in our society? And so these facts, just as much as my social position, will constitute or undermine our equality. Since equality here is something we actively do, it is something that we can and must learn.²¹ In other words, equality is neither a natural fact nor a social goal but a kind of practice. Learning the practices of equality involves not only developing the ability to offer and demand justifications, but also to do so in a way that is accountable to others.²² And that may very well require learning to recognize others as appropriate subjects of our love or respect or moral regard.²³ Justification meets recognition.

Before moving forward, it helps to sum up these differences: On a distributivist picture the equality that justice requires involves everyone

²¹ It should not be surprising, then, that one of the earliest political philosophers to develop this picture of justice, Jean-Jacques Rousseau, was also so concerned not only with education in general but also with the particular problem of how to educate people into being and acting as equals. For a somewhat different path to a similar set of conclusions about equality being a matter of our civic practices and habits, see D. S. Allen, *Talking to Strangers*. Chicago: University of Chicago Press, 2004. I discuss the implications of this view of equality for education in A. S. Laden, 'Learning to be Equal: Just Schools and Schools of Justice', in D. S. Allen and R. Reich (eds), *Education, Justice and Democracy*. Chicago: University of Chicago Press, 2013, pp. 62–79, from which much of the foregoing analysis is taken.

²² Accountability is one of the requirements of valid justifications on Forst's view. See Forst, *The Right to Justification*, p. 129. For further elaboration of accountability as a requirement in order for deliberation to be reasonable, see my 'Outline of a Theory of Reasonable Deliberation', *Canadian Journal of Philosophy* 30(2000), 551–80; and more generally, A. S. Laden, *Reasoning: A Social Picture*.

²³ On the importance of this initial capacity for seeing others as objects of our moral regard, see R. Gaita, *A Common Humanity*. New York: Routledge, 2000.

having the same slice of the pie because of some inherent feature that gives them an equal claim. On the impersonal relational picture, justice requires the kind of equality that is achieved when no one is standing on another's neck. Finally, on the intersubjective relational view, justice requires the kind of equality that is achieved when no one sees another as beneath her notice or concern, as invisible or undeserving of reciprocal justification.

At this point, partisans of the impersonal relational approach will worry that I have turned justice into an activity that takes place in everyday and face-to-face personal encounters. The problem is that a theory of justice that keeps its gaze firmly focused on such encounters appears to lose sight of the importance of *social* justice, returning in some sense to an ancient conception of justice as a personal virtue. Although this *is* a danger in thinking of justice as a practice, it is one that we can easily avoid. We need only note that institutions play a mediating role, shaping what we can say to one another by way of justification in at least two ways. First, among the things for which we can demand justifications are the particular shape that certain institutions take in our society. Second, we advert to certain institutional structures in the course of justifying our relative positions to others. Part of the justification you might offer me for your greater wealth is that you are entitled to it as a result of the basic structure of economic and social institutions we live under, one that I also consider fair. And, one way your justification can fail to satisfy my demand is if it relies on the functioning of institutions that are not fair or have been imposed on me. Since how we relate to one another is a function of what we can say to one another, the institutions that mediate our relationships continue to play an important role in our conversations about justice.

Consider now, a second feature of an intersubjective conception of justice. As my remarks about learning the practices of equality above suggest, this approach to justice brings squarely into view both the general educative role of institutions and the important institutional role of education in realizing justice. In establishing particular rules and

forums for demanding and offering justifications, institutions serve to teach those interacting with them and with others through them a set of techniques of reasoning and justification. Furthermore, an institution that establishes practices of accountability and justification within its structures teaches lessons about who is worthy of and owed such justifications. They thus initiate us into the practices of justification that serve to realize justice in our world. Institutions can be schools of democracy and justice or schools of despotism, and these features as well as their efficiency and productivity and contribution to fair schemes of distribution are ones we need to take heed of as we evaluate them in terms of justice. Think, for instance, about the institutions of the modern welfare state, which may more justly distribute income and relieve certain dependency relations, but which nevertheless too often treat their clients with a kind of arrogance and officiousness that violates the practices of equality I have been describing. In the process, they teach us unjust lessons about the kind of regard we owe one another.

Of course, there is one set of institutions in any society whose primary function is educative: schools and universities. And so if we begin to think of justice as a practice we can and should learn, then we need to think more carefully than many political philosophers have about whether and how schools serve these functions. Schools, rather than financial institutions or taxation schemes, may be, to use a phrase of G. A. Cohen's, 'where the action is'.²⁴

Finally, notice that by picturing equality in terms of the practices that constitute our relationships to one another as reciprocally accountable, we make room for certain forms of hierarchy within a just society. Since one of the insights that supports the move from the distributivist to the relational picture of justice is that hierarchies are precisely the form of inequality our theories of justice should address, this looks, at first sight, like a step backwards. Nevertheless, it is also

²⁴ G. A. Cohen, 'Where the Action Is: On the Site of Distributive Justice', *Philosophy and Public Affairs* 26(1), (1997), 3–30.

the case that no modern society can exist without some forms of hierarchical authority relationships. Even the staunchest advocate of radical democracy accepts that teachers should have some sort of non-reciprocal authority over their students, that managers should have the authority to manage workers, judges to pass down rulings, and so forth. If all forms of such social organization are forms of injustice, then complete justice is not only far-off but also not to be desired. So what we need is a way to distinguish between legitimate and illegitimate hierarchies, and picturing justice as a practice of equality provides one.

Here, it helps to distinguish hierarchy from arbitrariness of rule. Hierarchy involves some having authority over others, and thus having the status to make decisions or take actions that others do not. Teachers who determine lesson plans and assessment mechanisms and assign grades and enforce classroom rules without consulting with or receiving the approval of their students stand above them in a hierarchy. But an institution can have within it, hierarchical relations of this sort without granting those in higher positions the further privilege of non-accountability, of arbitrary rule. A teacher has this further privilege when demands that he justify his decisions can be peremptorily refused on the ground of his position in the hierarchy, with a 'because I know better' or 'because I am the teacher' or 'because that's what the rules say' where these are offered as final answers. But it is possible to stand in a hierarchical relation with others while nevertheless being accountable to them. In such cases, deference to one's authority must rest on earned trust and the ability to justify one's decisions, neither of which requires handing over authority to one's subordinates. It requires only that those in authority are accountable to those over whom they have authority, just as those under their jurisdiction are accountable to them. So an institution within a just society, whether a school or a workplace, can enact an intersubjective form of relational justice by making sure people within the institution are accountable to one another (and to those outside) without having to do away with all hierarchies of authority.

Moving beyond Forst

Although it isn't an explicit part of Forst's view, I think he would be perfectly happy with the idea of equality as a practice. But this is where his dialectical advance starts to overcome itself, because once we start picturing justice as involving practices of justification, it begs the question as to how we should understand the very justification of this picture. In other words, might the justification of our picture of justice as intersubjective justification be intersubjective as well? What would that mean? Let's try to get there through a somewhat different route:

Consider the role experts on justice play within the various pictures. On the distributivist picture, justice involves the correct allocation of the appropriate goods. Since distributive pictures of justice treat their subjects as passive recipients, it makes no difference to the justice of a distribution that some people neither accept nor understand it. Justice is a kind of social engineering problem, and like other engineering problems, is best left to be worked out and implemented by an expert, call him Jeremy (Bentham, not Waldron): justice demands government by lawyers and trained civil servants.

If we shift to a relational picture of justice, but hold on to an impersonal conception of justification, then we need to shift to a genuine democracy, where policies are decided upon and authorized by the people themselves, not handed down by experts. Nevertheless, on this view, there still remains a role for a certain kind of, as it were, philosophical expert, call him Ronnie (after Dworkin): someone who can determine which relations are just and which are not, who can give us a theory of justice.

Next, move to an intersubjective conception of justification within our politics. Here there is no possibility of a prior theory of justice: justice has to be worked out by the citizens of a society themselves as they work out what they can justify to one another, what justifications they can accept. But if we nevertheless hold that philosophical justification of our picture of justice must be impersonal, there may still be a role for a different kind of philosophical expert here, call him Jürgen. Such an

expert cannot directly lay out the most just institutions or distributions or give us a substantive theory that authorizes particular justifications, but he can lay out the boundaries of public reason or the structure of genuine moral discourse. He can tell us why the right to justification is fundamental to justice, and thus when we are engaged in genuine practices of justice-realizing justification.

If this is right, then moving from a distributivist to a relational picture of justice is a dialectical step forward insofar as it lessens the role of experts in the realization of justice. And this makes the move from an impersonal to an intersubjective picture of justification within a relational picture of justice similarly a step forward. But note that seen this way, there is another natural step to take. Jürgen retains the role of an expert because even though this third picture treats justifications within a political society as intersubjective, it treats the philosophical justification of the basic right to justification itself as impersonal. And that raises the question of whether we can also treat this stage of philosophical justification as intersubjective as well.

Because such a view would be intersubjective all the way down, it would make us active not only with respect to working out the details of our relations to one another in ways that make them non-arbitrary, but also with respect to the terms in which the justification of those relationships plays out. Justice, on this fourth model, is no longer a matter for experts and theorists to figure out or implement at all. It comes about only through our shared implementation of our shared ideas about how to live together, a process that is ongoing and goes all the way up and down.

We can understand this fourth picture as applying the intersubjective picture of justification to philosophy itself, and it is this picture of justice and of political philosophy that I want to invite you to consider. I don't think it is necessary in order to treat equality as a practice, but it does seem to be where doing so takes us. It is also, I think, where Forst and I part ways, so those who reject this invitation will be in good company.

Space constraints prevent a full description of what an intersubjective conception of philosophical justification would look like. But I want

to try to sketch some of the underlying issues at stake in the choice between these pictures of political philosophy.

First, note two roles a so-called ideal theory of justice can play. On a traditional picture, justice is generally seen as a goal and philosophers doing ideal theory as laying out a kind of blueprint about where to aim our policies. Philosophy sets out a theoretical goal, and then we apply our philosophical conclusions to particular policy questions in part by trimming our ideals by considerations about what is feasible. This model fits nicely with the idea that ideal theory is theoretically justified. If, however, justice is first and foremost a practice of justification, then ideals serve as constraints on our present action, rather than as a goal to aim for.²⁵ I realize justice by, here and now, holding myself and others accountable and only acting in ways for which I can offer reciprocally accepted justifications. In abiding by this constraint, I realize an ideal. Because the ideals pictured in intersubjective accounts of relational justice serve as constraints not goals, we are not to figure out what relational justice demands and then work out which policies will bring it about. Rather, we must ask of various policies, regardless of the ends they seek to promote, are these consistent with relational justice? Ideal theory so understood does not then require trimming by concerns of feasibility. Rather, it tells us which among the feasible alternatives should be off the table because it is inconsistent with the demands of justice. But this, in turn, offers a rather different view of political philosophy's role.²⁶ Political philosophy, so understood, is not the most abstract branch of political science, but rather a way to make our practice, here and now, more reflective, more reasonable, and thus, more just.²⁷ In doing this, it

²⁵ I discuss this contrast at greater length in reference to Amartya Sen's criticisms of Rawls in A. S. Laden, 'Ideals: Goals vs. Constraints', *Critical Review of International Social and Political Philosophy*, 16(2), (2013), 205–19.

²⁶ For the most part, this is not how contemporary analytic political philosophers think of the role of political philosophy. For a clear articulation of that more common view, see A. Swift, 'The Value of Philosophy in Non-Ideal Circumstances', *Social Theory and Practice* 34(3), (2008), 363–88. I don't think the possibility of one rules out the possibility or value of the other. But it is important to understand which one is undertaking and why.

²⁷ J. Tully, 'Political Philosophy as a Critical Activity', in *ibid.*, *Public Philosophy in a New Key*, vol. 1. Cambridge: Cambridge University Press, 2008, pp. 15–38.

does not give recipes and policy proposals to bureaucrats and princes, but helps ordinary citizens enact the justice we seek by helping us to see the meaning and power our actions can have when they are animated by a picture of justice.

Second, note the modality in which the various pictures of justice are expressed. A picture that treats philosophical justification as impersonal will talk, as Forst does, about whether everyone *could or would* accept a political justification.²⁸ An intersubjective picture, however, will ask us to ask whether our justifications *do* meet with uptake, *are* accepted. Is this shift from acceptability to acceptance a dangerous one? There are two reasons to think so, and both of them appear to concern Forst. The first involves the actual acceptance of faulty justifications, possibly as a result of manipulation or pressure. The traditional housewife who accepts her subordinate role within the household and the wider society and thus accepts justifications for various practices that subordinate her on the basis of this role is not, despite this, being justly treated. She has accepted justifications that are reasonably rejectable. The second kind of case involves stubborn rejection of good justifications. Here, just because someone obstinately rejects a perfectly good justification, we don't want to say that this rejection makes the justification insufficient. Hypothetical acceptability allows us to liberate the housewife while not being held hostage to the forces of unreason.

But not without costs. In particular, if all that matters is the acceptability of justifications, then it does not look as if the actual offering of justifications is essential at least at some level. We can work out what actions and laws and rights regimes are acceptable in the comfort of our studies, shifting to the hypothetical mode of thinking so beloved of philosophers; we are back relying on Jürgen and Ronnie, and perhaps even Jeremy. So taking this route tends to push us back towards an impersonal conception of justification. We can try to hold our ground by distinguishing between the intersubjective form of political justification and the impersonal form of philosophical justification

²⁸ Forst, *The Right to Justification*, p. 15.

(this is what Habermas tries to do). Forst takes another tack, by trying to assure us that our impersonal philosophical justification just *has* to be intersubjectively accepted. That, as I understand it, is what his recursive justification of the right to justification amounts to. But this position strikes me as unstable. What happens when a justification that has to be accepted just isn't? Luckily, there is another way forward.

We can also avoid the worrisome cases without shifting into a hypothetical register. A model for how to do this is Rawls's idea of pure procedural justice. Pure procedural justice obtains in cases where there is no way of determining the just result without actually going through a procedure. Rawls's example is gambling. The only way to know that a particular outcome is the result of a fair gamble is to play out the game. No amount of hypothetical reasoning will help here. But reliance on an actual procedure being carried out does not mean there are no justice-inspired constraints on the procedure. For the outcome of the game to be fair, the play of the game must be fair, and this will involve it following various rules. Similarly, we might say that for the acceptance or refusal of a justification to be determinative of the justice of the relationship in which it is offered, certain basic rules and norms of justification must be observed. These can look a whole lot like Forst's criteria of accountability, reciprocity and generality.²⁹ Someone whose rejection of a proffered justification violates these norms will not thus render the justification offered insufficient, so stubbornness is no bar to justice. And accepting a justification that violates these norms will not make the justification a good one, so the accepting housewife is not being treated justly. But the mere fact that an acceptable justification is available will not render a relationship just if there is no means for it to be demanded or willingness for it to be given. We realize justice in how we talk to one another, not in the space of abstract possibilities. And to avoid a different criticism, we can hold that these norms must gain

²⁹ Forst, *The Right to Justification*, p. 20, where they are presented more or less as I have presented them here, as constraining criteria.

their authority in the very same way that the justifications they make possible do: through being accepted.

But even if you accept that not laying out ideal goals and not offering theories that speak in hypotheticals are attractive possibilities, you may still find the idea that philosophical justification could be intersubjective all the way down unattractive, even downright unphilosophical. Many, probably most, philosophers do. So I want to end by trying to locate that resistance, and maybe suggest some of the attractions of the position I have been laying out.

What, ultimately, seems to lie at the bottom of the difference between an approach that distinguishes philosophical and political justification or in other ways tries to impersonally ground our conception of justice and one which aims to be intersubjective all the way down is something like what William James called philosophical temperament. The point here is subtle and tricky and I am not sure I am yet articulating it well, but the basic thought has to do with our tolerance for uncertainty in the struggle for justice.

Let me try to get at it in a roundabout sort of way. Kant taught us to think about morality (and much else besides) in terms of necessity and unconditional grounding. And to think in terms of necessity is to adopt the language of duty and inevitability.³⁰ It is to search for unavoidable, if not metaphysical or foundational, grounds of those duties in our condition or nature. It is to focus on what we must, inevitably, do or be.³¹ By resting our conception of justice on such unconditional and firm grounds, we secure our footing, as it were, and can rest assured that we will be able to counter injustice where we find it. For those as concerned to respond to injustice as Forst is, that is not something to give up lightly.

³⁰ Forst, *The Right to Justification*, pp. 33–4.

³¹ Forst's own Kantianism is constructivist and post-metaphysical, to be sure (see e.g. Forst, *The Right to Justification*, p. 36). But it is still suffused with the search for the unconditional ground of duty, of the necessity of acting in a certain way. Forst claims that this ground, though not constructed, must be re-constructed, and must thus be answerable to the very criteria it supports (ibid., pp. 22, 272n.46, ch. 2). And so neither Forst's Kant nor Forst's own view rests on a form of substantive realism. But in adverting to this re-construction, he is constantly brought back to something like its necessity or the necessity of the practical insight on which it rests (ibid., p. 60).

The problem is that once we have found an inevitable source of obligation in our condition, then it looks as if any failure to uphold and acknowledge that obligation is a kind of existential confusion, a failure to be human. But this is overly dramatic: it leaves no room for all the more or less ordinary ways we fail to live up to our ideals of justice without thereby failing to be human.

In contrast, the kind of view I have offered here can be thought of as holding out an ideal set of practices for others to join us in realizing. Rather than insisting on these practices as obligatory or inevitable or grounded in who we are, it holds them out as ideals, as something towards which we might aspire. It thus speaks in the language of exemplars, not principles. Since we can accept an ideal that we do not yet live up to, we can also at the same time accept all the myriad ways we currently fail to be just without failing thereby to be who we are.

Now, from the point of view of the impersonal view of philosophical justification we find in Kant and Forst and most other political philosophers, holding out ideals will appear to be insufficiently critical and grounded. It will seem too weak a position with which to confront the world's many injustices. For one, it looks as if letting go of the impersonal philosophical grounding of the basic right to justification leaves us with nothing to say to those who do not recognize it.

But I would suggest that giving up the project of finding unconditional grounds does not need to render us mute in the face of injustice. There is another way philosophical argument might proceed: rather than search for grounds for our principles, we might attempt to describe our ideals in ways that make them attractive, and invite others to see them as we do and to join us in the shared project of working out ideals we can share. This is inevitably a more collaborative enterprise. It requires that we also be open to being changed by what others say to us. In that sense, it does leave more up for grabs. But in doing so, it recognizes and respects those with whom we talk and argue in a way that arguing from already established philosophical foundations does not. It thus realizes justice by failing to guarantee it. (This is where

the choice turns on your tolerance for uncertainty in the struggle for justice).

We might understand this as a project of coming to be creatures for whom justice is inevitable, or simply a project of taking responsibility for taking on the obligations of justice. Note that this is a project we undertake first and foremost not by theoretical study or the implementation of particular social policies, but by, to quote Gandhi, being the change we want to see in the world, by enacting in our relationships with one another these very practices of justification and thus equality. And we do this not only as fellow citizens, but also as philosophers, for on this conception of philosophy's role, there is no difference.

As I said above, adopting this intersubjective picture of political philosophy can be seen as applying an intersubjective picture of justification to philosophy itself. Not, as Forst tries to do, by making the grounding of the principle of justification recursive and thus unavoidable, but by giving philosophy a different role to play: helping us to see more clearly the costs of adopting or abandoning certain ideals or ways of acting in the world and thus giving us a language in which to offer justifications to each other for thinking one way rather than another. If this strikes you as insufficiently philosophical, note that it may be where Kant's recognition of the autonomy of reason eventually takes us. It is arguably where it took Hegel and Nietzsche and, I would argue, Rawls.³² For if the justification of justice is as intersubjective an exercise as the justification of particular actions or principles or cooperative schemes, then we must construct our philosophical ground as we construct our political and social grounds, by reasoning together, by talking to one another. We cannot hope to discover or re-construct it by careful philosophical study alone. Similarly, if justice is our aspiration, not our condition, then we have to take it upon ourselves to be the change by engaging in practices of equality with one another,

³² For the further development of this argument with respect to Rawls, see A. S. Laden, 'The Justice of Justification', in F. Frayenhausen and J. G. Finlayson (eds), *Debating the Political: Rawls and Habermas in Dialogue*. New York: Routledge, 2010, pp. 135–52.

rather than to look for authorization or permission or necessitation in a grounding argument. This is the picture of the practice of equality that I invite you to consider. I find it attractive, but I realize that many readers, like Forst, will see such a leap into thin air as jumping off a cliff rather than taking flight. And they may well be right about that. It is certainly not an issue that I can settle now. It will, no doubt, require the coming of the dusk, when owls and boomerangs fly free.