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Justice and the Basic Right to Justification

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Rainer Forst's work on the right to justification represents an important contribution to contemporary theories of justice and democracy.¹ It presents a rich systematic account of justice – one that has an attractive unity.² I am sympathetic to many of its themes – its defence of a kind of universalism; its sensitivity to power, exploitation and oppression; its commitment to justification and reason-giving; and its treatment of global justice and injustice. I agree with its response to those who argue that human rights discourse is necessarily guilty of ethnocentrism, and am also in agreement with its analysis of Rawls's *The Law of Peoples*. Moreover, I admire Forst's capacity to discuss and integrate some very different thinkers and traditions of thought. In short: the account developed in *The Right to Justification* is a powerful and appealing one.

As the title suggests, the account that Forst develops and defends has at its heart the concept of a 'right to justification'. My aim in this paper is to explore this concept, and thereby, the theory of justice that Forst develops. To do so, I shall begin by outlining the nature of his account of justice as I understand it (Section I). I would then like to examine two specific features of Forst's account – namely his account of what I

¹ All references in the text are to R. Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice*, trans. by J. Flynn. New York: Columbia University Press, 2012.

² Although I argue below that we should in fact resist the attractions of this unified account and adopt something that is somewhat less unified but which is, so I argue, a more accurate reflection of our fundamental moral commitments.

shall term the ‘nature’ of justice and the ‘scope’ of justice. I begin with the former.

Forst offers an account of justice that is, as he recognizes, ‘monistic’ in an important sense (p. 195) for it reduces (and subsumes) all justice claims to one core idea (captured by the idea of a Basic Right to Justification). I argue that justice does not have this monistic character, and I seek, in particular, to defend a way of thinking about distributive justice that Forst criticizes. My aim here, though, is not to reject Forst’s ideal of a right to justification, but rather to argue that at its most basic and fundamental level justice involves *both* a ‘distributive’ component as well as the ‘procedural’ component that Forst defends. Forst accords primacy to what I am calling the ‘procedural’ component: I think, though, that there are two distinct types of justice and, crucially, that neither is reducible to the other. So, in place of his monism I offer a more pluralistic conception of justice with different types of claim, none of which can be subsumed by each other.

I then turn to Forst’s account of the *scope* of the right of justification (Section III) (specifically, when does it apply and who owes a duty of justification to whom?). My suggestion is that Forst’s account of the scope of the right of justification is drawn too narrowly.

Forst’s account of justice

Let me begin by outlining Forst’s account of justice. As I interpret it, Forst’s approach contains the following core features.

The Nature of Justice and Injustice: First, he insists that the core idea of justice is avoiding arbitrariness. More specifically, on his view, justice is concerned with avoiding arbitrary *rule*. Thus Forst writes in Chapter 8 that ‘the core idea of a just order . . . consists in the idea that its rules and institutions of social life be *free of all forms of arbitrary rule or domination*’ (p. 189). In the light of this, Forst argues, justice – the avoidance of such arbitrariness and in particular arbitrary rule – requires what he

terms the ‘basic right of justification’ (hereafter BRJ). Rule would not be arbitrary if its exercise were justified – if the right of the people to justification is met.

The Basic Right of Justification – Reciprocity and Generality. This then poses the question: What does justification involve? Forst’s reply to this is that justification must have two features: it must exhibit ‘reciprocity’ and ‘generality’. It is worth unpacking these two notions. Forst understands reciprocity as follows: A participant acts reciprocally when they do not seek simply to advance their own interests, but rather affords a similar status to the interests of others. Participants motivated by a sense of reciprocity accord to others the same benefits and opportunities that they call for themselves. The second feature of the right of justification is ‘generality’: participants honour this constraint when they include all and do not arbitrarily exclude anyone. In Forst’s words:

The criterion of reciprocity means that none of the parties concerned may claim certain rights or privileges it denies to others and that the relevance and force of the claims at issue are not determined one-sidedly; generality means that all those affected have an equal right to demand justifications. (pp. 129–30)

Scope. We can now ask: What triggers the right of justification? What is the scope of the BRJ? Forst often writes that the BRJ arises when people are ‘affected by’ social processes of various kinds. He says of the ‘*basic right to justification*’ that ‘[t]his right expresses the demand that there be no political or social relations of governance that cannot be adequately justified to *those affected by them*’ (p. 2: emphasis added). I shall say more about this later but want to turn now to two further implications of Forst’s view.

Justification. The first is: Why is *this* the appropriate response? For Forst, I think, the answer has to do with his philosophical anthropology. He affirms a rationalist conception of human nature. We are (exclusively?) reason-giving beings. He often invokes this conception of human

nature. The thought then is that to show persons the respect that they are owed political actors is to owe them a duty of justification – not only this, but also they are owed the specific kind of justification described above.

Implications. My next question is: What implications does this Basic Right to Justification have? Forst argues (plausibly in my view) that to realize the BRJ the participants are entitled to (i) rights to individual liberty (civil rights), (ii) the right to take part in politics (political rights) and (iii) the material resources required for persons to enjoy those rights (economic rights) (p. 262). A political order that satisfies these would be, in Forst's terms, a 'minimally just discursive basic structure' (p. 262). He argues that these kinds of rights must be honoured in both domestic contexts and at the international level. The international system must, for example, be structured in such a way that it does not undermine, but rather supports, democratic deliberation within political communities.

Alternatives. If we wish to defend a view, it often helps to know the alternative that the author is rejecting. Forst gives a clear account of *one* of the views he seeks to dislodge in the Introduction.³ There he contrasts two pictures of justice. According to the first picture, justice is conceived of being as primarily concerned with the fair distribution of burdens and benefits. In Forst's words, it 'concentrates on what individuals are due in terms of a just distribution of goods. This leads to either reasoning in relative terms through a comparison of each person's provision of goods, or it leads to the question of whether individuals have "enough" essential goods irrespective of comparative considerations' (pp. 3–4). This alternative view is also discussed in Chapter 8 where he writes:

the contemporary discussion seems to suggest that we view justice itself as a largely empty shell, which can only be filled in with substantive values, values that specify the respects in which social institutions are

³ Elsewhere he makes it clear how he differs from others (such as communitarians). I focus on his opposition to those who affirm a 'distributive' approach because I want to defend it.

to be free of arbitrariness. Justice would then be normatively dependent on this content and these values. I will show how misleading this view is by briefly going through various notions that are taken to be the basis for justice: freedom, equality, basic needs, democracy, and recognition. (p. 189)

Forst finds approaches which identify the core notion of justice as one centred around the correctness of distribution of resources wholly unsatisfactory. The distribution of burdens and benefits matters, of course, for Forst (p. 4), but on his view it is secondary. The primary – or fundamental – nature of justice is that persons implicated in social and economic processes have a basic right to justification – to a discursive process of justification which honours the norms of reciprocity and generality.

Having given a *very* rough and necessarily brief outline of some of the key features of Forst's account, I now wish to consider three aspects of his approach that I think merit further exploration. I begin with Forst's critique of the 'distributive' approach, and then turn to two features of his own preferred approach.

What is wrong with the other picture of justice? The 'Two Picture' View

§1. As noted above, Forst contrasts his view with an alternative picture of justice. My first critical comment is going to be that I don't think that we have been given enough reason to reject this alternative. Instead, I suggest, we should endorse a hybrid view that encompasses both the first picture and Forst's view, *and which treats neither as the sole fundamental consideration*. In my view, justice is a hybrid concept with many different components that can pull in different directions. Forst offers what is in one sense a monistic theory that has a common root – justice simply is the Basic Right of Justification. He writes in Chapter 10 that 'the question of the justifiability of power, rule, and coercion' is 'the first question of justice' (p. 239). I think that it is *one* of the questions of

justice but not that it is the only or the first or the most basic question. As I reported at the start, I incline to a more pluralistic view. On this pluralistic view, justice has the following features:

- (1) an account of how burdens and benefits should be distributed (Distributive Justice),
- (2) an account of the justified exercise of political power (Political Justice or Legitimacy) *and*
- (3) neither (1) nor (2) is more basic.

Condition (3) is of critical importance. As noted above, Forst does not deny that justice involves the distribution of burdens and benefits (p. 4) – no one could plausibly deny that – but he denies it primacy. The just distribution of such burdens and benefits, on his view, is not the *root* idea of justice, and it is subordinate to Forst's account of the just exercise of power (what I am referring to as (2) above). What constitutes a just distribution of burdens and benefits simply is that defined by the BRJ. I think, by contrast, that (1) has a separate existence. On my view, the fairest distribution of burdens and benefits is *not* defined by the BRJ but is derived (at least partially) independently of the BRJ. (I say 'at least partially' because I agree that the securing the BRJ has distributive implications. My point is that distributive justice is not *wholly* derived from the BRJ.) On this view, the nature of distributive justice is not reducible to either, (a), what is presupposed by the BRJ (the material conditions that must be realized for people to engage in the necessary dialogue or, (b), what is produced by the BRJ (i.e. the decisions that emerge from the political process).⁴ Let us call this the "Two Picture View".⁵

§2. Let me explain why we should hold on to the first picture of justice as representing an autonomous part of the concept of justice. I shall do

⁴ I am thus querying Forst's statement in Chapter 12 that 'it is mistaken to assume that distributive justice and political justice, as freedom from domination, require distinct normative considerations' (p. 258).

⁵ See, in this context, Nancy Fraser's 'perspectival dualism' in 'Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation', in N. Fraser and A. Honneth *Redistribution or Recognition? A Political-Philosophical Exchange*, trans. by J. Golb, J. Ingram, and C. Wilke. London: Verso, 2003, p. 63ff.

so by Forst's reasons for rejecting it. Forst engages in a critique of it in at least three places – first in the Introduction, then in Chapter 8 ('Social Justice, Justification, and Power') and in his discussion of conceptions of global justice that conform to the first picture in Chapter 11 ('Justice, Morality, and Power in the Global Context'). Let's consider the Introduction first. In a compressed passage Forst indicates four faults in the first picture. Though the passage is lengthy, it is worth quoting in full. Forst writes of the first picture:

this picture not infrequently ends up cutting out essential dimensions of justice, such as, first, the issue of how the goods to be distributed come "into the world," that is, questions of production and how it should be justly organized. But even more so, second, the political question of who determines structures of production and distribution – and in what way – is thereby ignored, as if there could be a giant distribution machine that would merely have to be programmed correctly. But such a machine is not acceptable not simply because justice would then no longer be understood as an achievement of subjects themselves, which would make subjects into passive recipients; in addition, and this is the third point, this idea neglects the fact that justifiable claims to goods are not simply "given," but can only be established discursively in appropriate procedures of justification. Fourth, a perspective fixated on goods also has the potential to block out the question of injustice, for insofar as it concentrates on a shortage of goods to be rectified, those who suffer from privation as a result of a natural disaster are viewed like those who suffer the same lack of goods from economic or political exploitation. To be sure, these are both rightly viewed as cases in which help is applicable, though in one case as an act of moral solidarity and in the other as an act of justice, the latter differentiated according to one's involvement in conditions of exploitation and injustice and according to the means at one's disposal to change these. If one ignores this difference, one can end up in a dialectic of morality that views an act as generous aid when it is actually required by justice. Autonomous persons are thereby turned from subjects into objects of justice, and then become objects of aid or charity.

For these reasons, precisely when it is a question of distributive justice, it is essential to see the *political* point of justice and free oneself from the false picture, which highlights only the quantity of goods (as important as that surely is). In accord with a second, more appropriate picture, which conveys the fundamental impulse against arbitrariness, justice – which always includes an analysis of injustice – must aim at intersubjective relations and structures, not at a subjective or supposedly objective provision of goods. (p. 4)

Let's consider each of these in turn.

§3. Consider then the first: The first picture is said to neglect 'the issue of how the goods to be distributed come "into the world," that is, questions of production and how it should be justly organized' (p. 4).

In Reply: This might fit what Nozick terms 'end-state' theories of justice, but I don't think it has any force against 'historical' theories.⁶ Indeed one of Nozick's central points is that this is what is wrong with certain conceptions of justice, but is amply recognized by his own account. Moreover, I think (contrary to Nozick) that very many theories of justice – including those of Rawls, Dworkin, Sen and Cohen – are concerned with 'how goods come into the world'. Robert van der Veen and Philippe van Parijs brought this out nicely in their 'Entitlement Theories of Justice: From Nozick to Roemer and Beyond' where they persuasively argue that many theories of justice (including Rawls's) have a 'historical' component.⁷ Their point carries over to other theories not discussed by them. For luck egalitarians, for example, the historical genesis is very relevant to determining whether a given state of affairs is just or not, for luck egalitarians care whether a given outcome is the product of 'brute luck' or 'option luck'.⁸ I also don't think it is fair to

⁶ R. Nozick, *Anarchy, State, and Utopia*. New York: Basic Books, 1974, p. 155.

⁷ R. van der Veen and P. van Parijs, 'Entitlement Theories of Justice: From Nozick to Roemer and Beyond', *Economics and Philosophy* 1(1), (1985), 69–81.

⁸ These terms come, of course, from R. Dworkin, *Sovereign Virtue: The Theory and Practice of Equality*. Cambridge, MA: Harvard University Press, 2000, p. 73ff. Note that Dworkin denies that he is a 'luck egalitarian': 'Equality, Luck and Hierarchy', *Philosophy & Public Affairs* 31(2), (2003), 190–8. See, however, Scheffler's persuasive response: S. Scheffler 'Equality as the Virtue of Sovereigns: A Reply to Ronald Dworkin', *Philosophy & Public Affairs* 31(2), (2003), 200.

say that this view need be silent on the just organization of systems of production. Rawlsians will want to design the basic structure – including the workplace and organization of firms – in ways which affirm the ‘social bases of self-respect’ (which is, of course, one of Rawls’s primary goods), and thereby promote the realization of the difference principle.⁹ This takes us to the second consideration adduced by Forst.

§4. Forst’s second point is that the first picture ignores ‘the political question of who determines structures of production and distribution – and in what way’ (p. 4).

In Reply: Two points can be made in response to this. The first follows on from the last paragraph. I think that the mainstream theories of distributive justice have the conceptual resources to take into account these questions (and, given their commitments, they must in fact do so). Consider again Rawls’s notion of the ‘social bases of self-respect’. To further this good will, however, have great implications for the structure of production and distribution. Realizing the Rawlsian ideal is incompatible with just sending everyone a certain package of goods; it requires, for example, among other things a workplace that is organized in such a way as to embody reciprocity and promote the social bases of self-respect.¹⁰

Second: let us suppose that a wholly distributive approach does neglect this aspect. My second point is that, without further argument, this *cannot* show that we should reject the first picture. It can show only that we need to augment it. This is what my proposed Two Picture View does. It says that there are two questions – (a) what is a fair distribution of burdens and benefits (distributive justice) and (b) who should

⁹ For the social bases of self-respect, see J. Rawls, *Justice as Fairness: A Restatement*, ed. E. Kelly. Cambridge, MA: Harvard University Press, 2001, p. 59. For good discussion of the implications of the social bases of self-respect for the organization of power in the workplace (and, more generally, for a discussion of how Rawlsian ideals entail a commitment to preventing power and domination in economic life), see M. O’Neill, ‘Free (and Fair) Markets without Capitalism: Political Values, Principles of Justice, and Property-Owning Democracy’, in *ibid.* and T. Williamson (eds), *Property Owning Democracy: Rawls and Beyond*. Oxford: Blackwell, 2011, esp. pp. 87–91. See also M. O’Neill, ‘Three Rawlsian Routes towards Economic Democracy’, *Revue de Philosophie Économique* 8(2), (2008), 29–55.

¹⁰ See again the papers by O’Neill cited in the preceding footnote.

exercise power and how should they do so (political justice/legitimacy). And, it insists, neither can be fully captured by, nor can be subsumed under, the other. Thus someone might answer:

- (a) with respect to the first question: I think that justice requires economic equality
- (b) with respect to the second question: I think that those who are democratically elected should exercise power and should do so in ways that they can justify to those governed by them.

Moreover, they might then add: we might come up with different answers to the two questions. For example, *I* think that justice requires equality, but I also think that a political actor may be exercising power legitimately even if they do not pursue these egalitarian ideals so long as they can justify their decisions to those they govern (and the system meets certain civil rights and socio-economic standards). In short: the second consideration *logically cannot* give us reason to reject the first picture. Justice does include the question ‘who decides?’, but it does not include just that.

§5. Consider now the third consideration: the first picture is said to neglect ‘the fact that justifiable claims to goods are not simply “given,” but can only be established discursively in appropriate procedures of justification’ (p. 4).

In Reply: I think we need to be very clear on what we mean by ‘justifiable’ in this context. Let us distinguish between the justification required for *political legitimacy* (political justification) and the justification required for a view to be *philosophically correct* (philosophical justification). Now the claim that political legitimacy-justification might require a discursive justification through political ‘procedures of justification’ seems plausible (though not uncontroversial). However, it does not follow from this that my views on justice are only (philosophically) sound and correct if they have gone through the same political process. So – in line with the first picture – one can say that Rawls’s or Dworkin’s or Nozick’s views are justified because they result

from a sound philosophical argument, while at the same time agreeing with the second picture – that these may not be enforced through the exercise of political power without some kind of process of political justification. Distributive justice is one thing and political legitimacy is another and, though I think (with Forst) that the second entails some kind of socio-economic preconditions, that does not undermine the fundamental point that they are conceptually distinct (and moreover they might pull us in different directions).

§6. Let us turn now to the fourth consideration. This is a concern that Forst raises both in the Introduction and also in his discussion of global poverty in his chapter on ‘Justice, Morality, and Power in the Global Context’ (Chapter 11). Forst puts the point like this in his Introduction:

a perspective fixated on goods also has the potential to block out the question of injustice, for insofar as it concentrates on a shortage of goods to be rectified, those who suffer from privation as a result of a natural disaster are viewed like those who suffer the same lack of goods from economic or political exploitation. To be sure, these are both rightly viewed as cases in which help is applicable, though in one case as an act of moral solidarity and in the other as an act of justice, the latter differentiated according to one’s involvement in conditions of exploitation and injustice and according to the means at one’s disposal to change these. If one ignores this difference, one can end up in a dialectic of morality that views an act as generous aid when it is actually required by justice. Autonomous persons are thereby turned from subjects into objects of justice, and then become objects of aid or charity. (p. 4)

In short: the distributive view confuses justice with other values like solidarity (and, one might add, compassion and humanity). This might, moreover, have malign effects because by eliding the difference it can transform acts that are ‘required by justice’ as ones seen as acts of generosity.

Chapter 11 develops the same point at considerable length. It considers those in gruelling poverty. To give it focus it considers the perspective of someone who works at the Serra Pelada goldmine in Brazil. It then considers several different ways of thinking of this person's plight and asking which best captures the normative situation. The possibilities considered are:

- (a) a 'humanitarian' approach which emphasizes the duties to meet people's basic needs (pp. 243–4);
- (b) a 'humanist' approach which emphasizes a sufficientarian conception of justice (p. 244);
- (c) a 'human rights' approach which says that persons have human rights and that the responsibility lies with his or her government (pp. 244–5);
- (d) a 'human rights' approach which says that persons have human rights and that the responsibility lies with both national and international actors (p. 245);
- (e) an 'egalitarian' approach which takes 'equality' to be the default setting, so to speak, and allows deviations from it only if there is a good reason (p. 246).

Now Forst makes many points against these rival views. Perhaps the central theme, however, is that none of these are adequate because they omit a crucial component – that the people in question are being exploited, that others are the cause of their misery and poverty, that they are powerless and subject to the domination of others. Justice requires that we address this structural inequality and not treat people as passive 'recipient[s]' of benefits but rather as active 'agent[s]' of justice' (e.g. pp. 245–6).

In Reply: Two points can be made in response. The first is this: I think that there is a weak and a strong version of Forst's point. The weak version replies: 'any adequate normative account of justice must include the concepts of exploitation, domination and self-government. Any account that omits these is defective.' I wholly agree with this. Given this I think we need to augment accounts (1)–(5) with an

account of exploitation, subjugation and oppression. There is, however, a strong version of Forst's argument. This says that the very essence of injustice is exploitation, subjugation and oppression. Exploitation is thus not just one kind of economic injustice: it is a necessary aspect of all economic injustice. This is clearly more controversial and I am not persuaded by this.

This takes me to the second point. Forst often writes that where someone suffers from poverty or malnutrition but that this is not the result of exploitation or subjugation, then there is no injustice. It is morally bad – and we have duties of solidarity and charity to help – but it is not a matter of injustice. I am not sure why we should take this view. There is an established body of thought which takes quite the contrary view. This is, for example, embodied in the Universal Declaration of Human Rights and the United Nations International Covenant on Economic, Social and Cultural Rights. It is the view defended by Henry Shue in *Basic Rights* and many others.¹¹ It is, for example, affirmed by James Griffin in *On Human Rights* and Amartya Sen in *The Idea of Justice*. Sen, for example, makes it clear that justice is what he terms a 'realization-focused' or 'accomplishment-based' concept – that is, it is concerned with the kinds of 'lives that people can actually live'.¹² David Miller and John Rawls also adopt Shue's approach.¹³ I have sought to defend this kind of view in *Justice Beyond Borders* and elsewhere.¹⁴ Given this I don't think we can simply assume that the eradication of poverty that stems wholly from natural causes is necessarily a humanitarian matter as opposed to a matter of justice.

¹¹ H. Shue, *Basic Rights: Subsistence, Affluence, and U. S. Foreign Policy*, 2nd edition. Princeton: Princeton University Press, 1996.

¹² A. Sen, *The Idea of Justice*. London: Allen Lane, 2009b, pp. 7, 10 and 18.

¹³ I include Miller and Rawls because both explicitly endorse Shue's account of basic rights. See D. Miller, *On Nationality*. Oxford: Clarendon Press, 1995, p. 74; and J. Rawls, *The Law of Peoples with 'The Idea of Public Reason Revisited'*. Cambridge, MA: Harvard University Press, 1999c, p. 65.

¹⁴ S. Caney, *Justice Beyond Borders: A Global Political Theory*. Oxford: Oxford University Press, 2005; S. Caney, 'Global Poverty and Human Rights: the Case for Positive Duties', in T. Pogge (ed.), *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?*. Oxford: Oxford University Press, 2007, pp. 275–302.

Henry Sidgwick tells us in *The Methods of Ethics* that when seeking to define the concept of ‘justice’ (as well, no doubt, as other moral and political concepts) ‘we may, so to speak, clip the ragged edge of common usage, but we must not make excision of any considerable portion.’¹⁵ My worry is that Forst’s approach makes an ‘excision of [a] considerable portion.’ That is, it redefines justice in ways that lose touch with the way in which it is often used.

This last point can be developed further. For someone may quite rightly respond that what I have done so far is challenge Forst’s critique of the ‘distributive’ picture, but I have not given any positive reason to endorse it. This is where Sidgwick’s admonition is relevant, for my (positive) suggestion is that wholly subordinating ‘distributive’ issues to the basic right to justification fails to fit with the ways in which people often think of justice. In many cases, it seems to me, we may want to call a distribution unjust *even if* it arose from a process that was characterized by justification that honoured Forst’s norms of reciprocity and generality. The latter, we might say, might give the decision-maker some *legitimacy*, and it may create a reason to obey it. But, in itself, it is insufficient to show that what results is just. If this is right, then it strongly suggests that justice claims do not necessarily conform to Forst’s unitary account.

*

It might be helpful to sum up here. I think that Forst’s account – a political world in which those who exercise power engage in a process of reciprocal and general dialogue and justification – is a compelling and attractive one. What I am calling into question is the rejection of the other picture of justice – the ‘distributive’ approach – and the subordination of distributive concerns (the ‘distributive’ picture, so to speak) to Forst’s preferred approach. And, here, my suggestions are that

- (1) Forst’s account of the first picture may fit some theories, but I don’t think that all are vulnerable to his objections. I think that the most

¹⁵ H. Sidgwick, *The Methods of Ethics*, 7th edition with a foreword by J. Rawls. Indianapolis: Hackett Publishing Company, 1981, p. 264.

plausible accounts of distributive justice are sensitive to concerns about the nature of the production process and the allocation of power.

- (2) Many of Forst's points do not give us reason to reject the first picture. Rather they give us reason to embrace the second picture as well. They are, thus, compatible with what I termed the Two Picture View. Forst, I think, gives us part of the picture, but I am not sure if his view captures the whole of it. Forst's language fits in well with the point that I am making. In the last chapter of the book, he writes, for example, that 'a focus on only distributive justice may be *insufficient*' (p. 258: my emphasis). If this is right, and the 'distributive picture' is on its own 'insufficient', – and I think it is – then the answer is to supplement it. It is not to reject it or to treat it as an aspect of the second picture, but to recognize its autonomy as a normative realm.

Forst may respond that the pluralistic conception must itself appeal to some unifying ideas. It must do so if the 'distributive' and 'procedural' elements that I mention are both to count as being claims of *justice*. This is true. However, it does not establish that the unifying feature is the one that is offered by the *basic right to justification*. We might, for example, say that the common feature that renders them (and other claims) claims of *justice* is simply that they are claims about what *rights* people have. And then we can say that people can have different kinds of rights – some to do with *just decision-making procedures* (a right to justification) and others to do with *just distributions* (a right to a just distribution of burdens and benefits) – rights that may pull us in different directions.

The *scope* of the right to justification

In the remainder of this chapter I want to turn from Forst's critique of other approaches to his outline and defence of his own preferred view.

More specifically I wish to examine what I termed earlier the ‘scope’ of the basic right of justification (*Who* has the basic right of justification and *against whom* do they hold it? *Who* is the rights-bearer in any given situation? and *Who* has the correlative duty?).

Forst’s approach is one of a broad family approaches which affirm the following type of claim:

All those who stand in a *certain kind of relationship* (**R**) have in virtue of that a certain kind of *entitlement* (**E**).

Many adopt views that have this kind of structure. David Held, for example, writes that ‘those whose *life expectancy and life chances are significantly affected by social forces and processes* [the R-component – SC] ought to have a *stake in the determination of the conditions and regulation of these, either directly or indirectly through political representatives* [the E-component – SC]’ (words in brackets added by me).¹⁶ And Thomas Pogge writes that ‘those *significantly and legitimately affected by a political decision* [the R-component – SC] have a *roughly equal opportunity to influence the making of this decision – directly or through elected delegates or representatives* [the E-component – SC]’.¹⁷ In this section I examine Forst’s account of when the basic right of justification is triggered. What kinds of relationship must exist for it to apply?

§1. I have two points to make here. The first is that I am not altogether clear what conditions have to be met for one group of people to have a basic right of justification against others. Forst writes, for example, in Chapter 9 that the basic right of justification ‘must include all those affected by actions or norms *in morally relevant ways*’ (p. 214: emphasis added). He also writes in Chapter 12 that ‘in a given context of justice, all social relations to which one is subject and that can be changed by political action are to be justified reciprocally and generally to all those

¹⁶ D. Held, *Global Covenant: The Social Democratic Alternative to the Washington Consensus*. Cambridge: Polity, 2004, p. 100: emphasis added.

¹⁷ T. Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, 2nd edition. Cambridge: Polity, 2008, p. 190: emphasis added. Three footnotes have been omitted.

affected in a relevant way, be they economic relations or relations of political authority' (p. 258: emphasis added). A similar formulation is also given later in Chapter 12: 'the primary context in which this right [the basic right of justification] is situated is the moral context of actions that affect other persons *in a relevant way*' (p. 261: emphasis added). But what are these 'morally relevant ways'? I think that the answer for Forst is: when persons are subjected to economic and political *power*, *then* they have the BRJ. As noted earlier, Forst writes that justice is essentially concerned with power, rule and domination. This also makes sense of Forst's discussion in Chapter 10 where he argues that the global political and economic context is 'a *context of force and domination*' (p. 234) and hence that the BRJ applies globally. So, I take it that being subject to power triggers the basic right of justification. This, though, raises the question 'what counts as power?' Are we operating with a Foucaultian notion of power (or domination)? Or Dahl's or Lukes's? Or Weber's? Or something else?

§2. Let us suppose that being subject to the power of others generates a right to justification for those who are subjected and a duty of justification on those exercising power. This shows that being subject to power is *sufficient* to grant one a basic right of justification. Forst, however, goes further than this. He appears to hold that being subject to power is both sufficient *and necessary* to trigger the duty of justification. Persons have basic rights of justification only against those who exercise power over them? But why should we hold this? To bring out the issue let us compare two positions.

- (a) The systemic view: justice is owed only to co-participants in a system of power.
- (b) The humanity-centred view: justice is owed to all persons, in virtue of their humanity.

Forst affirms (a). He does not deny that we may have duties of morality to non-members, but he does not think that we have duties of justice to non-members. Forst is hardly alone in this. Many – such as Thomas

Pogge – affirm (a).¹⁸ (b), however, also has its adherents – including Richard Arneson, Brian Barry, Charles Beitz and David Richards. I too have sought to defend (b).¹⁹

My question, then, is: why should we endorse (a). I have three comments to make.

\$2.1. The first is that I don't think Forst gives a positive defence of (a).

\$2.2. The second is that some of the things that Forst does say fit as well (maybe even better) with (b) as they do with (a). For example, Forst appeals on several occasions to a certain conception of human nature to ground his political constructivism. Human beings, he writes, are '*justificatory beings*. They not only have the ability to justify or take responsibility for their beliefs and actions by giving reasons to others, but in certain contexts they see this as a duty and expect that others will do the same' (p. 1). This approach suggests that persons bound together in political and economic governance structures owe others that they affect duties of justification. However – and this is the crucial point – if we think that persons are justificatory beings, then why do we not owe justifications to all persons – whether or not we currently affect them.

Michael Mann once identified a kind of imperialism that he called 'ostracizing imperialism'.²⁰ This refers to situations where wealthy would-be imperialists eschew contact with a society because they hold that it is not in their interest to conquer them. As Mann puts it, some parts of the world 'are "ostracized" by a capitalism which regards them as too risky for investment and trade'.²¹ So such people are disadvantaged

¹⁸ Pogge *World Poverty and Human Rights*.

¹⁹ R. J. Arneson, 'Luck Egalitarianism – A Primer', in C. Knight and Z. Stemplowska (eds), *Responsibility and Distributive Justice*. Oxford: Oxford University Press, 2011, pp. 24–50; B. Barry, *Theories of Justice: A Treatise on Social Justice, Volume I*. Hemel Hempstead: Harvester Wheatsheaf, 1989; C. R. Beitz, 'Cosmopolitan Ideals and National Sentiment', *Journal of Philosophy* 80(10), (1983), 591–600; D. A. J. Richards, 'International Distributive Justice', in J. R. Pennock and J. W. Chapman (eds), *Ethics, Economics, and the Law: NOMOS XXIV*. New York: New York University Press, 1982, pp. 275–99. I have also argued along these lines in Caney, *Justice Beyond Borders*, ch. 4.

²⁰ M. Mann, 'Globalization and September 11', *New Left Review* 12 (November–December 2001), 53.

²¹ Mann, 'Globalization and September 11', p. 54.

because they are too poor to colonize. From now on Forst's theory there is no duty of justice to these people because one lacks links with them, but this seems to me questionable. Suppose that they call across the ocean and ask why we do not assist them to overcome the poverty that undermines their capacity to lead autonomous lives. Do we not owe them – as a matter of justice and respect for their common humanity – any justification?

§2.3. Consider, finally, a further point that Forst makes. He writes of justice that 'its core meaning is found in its fundamental opposition to arbitrariness' (p. 2). I agree. But (b) can accept this: it simply gives a different interpretation of arbitrariness. It maintains – in line with luck egalitarian thought, but not just luck egalitarian thought – that it is morally arbitrary for some to face such terrible deprivation for the mere fact that they are born in a resource-poor country. So my point then is that (b) fits in with Forst's appeal to our nature as justificatory beings and it fits in with his account of justice-as-opposed-to-arbitrariness. Consider in this light, the research by Jeffrey Sachs,²² Paul Collier²³ and Ian Morris²⁴ (among others) on the geographical determinants of people's economic standard of living. It is, I think, arbitrary that some should face much worse opportunities in life merely because they are born in one place rather than another.²⁵ So (b) can also reflect and accommodate Forst's point that justice stands opposed to arbitrariness. It gives us a different conception of it – but one that I think is compelling – and I am not sure why we should reject this conception and adopt the more narrowly conceived conception that Forst offers us.

²² J. L. Gallup, J. D. Sachs and A. D. Mellinger, 'Geography and Economic Development', *International Regional Science Review* 22(2), (1999), 179–232; J. L. Gallup and J. D. Sachs, 'The Economic Burden of Malaria', *The American Journal of Tropical Medicine and Hygiene* 64(1) (suppl.), (2001), 85–96.

²³ P. Collier, *The Bottom Billion: Why the Poorest Countries Are Failing and What Can be Done About It*. Oxford: Oxford University Press, 2007.

²⁴ I. Morris, *Why the West Rules – for Now: The Patterns of History, and What They Reveal About the Future*. London: Profile Books, 2010.

²⁵ S. Caney, 'Cosmopolitan Justice and Equalizing Opportunities', *Metaphilosophy* 32 (1/2), (2001), 113–34. S. Caney, 'Humanity, Associations and Global Justice: In Defence of Humanity-Centred Cosmopolitan Egalitarianism', *The Monist* 94(4), (2011), 506–34.

Concluding remarks

This brings my analysis to a close. Rainer Forst's *The Right to Justification* raises a number of interesting and important questions. I have focused here on only two of the many questions that one might ask about the key idea of a basic right to justification.²⁶ The first concerns the very nature of justice. Does Forst give us reason to endorse his monistic account of the nature of justice, and, related to this, do his criticisms of the 'distributive' picture succeed? I have argued that the 'distributive' picture can withstand the objections he levels against it, and, moreover, that we do not have reason to endorse, and have good reason to reject, a single picture of justice of the kind that Forst canvasses. I offer instead a more pluralistic conception.

The second issue concerns the scope. On Forst's view the scope of justice – as expressed by the basic right of justification – is set by certain kinds of socio-economic or political relations. Here I have two concerns. First, it is not clear to me exactly what type of relations generate the BRJ, but it is vital to have a precise account in order to determine who is obligated to engage in justification to whom. Second, it is not clear to me why the scope of the BRJ should be circumscribed in this way.

These disagreements, I hope it is clear, arise within the context of very many shared commitments – commitments to universal values; to freedom, equality and rights; to an opposition to domination and exploitation; and to a commitment to reason and to the importance of justification in contexts of power.

²⁶ A third question that I have not explored here, but which I believe is of fundamental importance is: what exactly is justification? Why should we accept Forst's suggestion that it requires reasoning and deliberation characterized by reciprocity and generality?