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Justifying Justification: Reply to My Critics

Rainer Forst

The task of replying to the distinguished colleagues gathered here presents an aporia for me. For it is such a great honour and pleasure to have these powerful minds comment on my work that out of sheer gratitude I feel I should applaud everything they say. But at the same time, that would violate the game of giving and asking for reasons that we are playing here – and it would be disrespectful of the marvellous reconstructions and thorough criticisms they have to offer. So I fear I am forced to show my gratitude by a response that explains, defends and refines my often inchoate and muddled views – though not really retracting. But I assume that – knowing me – my dear colleagues also did not quite expect me to go that far.

I also want to express my heartfelt thanks for the completely undeserved privilege of being in the position to reply to these critics – and a special thanks to David Owen who, together with Matt Matravers, organized the wonderful conference at the University of York on my work in June 2011, where a number of these papers (and others which will appear in a second volume) were presented. David was also responsible for organizing a panel at the Annual Meeting of the American Political Science Association in Seattle in September 2011, from which three more papers included here stem.¹ I am deeply indebted to him.

¹ There was also a symposium at the American Philosophical Association's Eastern Division Meeting 2012 in Atlanta with comments by Seyla Benhabib, Jeff Flynn and Matthias Fritsch to which I replied; the symposium is forthcoming in *Political Theory*.

From Germany to Scotland – and back

In his excellent piece, Andrea Sangiovanni forces me to clarify my discourse-theoretical constructivism, and I could not think of a better challenge to explain the moral-philosophical ‘groundwork’ of my Neo-Kantian view. I admire Sangiovanni’s work on justice and the relation between morality and politics, and I feel close to his ‘practice-dependent’ account of justice, though I have some questions about the relation of immanence and transcendence with respect to that.² I leave that aside here, as I will have further occasion to comment on my view of practice in replying to some of the other papers.

In a fine instance of Humean-humane empathy and solidarity, Sangiovanni wants to save me from German rationalism and asks me to join the club of what he calls Scottish constructivists, which strikes me as a rather new club, given that constructivism generally holds that the principles of construction are principles of practical reason – implying a notion of practical reason for which Hume had little time. So I think that Sangiovanni’s Scotland is already closer to the Continent than is normally the case. Still, according to him, ‘rationalist constructivism’ cannot stand on its own feet as long as it lacks a good account of moral emotions, like empathy. For him, these ‘contingent human sensibilities’ present the ‘seat of normativity’ (58); in other words, only where empathy is coupled with ‘deliberative reflection and action’ (62) can we find the very ground of morality.

I think I should, in typical dialectical fashion, agree and (mostly, I fear) disagree: Empathy is an important capacity of responsible moral agents, but it can only be such if it is guided by practical reason and indeed a part of practical reason, properly understood. Otherwise, empathy can be partial and thus also be ‘morally blind’, to use Sangiovanni’s term, to which I will return. In conjunction with norm-guided practical deliberation, empathy is a necessary condition for engaging

² See my ‘Transnational Justice and Democracy. Overcoming Three Dogmas of Political Theory’, in Eva Erman and Sofia Näsström (eds), *Political Equality in Transnational Democracy*. New York: Palgrave Macmillan, 2013d, 41–59.

in moral justification in the right way, but that does not mean that it has a 'grounding' role to play. For the reconstruction of the moral point of view follows another route and presupposes a reconstruction of moral validity claims and criteria for their justification (one notion of 'grounding' I use),³ and, furthermore, the validity of the fundamental right and the categorical duty of justification cannot be made contingent upon the existence of certain humanitarian motives of persons (another notion of 'grounding'). In a nutshell, that would be to mistake a *justificatory* and an *explanatory* account of moral action and to exchange the standpoint of the first and second person with that of the third person – a mistake easily made by those fully enthralled by Scottish empiricism, as Andrea Sangiovanni is not, I believe.

According to my Kantian view of the autonomy of morality, morality can only be based on *moral* grounds, namely on the respect for every other person as an equal in the normative space of justifications, regardless of how close to or distant one feels from him or her. Moral empathy thus has gone through the filter of justificatory reason, not the other way around, for it recognizes the moral status of others as equals and thereby abstracts from the different ways in which we empathize with others as an empirical and emotional fact. That does not mean that moral respect only regards others as 'generalized others', as Seyla Benhabib once called it⁴; rather, it asks us to respect others as 'concrete', finite and needy, and yet still through a generalizing lens, not giving priority to some persons that could not be justified to all others as equals. As moral persons, we are all equal authorities in the realm of reasons.

But I am leaping ahead. In order to do justice to Sangiovanni's rescue efforts and in order to try to save him from Humeanism in return,

³ For the different ways to understand what it means to 'ground' morality, see my *The Right to Justification*, New York: Columbia University Press, 2012a, 22f. (henceforth *RJ*).

⁴ Seyla Benhabib, *Situating the Self. Gender, Community and Postmodernism in Contemporary Ethics*. New York: Routledge, 1992, ch. 5. See also the exchange between Rainer Forst, 'Situations of the Self: Reflections on Seyla Benhabib's Version of Critical Theory', *Philosophy & Social Criticism* 23 (1997), 79–96, and Benhabib, 'On Reconciliation and Respect, Justice and the Good Life: Response to Herta Nagl-Docekal and Rainer Forst', *ibid.*, pp. 97–114.

I will start from the basic tenets of Sangiovanni's fine reconstruction of constructivism. There is much I agree with here, such as the thesis about the 'stance-dependence' of moral claims (31), yet I would emphasize the non-arbitrary, rational character of that stance, being guided by principles of practical reason. (I will come back to my notion of reason and that of Sangiovanni, for there one of our basic disagreements seems to lie.) Sangiovanni is also correct in locating my constructivism in the camp that makes no strong metaphysical investments – I call it a 'practical' and not a 'metaphysical' form of constructivism.⁵ That means that the reconstruction of reasonable principles of construction can remain agnostic about whether in following these principles moral reasons are 'produced' or 'discovered'.

In a further important step, Sangiovanni emphasizes that constructivists believe that the proper procedure of construction (or justification) generates categorical moral reasons and norms which 'bind us whether or not we desire to be so bound or have an interest in being so bound' (33). As I said above and as Sangiovanni affirms himself (59), this is no small burden for any form of constructivism that aims to settle on Scottish turf.

Furthermore, Sangiovanni rightly stresses, as do I, that Kantian constructivists in particular need to explain the strong normativity of the constraints and principles of the justification procedure. And since this form of normativity obviously cannot be generated through the procedure which it is to ground, Sangiovanni sees a dilemma there: either one refers to an independent set of moral values to justify the procedure and thus includes a heteronomous normative element or one looks for non-moral grounds and then lacks moral reasons to engage in the procedure in the first place. This is indeed a problem that has haunted many discussions of constructivism⁶; and it has led to

⁵ *RJ*, p. 50.

⁶ See, for example, Onora O'Neill, *Constructions of Reason. Explorations of Kant's Practical Philosophy*. Cambridge: Cambridge University Press, 1989, chs 3 and 11. Christine Korsgaard, *The Constitution of Agency. Essays on Practical Reason and Moral Psychology*. Oxford: Oxford University Press, 2008, ch. 10.

different versions of it that Sangiovanni calls – following Susan Street – ‘restricted’ and ‘unrestricted constructivism’ (34). In that connection, I have criticized Habermas’s constructivist discourse theory for not providing adequate moral grounds for the normativity of the discourse principle.⁷ My own suggestion tries to avoid that dilemma by interpreting the principle of justification in moral contexts as a moral principle of practical reason, thus going back to Kant’s essential thesis that the categorical imperative is a *moral* principle of practical reason. There is no magic involved in such a dilemma-avoiding move, as a Humean would think: for practical reason would be a half-baked faculty if it only told you *how* to justify yourself morally, but not *that* you need to do so. Unpacking this ‘that’ is not an easy task, as I will explain in a second, but it can be done if we reconstruct the kind of moral responsibility that we have as persons who are always already participants in practical contexts where moral claims are raised by ourselves and others and where the expectation to make good on them is the most natural expectation – an expectation both reasonable and moral. The overarching principle of reason says that you ought to base your actions on reasons proper to justify them, depending on context, and in moral contexts that means that you have a duty of justification to provide morally justifiable – reciprocally and generally non-rejectable – reasons for actions that concern others in a morally relevant way. Thus the dilemma dissolves: there are free-standing moral grounds for the duty and right of justification, yet they do not refer to a set of values distinct from the practice of justification – indeed, the right to justification is the most basic right that moral persons as agents of justification have, and respecting persons as ends in themselves means to respect them as having that right. The practice of justification is a *normative* practice, and to be part of it means to understand the particular kind of normativity relevant to moral contexts (which is a special area of justification). Practical reason is the faculty of engaging in practices of practical justification, and there is no reason why we

⁷ RJ, pp. 55–7 and 77f.

should truncate that faculty by reducing it to a 'know-how' and cutting the 'know-that' out. In other words, with Kant I believe that practical reason determines the will of reasonable moral persons.

Thus I find Sangiovanni's distinction between the two kinds of constructivism overdrawn. Every form of constructivism has to be restricted in such a way that its very foundations cannot be constructed in the same way as the norms generated in the constructivist procedure, as I argue in my book.⁸ But that does not mean that the normativity of the constructivist procedure stems from an arbitrary set of independent values or conventions. I cannot go into the interesting discussion of Rawls and Scanlon that Sangiovanni presents, but would like to emphasize that even in *Political Liberalism* Rawls stresses that only 'principles' and 'ideas' of practical reason are the non-constructed but reconstructed basis of the constructivist procedure – the important 'ideas of reason' being the relevant moral-political conceptions of society and person which 'characterize the agents who reason and specify the context of practical questions'.⁹ And in Scanlon's theory, I also find that the 'ideal of justifiability to others'¹⁰ he cites as the reason to be moral expresses the immanent moral normativity of the constructivist procedure that practically reasonable persons accept – thus an ideal of reason, so to speak, not being dependent upon a certain conception of the good, as Sangiovanni thinks (41).

As far as my own account is concerned, it is more modest than a full-blown constitutivist account which implied that in order to be a rational agent or person at all one needs to follow the precepts of morality. I suggest that to be *fully* reasonable in a practical sense, one must be able and willing to provide adequate reasons for one's morally relevant actions – yet I do not think that someone who lacks that capacity is

⁸ Ibid., pp. 48 and 84 and already Rainer Forst, *Contexts of Justice. Political Philosophy beyond Liberalism and Communitarianism*, trans. J. Farrell. Berkeley and Los Angeles: University of California Press, 2002, ch. IV.2.

⁹ John Rawls, *Political Liberalism*. New York: Columbia University Press, 1993, p. 108. See also my discussion of Rawls's constructivism in ch. 4 of *RJ*.

¹⁰ Thomas M. Scanlon, *What We Owe to Each Other*. Cambridge, MA: Harvard University Press, 1998, p. 156.

not capable of acting, deliberating or communicating. He or she is just limited in this ability and violates the norms valid in moral contexts. So I do hold what Sangiovanni calls 'justificatory constitutivism' (44) as far as I think that to orient ourselves in the space of reasons we need to have the capacity and willingness to follow the reasons that are adequate in the contexts in which we move – some theoretical, some practical and of the practical ones some moral, some ethical, some legal, political, professional or what have you (and some mixed, of course). So the moral capacity is not constitutive of the whole game of asking for and giving reasons, only of a particular one. Thus it is a limited constitutivism which I defend. But with respect to moral contexts, I do indeed think that we must, as participants inevitably affecting others, accept the duty of justification. Accepting that duty and also one's right to justification categorically constitutes us as *moral* persons – but we can also be persons and *rational* agents without accepting this duty, just not fully *reasonable* moral persons.

Sangiovanni presents a very illuminating discussion of cases of moral blindness, and as I said above, I agree that a certain form of empathy belongs to being a responsible moral agent – yet I do not see this as separate from practical reason properly understood, nor do I think that this is a grounding issue. For it is misleading to say that only persons with certain abilities and dispositions have moral duties and that thus there are no universal and categorical duties (I am not sure Sangiovanni would say this). Rather, when someone seems to act amorally rather than immorally, we might have to shift our perspective towards him – from the participant's perspective of the first and second person to that of a third person trying to explain what is 'wrong' with someone. But that is an explanatory form of discourse, not a justificatory one. It does not touch the normative question of moral duties in a fundamental way.

I do not deny that there are cases of moral blindness as Sangiovanni describes them. And I also do not doubt that they are connected to a pathological lack of empathy. Yet I would also add cases of moral blindness due to an overflow of empathy, either such that you give – 'unreasonable',

as we say – privilege to your own family or people of your age, or such that you forget yourself in a selfless and self-damaging way in helping others. Thus empathy itself is not yet a moral quality of persons, as it can have lots of amoral or immoral results. Sangiovanni is aware of these problems (59) and thus only counts a particular form of empathy among the requirements of morality: to be able to see in others – and in all others – their humanity, that is, ‘as bearing the same range of sensibilities, concerns, emotions as we do, and that are typical of all human beings’ (58). I would add that another side of moral empathy is also to be sensitive to the ways in which others are *not* like us, but I leave that aside here. What I want to point out is that the quote by Sangiovanni makes it clear that, contrary to what he says, empathy cannot have a grounding role, for it is *only* those aspects of empathy that belong to an impartial form of justificatory morality to which he refers, and thus the grounding relation goes in the other direction: morality asks us to cultivate those forms of empathy that sustain it.

Thus the kind of empathy required for morality is a form of *reasonable* empathy, guided by principles such as treating like cases alike, treating all persons equally and so on. So this is no faculty separate from reason; indeed, it is guided by reason in following the criteria of reciprocity and generality. As Kant remarks, moral emotions cannot give us the criteria of moral justification, but they accompany our interest in acting from the right reasons.¹¹ The true moral feeling he thought was based on respect for the moral law. I, however, would say that it is based on the respect for others as directed by the moral law that calls us to treat them as justificatory equals. Thus the main ‘organ’, contrary to what Sangiovanni says, to ‘respond to moral reasons’ (51) is reason, properly understood, and only through that does the right form of empathy come to the fore. (I sometimes think it is those who criticize rationalism harshly who are the most radical rationalists, since

¹¹ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. M. Gregor. Cambridge: Cambridge University Press, 1998, p. 64 (Prussian Academy Edition 4:460); Kant, *Critique of Practical Reason*, trans. M. Gregor. Cambridge: Cambridge University Press, 1997, pp. 62–70 (5:72–82).

they purify rationality so much of normative content.) In other words, empathy does not make us 'see' moral reasons (53); rather, reason makes us see them and empathy is an aspect of that seeing. Reason is not just an instrument. The wrong involved in failing to take up the moral point of view is indeed not primarily a type of 'rational inconsistency' (57) – though it is that, too. Basically, it is a failure of the form of moral empathy that we expect of competent reasonable agents, emphasizing the difference between *rationality* and *reason* as Kantians do.

So seeing the humanity in others in the moral context is a particular way of seeing others. It means to respect others as ends in themselves, that is, as justificatory equals who have a right to justification such that I am not free to determine what I can justifiably do to them, or expect of them. Morality is a relation between us, and it is established by way of justification. Regarding the other as 'human' in a 'humane' way means to see him or her as needy and finite and at the same time as an equal authority in the space of reasons. It means to accept and recognize an 'original' form of responsibility not dependent upon contingent circumstances, but on sharing a world together, and with that world we share a number of practices, one of them being called 'morality'. I am not sure whether someone who gives unjustifiable privilege to his kin or to someone else is not a 'normal' person, as Sangiovanni argues (62) – I would just say this person lacks the moral corrective in his or her emotional set-up that qualifies him or her as a responsible moral person. Yet that we 'cannot but' respond to others' suffering and vulnerability as if it were our own if we are 'normal' is a very strong thesis of Sangiovanni's bordering on what I would call 'Scottish constitutivism'. As I see it, empathy can take many forms, and the form it needs to take in moral contexts we determine by criteria of reasonable justification, not by a criterion of 'normalcy' versus 'pathology'. When Sangiovanni argues on an earlier page that 'the deliberative standpoint from which we either create or discover moral reasons must also model the particular character of our shared human empathy' (56), he seems to agree – and so I think he can be saved from embarking towards the wrong shore.

Power and reason(s)

There are very few contemporary theorists who have thought about power as originally and comprehensively as has Amy Allen.¹² I have learnt from her and keep learning from her, probably more than she thinks I do. That is because, on one view, our positions seem to be strictly at odds, while in other ways, they are very close. Her critique motivates me to make clearer the way in which I take power, justification and reason to be intertwined. With that basic thesis I should not quarrel, only with her critique that my approach cannot account for that intertwinement.

Allen is right to stress that I regard the question of power as the first question of justice – and she is also right to ask me about the theory of power that fits my view. In my work after *The Right to Justification*, I have elaborated on this, but already in that book – as Allen remarks – I argue for a critical theory programme of a ‘critique of relations of justification’¹³ which analyses not just the lack of acceptable social justifications but also the lack of a language, of social spheres, of individual and collective possibilities and institutions of challenging existing justifications. These are the themes taken up in *Justification and Critique* and in my ‘Noumenal Power’ essay.¹⁴ Let me explain briefly.

My main ideas with respect to the notion of power are (1) to see it as a normatively neutral phenomenon – assuming that the exercise of power can be good or bad, depending on whether it is justifiable. Amy Allen agrees, as she uses terms like ‘domination’ or ‘subordination’ when she talks about negative forms of power. The second idea (2) with which Allen does not quite agree¹⁵ is to locate the phenomenon of

¹² See Amy Allen, *The Power of Feminist Theory. Domination, Resistance, Solidarity*. Boulder: Westview, 1999, and *The Politics of Our Selves. Power, Autonomy, and Gender in Contemporary Critical Theory*. New York: Columbia University Press, 2008.

¹³ *RJ*, p. 121.

¹⁴ Rainer Forst, *Justification and Critique. Towards a Critical Theory of Politics*, trans. C. Cronin. Cambridge: Polity, 2013, and Forst, ‘Noumenal Power’, Normative Orders Working Paper 2(2013), (www.normativeorders.net).

¹⁵ See our exchange in ‘Power and Reason, Justice and Domination. A Conversation between Amy Allen, Rainer Forst and Mark Haugaard’, *Journal of Political Power*, forthcoming.

power primarily in the noumenal space, or less paradoxically sounding, to place power in the space of justifications.¹⁶ So let us define power as *the capacity of A to motivate B to think or do something that B would otherwise not have thought or done*. It is open as to whether this is done for good or bad reasons, for the sake of or contrary to B's interests and by which means. These means can be a 'powerful' speech, a well-founded recommendation, an ideological description of the world, a seduction, a command that is accepted or a threat that is perceived as real. The limiting case is one of pure force, where A moves B purely by way of physical means, by handcuffing him or her or carrying him or her away. At that point, power as a relation between agents turns into physical violence, and the noumenal character vanishes.

Different from the exercise of physical force or violence, a relation of power rests on recognition. This is not necessarily a happy form of recognition, for the threat that is perceived as real is in that very moment also 'recognized' and gives one a reason for action intended by A – but if, as in some cases it happens, the threat by the blackmailer or the kidnapper is no longer seen as serious, their power disappears. They can still use brute force and kill the kidnapped person, but that is rather a sign of having lost power (either over those who are not willing to pay or over the kidnapped person, who refuses to recognize the kidnapper as dominant). Power is what goes on in the head, so to speak, and what goes on is a recognition of a reason (or better and more frequently, various reasons) to act differently than one would have without that reason. This recognition rests on seeing a 'good enough' reason to act; it means to see a *justification* for changing your way, a motivation based on reasons. Power rests on perceived and recognized, accepted justifications – some good, some bad, some in between. A threat can be seen as such a justification, as can a good argument. But power only exists when such an acceptance exists.

Thus the original phenomenon of power is of a noumenal, intellectual nature: *to have power means to be able – and this comes in different*

¹⁶ In the following paragraphs, I rely on my 'Noumenal Power'.

degrees – to use, influence, determine, occupy or even to seal the space of reasons for others. This can happen in a singular event – of a powerful speech or a deceit – or in a sequence of events or in a general social situation or structure, where certain social relations are seen as justified, so that a social order comes to be accepted as an *order of justification*. Relations and orders of power are relations and orders of justification; and power arises and persists where justifications arise and persist, especially where they are integrated into certain *narratives of justification*.¹⁷ In their light, social relations and institutions – but also certain ways of acting and thinking – appear legitimate, possibly also as natural or according to God's will. These can be relations of subordination or of equality, political or personal, and the justifications can be well founded and collectively shared with good reasons; they can be merely 'overlapping', or they can be distorted and ideological (i.e. justifying a social situation of asymmetry and subordination with false reasons that could not be shared among free and equal justificatory agents in a discourse free from such asymmetry and distortion).¹⁸ Such a notion of ideology has no strong investment in a notion of 'objective' or 'true interests'. All it implies normatively is a right to justification of normative relations between free and equal persons.

As I see it, a noumenal account of power relations is more 'realistic' than theories that locate power in physical means, be it money or weapons. For it explains all those forms of power that cannot be explained by recourse to such means – the power of speech, of (again: good or bad) arguments, of seduction, of love, of 'acting in concert', of commitments, of religion, of morality, of personal aims, etc. More importantly, it also explains the power of these material means – for money only motivates those who see its use as justified and who have

¹⁷ For the notions of orders or narratives of justification, see Rainer Forst and Klaus Günther, 'Die Herausbildung normativer Ordnungen', in Forst and Günther (eds), *Die Herausbildung normativer Ordnungen*. Frankfurt/Main: Campus, 2011, 11–30, and Forst, 'Zum Begriff eines Rechtfertigungsnarrativs', in Andreas Fahrmeir (ed.), *Rechtfertigungsnarrative*. Frankfurt/Main: Campus, 2013, 11–28.

¹⁸ Here I am in agreement with the central insight of Jürgen Habermas' version of critical theory.

aims which make money necessary; and weapons, as I explained above, only serve their function if they are seen as reason-giving. If not, they can still be used to shoot, but then power is transformed into physical violence, and the real intention of using them – being recognized as superior and threatening – might remain unrealized.

So based on that view, I do not think that Allen is right to point out that I use the idea of the power of justification only ‘in positive terms’ and have no way to explain the use of justification and reasons when it comes to ‘legitimate existing relations of domination’ (67). My theory of power tries to provide the conceptual tools for exactly this; it is only in understanding the noumenal power of, say, patriarchy, the idea of the free market and other ideological complexes that we understand the power they have over people. So here I agree with Allen in spirit, though not in her critique of my approach.

What I am less sure about is whether I would want to join Allen in saying that ‘practical reason’ itself is a tool of domination. I believe that many complexes of justifications and hegemonic reasons serve that purpose and that many historical forms of what has been seen as ‘reasonable’ have been legitimizing domination and oppression.¹⁹ But, as Allen suspects, I would still hold onto the view that reason is the only critical faculty we have to object to such justifications, and so we are back in a dialectical two-worlds-scenario of immanence and transcendence. It is not mysterious or paradoxical to say that many notions of the ‘reasonable’ have been exclusionary, one-sided, racist, paternalistic, etc. *and* hold onto the idea that a better understanding of what is reciprocally and generally rejectable and what is not is the main means to criticize such forms of domination in the justificatory realm. Indeed, this is unavoidable, and however ‘scandalous’ or ‘impure’ (81) social and historical forms of reason have been and as much as we need to critically reflect on the blind spots of our own notions of the ‘reasonable’, there is no other faculty of seeing through that but the

¹⁹ See, for example, Thomas McCarthy, *Race, Empire, and the Idea of Human Development*. Cambridge: Cambridge University Press, 2009.

always imperfect and yet infinitely improvable finite faculty of reason. How could a theory be critical if it did not use that faculty, and indeed, I think that a theory only deserves to be called *critical* if it makes the very principle and practice of rational critique its cornerstone; that is what my idea of a critique of relations of justification does. Reason may always be impure in its finite forms, but that does not mean that we have other ways to overcome its reified and limited forms. I do not see that Allen provides another such faculty. As I will explain below in responding to Kevin Olson, it is a mistake to confound a critical social analysis of given structures of justification with the conceptual and criterial apparatus to do so – an apparatus, to be sure, that constantly directs its criticism also to itself, as any Kantian view would do.²⁰

In that connection, I want to respond to a number of the critical claims Allen makes and that relate to the opposition she constructs between her contextualist approach and my discourse theory. First, there is the question of foundationalism. I am happy to be a ‘foundationalist’ when it comes to the reconstruction of the moral point of view of practical reason, for two reasons. First, it is not a metaphysical foundation I point to, but one we arrive at through proper reflection – it reconstructs the conditions of the possibility of acting with appropriate moral justification. Allen asks why that is not an ‘arbitrary’ (72) exercise if it is a mere reconstruction. Yet it seems to me that to ask the question in that way reveals a foundationalist desire for a metaphysical security we cannot have. All we have is the best account of the principles of the practice we call the use of reason, and there is no God or eternal truth that dictates that to us. If someone wants to call that ‘nonfoundationalist’, that is fine with me, too. Yet you can also call it ‘transcendental’.

Second, as I explained above in my response to Sangiovanni, if we reconstruct morality properly and the place it has in human life, we

²⁰ See the famous quote from the *Critique of Pure Reason*, trans. P. Guyer and A. Wood. Cambridge: Cambridge University Press, 1998, p. 643 (A 738/B 766) I cite in *RJ*, p. 13: ‘Reason must subject itself to critique in all its undertakings, and cannot restrict the freedom of critique through any prohibition without damaging itself and drawing upon itself a disadvantageous suspicion.’

can (and should) look sceptically at what at a given time counts as 'moral' or 'immoral', but we cannot bracket the validity of morality in a contextualist manner. Why not? Why should we not declare the basic moral respect of others as justificatory equals as something not strictly binding or a mere cultural invention of Western or Christian cultures? Because this is to mix up genealogy and validity, and it is morally, historically and sociologically questionable. In a moral and conceptual perspective, it seems contradictory to call the right to, and power of, justification a 'weapon of the weak' (as Allen does) and also to say that the basic claim of being respected morally is only valid within a particular ethical-cultural horizon 'of European Enlightenment modernity', as Allen's communitarian view suggests (77f.). It is contradictory since the critical claims against racism and sexism rest on precisely such a moral ground, as I do not think that for Allen, racism and sexism do not exist in non-European cultures. The validity restriction for which she argues would mean that people in non-European societies in the past or the present have no justifiable claim to be respected as moral equals, or at least that they speak a foreign, 'Western' moral language when they make such claims. The result would be to exclude those who struggle for emancipation in such societies from the realm of justifications; it would disenfranchise them morally, for they would be seen to have the wrong, non-European passport to properly speak the language of 'European' morality. In my work on human rights²¹ I have tried to show the ideological implications of such a normative inversion.

The contextualist view is also historically problematic, for it does not appreciate how radical the critique of Christian and other justification narratives had to be in *establishing* notions of human rights or basic moral respect. As I try to show in my *Toleration in Conflict* – whether we refer to the Levellers who argued that the king is not the divinely ordained father of the subjects but their employee based on a contract, or to Pierre Bayle who argued for the moral faculties of atheists – the critics within European history had *no* socially recognized 'ethical notion of

²¹ RJ, ch. 9 and *Justification and Critique*, ch. 2.

the good' on which to rely and *no* 'particular form of life' established – rather, they were revolutionary forerunners in *creating* such a life form. I am not denying that the form it took is historically situated, of course, but I am denying the conservative view that only certain forms of life generate productive developments by way of immanent critique such that radical critique and innovation would not be possible. It would be better in critical theory to remind ourselves of the possibilities of *radically* transcending certain ethical life forms rather than tying our imagination to them and only see the recurrence of the same. Surely, every form of social criticism uses the material that is there, but the way it (re)forms this material can be truly innovative and will then be seen as 'unreasonable' by most people, as the fate of radical critics such as Bayle and Spinoza attests.²² But beyond and above all that material, or rather deep inside of it, the structure of asking for better justifications and ultimately for ones that could gain assent by all as free and equal is an essential part of every such struggle if it is a struggle for emancipation. It is a 'deep grammar' of social conflict and emancipatory aims – and as such, it 'belongs' to no particular culture, history or life form. The language of emancipation and of no longer wanting to be denied one's right to be a participatory equal is a universal language spoken in many tongues. It is spoken, and that is why contextualism is also sociologically wrong, where people engage in struggles for emancipation, wherever that takes place. It does not determine their substantive language and their interests to form their society as they see justified, so it does not limit but *express* their autonomy. The claim to that kind of autonomy, to be an equal justificatory authority in the normative order of which you are a part, is the basic human rights claim persons can raise.

The question of socialization that Amy Allen brings up is distinct from the question of historical contextualism, though she relates them convincingly in pointing to the fact that human beings always grow up by being initiated into concrete forms and practices of justification

²² See, for example, Jonathan Israel, *Radical Enlightenment. Philosophy and the Making of Modernity 1650–1750*. Oxford: Oxford University Press, 2001.

that make them into subjects of justification – thus raising the question how they can generate the critical power to transcend these forms and practices. I am not an expert on theories of socialization, much less so than Allen, and so I hesitate to dabble in this field. But since I do not see power as a negative phenomenon (and think we agree on that), I do not find the idea that ‘power relations are constitutive of subjectivity’ (82) wrong or surprising. I also find that a social power analysis is necessary which can show how many forms of dominating or oppressive power constitute subjects and produce ‘docile bodies’, as Foucault says.²³ So I am not sure where to disagree – up to the point maybe where Allen wants to say that because of the inextricable relation between (dominating) power and subjectivity and reason we should be less confident ‘in the ability that reason itself gives us to distinguish between legitimate and illegitimate forms of power and dependency’ (82). I am torn here, as these judgements, especially when it comes to personal relations but also with respect to larger social ones, are indeed hard to make, but I take that to be a challenge for practical reason to try and see clearer despite its imperfection, and I do not see the conceptual problem this seems to raise for Allen. I also cannot resist questioning the necessary role of sanctions in moral education, for it seems what is essential for the child is to internalize that morality needs to be followed for the sake of the other, without reward, not for the sake of avoiding sanctions. In the Nietzschean and Freudian tradition, there is the dominant idea of morality being based on the internalization of sanctions, but maybe it is time to overcome the *Obrigkeitsstaat* in our conception of socialization.

But I do not want to avoid the central problem that Amy Allen puts her finger on: If we always already are socialized into certain life forms, how can we attain the critical distance required to identify them as ideological, oppressive or patriarchal, as the case may be? And if we do so, how can we be sure that our critical standards are free from

²³ Michel Foucault, *Discipline and Punish. The Birth of the Prison*, trans. A. Sheridan. New York: Random House, 1977, p. 136.

other forms of ideology and domination – and so on? The danger of a vertigo of arbitrariness seems to loom large here: not seeing the plank in one's own eye. In response, I should stress that I am not committed to the metaphysical claim that in every form of life and development of subjectivity there is a 'conatus' that resists domination. Yet I believe that socialization is not to be seen as a one-dimensional process of adapting to certain forms of power. If socialization allows for some form of autonomy, this is an achievement of the internalization of social norms as well as of the internalization of the normative possibility to question given norms and to reflect on their justificatory quality. This in itself strikes me neither as a particularly modern nor 'Western' idea; cultures and societies generally develop 'cracks' used and sometimes created by critics (in different ways), and each culture and society tries to develop forms of justificatory power to close these cracks discursively or to seal them by ideological means. Socialization processes are located within these processes, navigating the space for individuality within sociality.²⁴ No subjectivity is 'free from power', but it is also not simply a 'product' of arbitrary power – rather, in learning to understand oneself as a justificatory being, one can also learn to use that capacity critically. Again, there is no metaphysical guarantee for that, yet there is also no reason to assume that the space of reasons is generally sealed and closed by forms of domination inherited through socialization. The 'ground' of reflexively transcending those forms is the self-awareness of being a justificatory agent, nothing more and nothing less. Social critical theory has the task of analysing the social conditions under which such awareness can develop.

Finally, a word on 'applied ethics'. Following Raymond Geuss,²⁵ it is a common critique of types of 'ideal theory' to point to their abstraction from the real world and their blindness to 'real politics'. I share this critique to some extent, especially when it comes to institutional

²⁴ Jürgen Habermas, 'Individualization Through Socialization: On George Herbert Mead's Theory of Subjectivity', in his *Postmetaphysical Thinking*. Cambridge, MA: MIT, 1992.

²⁵ Raymond Geuss, *Outside Ethics*. Princeton: Princeton University Press, 2005, and *Philosophy and Real Politics*. Princeton: Princeton University Press, 2008.

ideals of justice that do not take into account the structural social contexts of domination and exploitation to which they are supposed to 'apply', but still I do not agree with the 'realist' critics' ideas of what is 'real' or what the grounds of critique can be.²⁶ It should, however, be obvious that discourse theory cannot be the subject of such critique. For discourse theory rests on the very idea that the authors of norms and social orders ought to be the subjected or affected *themselves*, and so there are no abstract normative ideals constructed that then are 'applied' by someone (the philosopher king?) to a 'non-ideal' world. The assumption that a discourse theory operates in an ideal or applied ethics mode overlooks the main point of discursive autonomy. So as I will explain below in responding to Kevin Olson, we do start within social practices, but we require normative and sociological tools to orient ourselves critically within them. Some of these tools will be moral concepts, and we situate them when we criticize false justifications and argue for proper structures of justification to oppose the structures of domination there are – yet all that is far from what can be called 'applied ethics'.

The universality and reflexivity of the right to justification

Kevin Olson also engages with my arguments for a basic right to justification, in a way related to some of Amy Allen's critique but also quite distinct. He questions the idealizing implications that he thinks are entailed in my version of the linguistic turn in political philosophy and that blind me to the social stratification in contemporary societies. I deny, however, that I make these idealizing moves. Here is why.

When we engage in political philosophy, we need an anchor, or, less metaphorically, a starting point. With Kevin, I think that such a starting

²⁶ See my introduction to *Justification and Critique*.

point should be our social *practice*, and what else could it be, since philosophy's task is to rationally reconstruct our practices of thinking and acting? But which practice shall that be if we are interested in questions of justice, for example? Some, like Olson (and Allen), say it ought to be practices of power and domination, the 'messy world' (100) of social differentiation, recognition as well as disrespect – and not an idealized world of reciprocal justification. Contrary to what he thinks, I completely agree,²⁷ as it cannot be otherwise for a critical theory of our actual social practices. But at this point, it is important to be clear about what we mean by 'practices of power'. As I just explained, I suggest that we see power as a *noumenal phenomenon*: having power is having the capacity to influence, determine, maybe even to dominate the space of justifications for others. So if we are interested in power, we should be interested in the structures of justification that lie at the bottom of social and political relations – and then we may want to ask whether the justifications given for certain relations are good justifications (and we need a standard for that), and we ask whether the existing practices of justification, including those that are institutionalized, are adequate for the purpose of generating generally binding and acceptable justifications, which brings us to the programme of critical theory that (as I said above) I call a *critique of the relations of justification*.

Note that I started with a brief reflection on power and then moved to a view of our social practices as practices of justification – some democratic, some ideological, some riddled with asymmetry and false assumptions, some being practices of critique.²⁸ So a justificatory view like mine does not start from an idealized picture of us as purely noumenal beings engaged in free and equal discourse; rather, it starts from a reconstruction of the various practices of justification we are engaged in, as *social* noumenal beings. We have to see society as a

²⁷ For that argument, see esp. ch. 12 of *RJ*.

²⁸ I cannot go into the similarities and differences here with the rich social theory of justification provided by Luc Boltanski and Laurent Thévenot in *On Justification*, trans. C. Porter. Princeton: Princeton University Press, 2006.

‘normative order’ in the sense of an ‘order of justification(s)’ of very different kinds (to use the Frankfurt Research Cluster terminology).²⁹

Among these practices of justification, two have a special character that is important in our context. The first is the practice of *critique*, of saying ‘no’ (or, one step prior, ‘why?’) to given and possibly long-established narratives of justification and to the structures generating them, and I am interested in the normative power that is entailed by such critique: What exactly is it that is claimed when someone doubts one-sided justifications, unjustifiable distributions or political institutions that are unjust? Many things, to be sure, but fundamental among them is one basic claim: Not to be disregarded as an authority in the social space of justifications that we all share and where we ought to be equals when it comes to rules or norms that bind us all. So our view of justificatory practices has to be *threefold*: there is the realm of given social justifications, and with Olson I believe that many of them have to be analysed in Bourdieuan terms as practices of exclusion and power; but then there are also practices of mutual justification, though never ‘pure’, where we reflect on what good and defensible justification is. Then there is the ‘third world’ of critique, where we raise concrete critical claims, and, reflexively speaking, the most basic one is to be a subject with the right to demand and deliver justifications for the norms that bind one in the first place.

There is also a more abstract dimension involved here, and this is what Olson focuses on. We can look at *morality* as a practice of justification, the second peculiar practice, and in order to reconstruct it, we start from the validity claims that would have to be made good for moral norms to be strictly, reciprocally and generally valid and binding. These criteria of validity are then transformed into criteria of justification, expressed by the duty to present reciprocally and generally non-rejectable reasons for reciprocally and generally binding norms. Why a duty? Because – as I tried to explain in answering Andrea Sangiovanni and Amy Allen – the practice of morality is a game unlike

²⁹ See Forst and Günther, ‘Die Herausbildung normativer Ordnungen’.

others. It is a game that humans cannot opt out of without violating a basic moral demand, namely that of treating others as autonomous 'ends in themselves', that is, as beings with a right to justification with respect to how one treats them. The insight relevant here is an insight of reason and morality at the same time: you see the other as like and as unlike you; like you, he or she can use and in any case³⁰ deserves reasons in moral contexts of action; unlike you, he or she might have justifiable claims and reasons you did not recognize and at first may not understand. So my moral 'outlook' is not 'humanist' in the sense that I project one form of recognition onto all others; what I mean is that morality is a particular practice of respect, and it involves not essentializing or idealizing others, but seeing them as reason-giving and reason-deserving autonomous and yet vulnerable beings.

In analysing practices of justification, we must not mix philosophical and sociological categories: in reconstructing the practice of morality, neither do I say that this practice is an empirical sociological fact to be ascertained in purity (not even Kant thought that) nor do I say that such a practice is the dominant one in contemporary society. Rather, I reconstruct the logic or normative grammar, if you like, of a practical context, that of morality, and extrapolate and abstract (though not idealize) the kind of recognition that is specific to this context. Nowhere do I say that such an outlook 'characterizes the practices of contemporary societies' (93) or that this 'actually characterize[s] the norms and attitudes of the real people around us' (ibid.). That would be an impermissible idealization.

I also think that the interesting difference between a constructivist and a reconstructive account of morality that Olson suggests is overdrawn. When we reconstruct the practice of morality, we give the best account of it that is possible for finite beings like us who reflect on what we do and should do. The practice of morality takes place in the empirical *and* the noumenal realms; if things go well, we strive for justifiable ways of acting, yet oftentimes, we fail. As I said, I do

³⁰ That is: even if unable to use his or her capacity of reasoning.

not think that the moral form of recognition is the only normative or dominant one. In my *Contexts of Justice*, I distinguished between a number of different contexts of recognition. But the moral dimension is one that critically cuts through the others – in the case in which the other forms (ethical or political, for example) are criticized as morally unacceptable and when one reclaims one's basic right to justification. In the absence of such a dimension, I do not see where Olson, in his version of reconstruction, would otherwise gain a normative foothold in the 'ways that people actually recognize one another' (101). For a critique of such forms, whether Bourdieuan or Foucauldian, one needs a normative basis that the principle of justification provides – as a principle immanent to and at the same time transcending social practice. This is not an intellectualist or overly rationalist construction – reason-giving comes in a myriad of forms, and when critique goes well, it shows that some forms of justification fail and exclude certain voices. Such critique must be performed in a mode of justification, even if it consists of holding up signs or pictures of missing persons in a public square.

So I agree that we need a differentiated epistemology of justification and of justifications. I also believe that the main medium of power is justification, and that can be good or bad, depending on the justifications given. I do try to avoid an idealized picture of such practices – yet at the same time we cannot do without the three worlds of *actual* justifications, of *better* ones and of the world of *critique* moving between them. In political philosophy, it is a mistake to conflate these worlds and fancy yourself into a world of glorious justificatory practices that has nothing to do with reality. But if we reflect on the justificatory qualities of our social world critically, then we do gain access to another practice of justification, and that is how we attain critical distance here and now. The practice of critique itself is norm-governed, but these are norms against any reification of norms. Critique is a reflexive practice, as Kevin Olson himself affirms in his own important work on democratic theory.³¹

³¹ Kevin Olson, *Reflexive Democracy: Political Equality and the Welfare State*. Cambridge, MA: MIT Press, 2006.

He also raises an important point highlighted in the Marxist tradition, that of reflecting on one's own possibly class-based bias in theory production. For a Frankfurter, this is not an unfamiliar theme. Clearly, certain evaluations of the high standard and importance of particular forms of discourse can reproduce class bias and have exclusionary implications. But the critique as put forth by Olson might itself reproduce a class bias in reducing the meaning of discourse to elaborate argument only, which I do not intend, and in arguing that discursive practice is an elite practice as the public use of reasons for social groups may be a 'less intuitive practice, and perhaps worse, one at which they perceive themselves as less competent' (97). As critical theorists, I believe, we should not just be wary of a confusion of conceptual and sociological arguments but also be careful not to restrict discursive competence to the seminar room. That would indeed be a form of 'cultural imperialism' (98), and I fear Olson is coming close to reproducing it. But that is not what he intends. Rather, we both agree, I believe, that many different forms of critical discourse have been and are valid and powerful in politics, and that they need not be intellectualistic in order to be so. I also think – and tried to show in my *Toleration in Conflict* – that the demand for justification is a strong motivating force in historical struggles for recognition³² and emancipation, and that this is no business restricted to intellectual elites, but to protesters in the street or in other public or non-public settings.

In critical theory, it is important, and here I take a point of Olson's on board, to always be aware of the different worlds one is part of and thus use at least two different versions of normativity: the normativity of the (noumenal) power structures that surround us that fix and 'normalize' identities and that determine what can be said and what

³² On that point, see my '“To tolerate means to insult”: Toleration, recognition, and emancipation', in Bert van den Brink and David Owen (eds), *Recognition and Power*. Cambridge: Cambridge University Press, 2007, pp. 215–37, (reprinted in *Justification and Critique*, ch. 6) and Axel Honneth's 'Rejoinder' in the same volume, esp. pp. 363f.

not; and the normativity of critique directed against such reifications, essentially claiming a right to justification and the right to construct a normative order on the basis of (more) acceptable reasons.³³ These two normativities are always intertwined, but we must not lose track of their conceptual distinction.

Justification – political, but not in the wrong way

I am immensely honoured and pleased that Tony Laden has dedicated his marvellous piece to my work and thus continues a discussion on justice that goes back to our time together at Harvard in the early 1990s when we both were thinking about ways to ‘radicalize’ Rawls by connecting his insights with those of discursive and deliberative democracy, as Laden did admirably in his *Reasonably Radical*³⁴ and as I tried to do in *Contexts of Justice*.

Like my previous critics, Laden wants to save me from an overly foundationalist stance with respect to the grounding of my theory and gently invites me to follow his more practical understanding of what political philosophy can and ought to do – namely to provide no more and also no less than a justification that is ‘intersubjective all the way down’ (123) without any impersonal or transcendental banisters of thought. His way of thinking is so close to mine that I am tempted to accept that kind invitation, but I fear I should resist, as I find that between the notion of an independent and impersonal philosophical justification and Laden’s idea of intersubjective practical justification we need to take into account the *moral* dimension of justification and of basic questions of justice and insert that between ‘philosophical’ and ‘practical-political’ justification. If we fail to do that, intersubjective

³³ I have developed this in my ‘Towards a Critique of Justificatory Reason’, German version forthcoming in my *Normativität und Macht*. Berlin: Suhrkamp.

³⁴ Anthony Simon Laden, *Reasonably Radical: Deliberative Liberalism and the Politics of Identity*. Ithaca: Cornell University Press, 2001.

justification could become ‘political in the wrong way’, to use a phrase of Rawls which he used in a (only slightly) different context.³⁵ Let me explain.

Laden reconstructs the relational, practical conception of justice we both share in an attractive way. Like him – as I spell out more fully in the longer piece on the ‘Two Pictures of Justice’ that is reprinted here – I believe that justice is essentially about how we relate to one another, not primarily about the goods we have or receive. ‘How we relate to one another’ refers not only to the legal and institutional status persons have but also to the *practice* of recognizing one another and treating one another as social equals. Justification, as I conceive of it, is indeed the essential practice of constructing justice. As I argue in the Introduction to *Justification and Critique*, we need to make philosophy ‘practical’ by reflexively understanding the principle of justification as a practical imperative, thus liberating political philosophy from an authoritarian slumber.

I also agree with Laden that we need to pay close attention to the kind of arbitrariness that a conception of justice aims to overcome or prevent; and as I argue in ‘Two Pictures’, I think that priority needs to be given to social and political forms of arbitrariness, that is, to forms of rule without proper justification and – again reflexively speaking – without proper procedures and possibilities for justification in place. I am not sure I ‘occlude’ (107) this in *The Right to Justification*, but in any case I say more about it in the full version of the argument reprinted here.

The two conceptions (or ‘pictures’) of justification Laden distinguishes bring us to the heart of his argument – and to his own elaborate view of reasoning as a demanding social art and virtue as laid out in his recent book *Reasoning*.³⁶ In his view, an ‘impersonal’ justification possesses an independent warrant of truth that authorizes reasons, whereas an ‘intersubjective’ justification is truly addressed to others and aims at consensus between them (I take it). Yet as important as this distinction

³⁵ John Rawls, *Political Liberalism*, pp. 39f., 142.

³⁶ Anthony Simon Laden, *Reasoning. A Social Picture*. Oxford: Oxford University Press, 2012.

is, I fear it might be overdrawn. For if intersubjective justification is a form of justification that generates valid norms, it aims at *reasonable* acceptance, not merely at any form of acceptance, as Rawls, to whom Laden refers here, also stresses throughout both his earlier and his later works. If 'reasonable' were not put in as a qualifier (itself to be concretized), how could such justification overcome arbitrariness and be a practice of reason(ing)? So for Laden, too, as he explains in his book much more fully,³⁷ reasoning is a norm-governed practice of free and equal exchange of arguments with certain criteria for reasonable or unreasonable acceptance or rejection – provided that these criteria do not lead to reification but are open enough to allow for normative innovation by discursive challenge and reorientation. So in any practice we call intersubjective justification, I think some 'impersonal' or 'transpersonal' aspect needs to be present, as the game of justification is not owned by me, you or even us as a particular (and potentially exclusive) community. So when Laden says that the egalitarian practice of justification implies that the participants are 'prepared to offer justifications to one another and . . . take themselves to be bound by the uptake or rejection that their justifications meet' (113), I would add the tiny but important word 'reasonable' before 'uptake and rejection' – as Laden expects me to do. This is because justification in normative contexts is about something – call it justice – that even general acceptance, if based on improper reasons, can fail to achieve. Thus to reject such improper reasons is also a demand of justice and justification and a form of showing respect – towards those who would suffer if those bad reasons were followed, but also towards those whose reasons one rejects. For by seriously engaging in discourse, we show respect by saying 'yes' or 'no' to the statements of others provided we try to offer good reasons. Rejecting someone's arguments is no sign of misrecognition; rather, rejecting someone as a person and as an author of potentially valid claims is a severe form of disrespect. These two dimensions of recognition must not be confused. It is no sign of

³⁷ See *ibid.*, Part II.

misrecognition to reject homophobic or racist positions; rather, it is a demand of justification and recognition to do so. When we situate discourses on justice socially, we also have to situate them in contexts of severe injustice and of views that support such injustice. Otherwise, our theory of justice is not critical enough and idealizes in a problematic way (as I explained in my previous reply to Olson). Justification in real life often is a polemic rather than a peaceful form of discursive exchange; and for such polemic, we need criteria beyond consensus – criteria of the justifiable or unjustifiable rejectability of claims. Does Laden disagree?

Let's see. In a beautiful passage, he asks me to follow him into the land of completely intersubjective justification. I hear the sirene's song, yet I should hold onto the mast. But I think he should not go there, too, and here is why. I still remember how baffled Rawls was when Habermas criticized him for not sufficiently placing the method of discursive justification at the centre of his theory, and Rawls strongly affirmed in his reply that in his theory 'there are no experts'.³⁸ So it is an elegant dialectical move by Laden to, in turn, criticize Habermas and myself for giving too much room to transcendental expertise. Like Laden, I criticize experts like 'Jeremy' (118) for whom politics eventually seems to reduce to social engineering realizing the right principles of justice – think, for example, of the idea of the 'distributor' as a political figure in G. A. Cohen's thought.³⁹ I also agree with the critique of 'Ronnie', though that is a more difficult matter which I will leave aside for now. But then there is the philosophical expert called 'Jürgen' who lays out 'the boundaries of public reason or the structure of genuine moral discourse' (118f.) or – possibly – the expert 'Rainer' who even argues for a 'right to justification'. This addition might be adequate since Habermas rejects that deontological notion of a basic right.⁴⁰

³⁸ John Rawls, 'Reply to Habermas', *The Journal of Philosophy* 92 (1995), p. 140.

³⁹ G. A. Cohen, *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy*. Princeton: Princeton University Press, 2011, p. 61.

⁴⁰ See Jürgen Habermas, 'Reply to My Critics', in James Gordon Finlayson and Fabian Freyenhagen (eds), *Habermas and Rawls: Disputing the Political*. New York and London: Routledge, 2011, pp. 295–8.

Laden is right in saying that the discourse-theoretical 'expert' does not lay out a theory of just institutions or distributions but restricts himself to more formal and criterial arguments. Yet I go – again departing from Habermas, who has no room for a theory of justice between his theories of morality and of democracy – even further and say that on the basis of a conception of the right to justification we can construct a theory of 'fundamental justice' which includes the principles of a fundamentally just basic structure of justification which is required if further democratic constructions of justice are to get off the ground. The main consideration here is a *reflexive* and a *moral* one: without such a basic structure of justification in place, a fundamental moral demand is violated. Laden neglects this moral argument, I fear – though only explicitly, while implicitly he uses it. And that argument makes no one a paternalist expert – it just points out what any participant in a justice discourse accepts who understands the term in the correct – non-arbitrary – way. So the kernel of truth in 'impersonal' justification is deeply 'personal', stressing the importance of egalitarian respect.

The reason why I think that Laden uses this reflection implicitly is that I think he is much closer to 'experts' such as 'Jürgen' or even 'John' (Rawls) than to 'Richard' (Rorty), though he comes at times close to a Rortian view of groundless dialogical justification. But only close, not really to it. Because Laden's notion of intersubjective justification 'all the way down', to my mind, is still *norm-governed all the way down*. The intersubjective justification implements '*shared* ideas about how to live together' (119, my emphasis) – so there is the norm of *shareability*. Furthermore, no one concerned is to be excluded from such discourse – so there is the norm of *full inclusion* (and the question of how many forms exclusion can take – legal, social, political, economic, etc.). There is also the norm of '*equality and reciprocity*' (109, my emphasis), and we might add others such as deliberative *autonomy*, *sincerity*, etc.⁴¹ And how could it be otherwise as long as the practice of justification is the

⁴¹ See, again, Laden, *Reasoning*, chs 4–6.

paradigm of the non-arbitrary practice of constructing justice, as we both think it is?

So as Laden anticipates, I would say that his 'rules of the game' do indeed 'look a whole lot like Forst's criteria of accountability, reciprocity and generality' (112), since 'certain basic rules and norms of justification must be observed'. But this does not make us 'experts' in a problematic way because what we both do is reconstruct the implicit knowledge of *participants* in such a justification exercise, yet I would add that we thereby also need to reconstruct the *moral* perspective and duties of participants in such discourses. It would be a rather pale view of intersubjective justification not to see this moral dimension of it. Participating in the practice of justification, we do not just 'invite' (124) others to see things our way; sometimes, for the sake of ourselves or others, we need to make it clear that others are wrong and unjust. That is how I would interpret Gandhi's idea of 'being the change we want to see in the world' (125). So I don't know whether the difference between the two of us comes down to a difference between a Kantian versus a more contextual philosophical temperament; that is possible, but if so, it is because a Kantian sees himself or herself bound by an imperative not to leave certain things 'up for grabs' when it comes to basic questions of justice (124) and as I said, given the normative frame of Laden's own view, I don't think we disagree over much here.

A reflexive, autonomy- and discourse-based philosophy that opts for a certain normative 'ground' claims no super-political authority, as Laden fears; it only reconstructs the immanent structure of justice discourse and unveils its normative core. So it is not from the standpoint of 'philosophy' alone but also from a contextual, participant's perspective that there is a transcending quality to justification – the question of what 'could' be accepted will not go away, and no Rortian (or other) contextualism can ever dissolve it. It remains with every protester who says 'no' to a given system of justifications and institutions. The world of *acceptance* is always accompanied by the world of *acceptability*, and reason is the – finite and fallible – faculty to move between the two. Otherwise, no critical thinking or theory is possible – as Bernard

Williams saw following Habermas in stating ‘that the acceptance of a justification does not count if the acceptance itself is produced by the coercive power which is supposedly being justified’.⁴² This ‘critical theory principle’ clearly rests on the idea of a basic right to justification, as I would argue, but here I leave that aside.⁴³

Laden agrees (on 122), I think, when he argues that no justification that violates basic discourse norms can be acceptable – even if it were accepted. We need to recursively reflect on every form of acceptance and ask whether a superior form of acceptability is thinkable, and for that we need no elaborate notion of ‘false consciousness’. We only need a recursive notion of the criteria of justification. In no way will this make, as Laden fears, ‘the actual offering of justifications’ (121) unimportant – for neither can empirical consensus claim the dignity of full justification if it is based on reciprocally rejectable reasons nor can we know the reasons and claims persons really have in complete abstraction from real discourse. But apart from that epistemic point (often stressed by Habermas) for actual discourse: to be the author of valid claims is a basic *moral* right of autonomous persons and it implies the right to *participate* in *actual* discourses as much as it implies the right not to be overpowered by actual discourses that lack justification. There is no contradiction here, as these are only two sides of the same coin of discursive autonomy. As justificatory equals, we need to be able to speak here and now, but we also have the (noumenal) power to transcend what is and has been spoken. The imperative of reciprocal and general justification, by recursively inquiring into the quality of its procedures as well as its products, never takes away the voices of justificatory equals but implies that their voices must not be silenced by domination or false agreements. It is an imperative immanent to, and at the same time transcending, the practice of justification. Taking this into account means to look at justification as intersubjective all the way down – and all the way up.

⁴² Bernard Williams, *In the Beginning Was the Deed. Realism and Moralism in Political Argument*. Princeton: Princeton University Press, 2005, p. 6.

⁴³ Williams himself affirms that the ‘basic legitimation demand’ of general justification is a moral principle ‘inherent in there being such a thing as politics’ (ibid., p. 5).

Locating political contexts of (in-)justice

Eva Erman is a kindred spirit with whom I share many basic assumptions and ideas. Her work on a discourse theory of human rights and of democracy marks an extremely important development and refinement of the approach we both value.⁴⁴ Yet the landscape of discourse theory is large, especially when it comes to the issue Erman presses me on, the ‘boundary problem’ with respect to conceptualizing a democratic community of justification. In her view, I do not properly take the question of the ‘conditions of democracy’ into account in the way I locate political contexts of justice, especially when it comes to transnational justice and democracy. Criticizing my version of the ‘all subjected’ principle – which says that all those who are subject to norms and institutions of political and/or social rule or domination have to be seen as political subjects with a right to co-determine these norms or institutions – Erman argues for what she calls the ‘equal influence’ principle which she situates in thicker contexts of ‘interdependent interests’ (143) within a political people as a democratic collective. I fear I have to disagree, however, for I think that she uses the wrong kind of empirical precondition for locating political contexts of justification properly, restricting them to already existing and functioning democratic collectives. This connects empirical and normative considerations in the wrong way and excludes justifiable claims of persons or groups to be included in democratic practices of justice, practices that first and foremost address existing injustice and thus ‘track’, as it were, relations of rule and domination. Let me explain.

According to the principle of justification as I interpret it, in contexts of political and social justice which are guided by norms, rules and institutions that claim to be valid and binding for all subjected to them, the right to justification is not just a right that such rules

⁴⁴ Eva Erman, *Human Rights and Democracy: Discourse Theory and Global Rights Institutions*. Aldershot: Ashgate, 2005; idem., ‘Human Rights Do Not Make Global Democracy’, *Contemporary Political Theory* 10 (2011), 463–81.

and norms are justifiable to all as equals; it also requires that a basic structure of justification (what I call 'fundamental justice') is in place in which justificatory practices exist such that those subjected can be the co-authors of these rules and norms. That is why, in my view, democracy is *the* political practice of justice grounded in the right to justification. So democracy in my view is not 'instrumental' to justice; it is what justice demands. I am not sure Erman and I disagree here.

The basic right to justification is a non-domination right, as Erman rightly says. But it is a version of non-domination which does not use a negative, neo-republican notion of liberty as freedom of choice secure from the possibility of arbitrary interference; rather, domination I call any kind of arbitrary rule without proper justification and without proper possibilities of justification in place, and the basic liberty *and* justice claim to non-domination is the claim to be respected as a justificatory equal.⁴⁵ So a context of political and social *justice* exists where there is a context of social or political *rule* (in German *Herrschaft*), whether formal legal or informal social or economic rule, and also where a context of *domination* (*Beherrschung*) exists (i.e. a form of unjustified and unjustifiable rule, formal or informal). These are the structures of power which generate duties of justice and of justification – the first duty of justice being to establish relations of justification that overcome or avoid relations of domination. Justice is a reflexive term: the first duty of justice is to establish normative authorship (and structures of justification) where rule or domination resides such that justice can become an autonomous achievement of those subjected to power in these two forms.

So in my view, justice 'tracks' power as rule or domination. Hence a *demos* – or better: a political community of justification – exists where a context of rule or domination exists, and such contexts are often not coextensive with established political communities. In my work on a critical theory of transnational justice, I speak of contexts of 'force

⁴⁵ I explain the difference to Philip Pettit's view in my 'A Kantian Republican Conception of Justice as Non-Domination', in Andreas Niederberger and Philipp Schink (eds), *Republican Democracy*. Edinburgh: Edinburgh University Press, 2013, 281–92.

and domination'⁴⁶ in the plural, as contexts of 'multiple domination,' from the local to the global level, connecting people's lives primarily not by positively established and legitimate forms of rule, but by a plethora of forms of domination. So the proper *empirical* as well as *normative* condition of locating a political context of justification is the existence of contexts of rule or domination. There are many such contexts, some national, regional, transnational or international; I stress the transnational dimension because complexes of political, legal and economic power in today's world transcend classic boundaries and form a system of interdependence that we could only very euphemistically call a system of 'cooperation'.⁴⁷ Rather, it is a system of asymmetrical burdens and benefits that all too often serves to reproduce these asymmetries. This is what a 'realistic' conception of transnational justice has to start from being confronted with the (difficult) task of finding the right connection between these different power structures.⁴⁸

Erman holds a different view. For her, the B-question of who may decide democratically over whom needs to be connected to – and essentially depends on – the C-question of what the basic conditions of democracy are. And since these conditions are the two of political equality and political 'bindingness,' a context of democratic justification can only be located where an already functioning and established democratic community exists in which there is not just the possibility of exercising equal political influence guaranteed by a scheme of rights and institutions but also where there is a 'democratic practice' (131) in place in which those subjected recognize the good of exercising their political power together as a collective. So Erman's view of where a democratic context can exist is substantive: only where 'political bindingness' (in the sense of citizens seeing themselves bound to others politically) is in place can there be a democratic community. Thus, to

⁴⁶ *RJ*, 256f.

⁴⁷ See, for example, Deborah D. Avant, Martha Finnemore, and Susan K. Sell (eds), *Who Governs the Globe?* Cambridge: Cambridge University Press, 2010.

⁴⁸ On this, see my 'Transnational Justice and Democracy,' *supra* note 2.

my mind, the C-question basically answers the B-question in Erman's argument. As she emphasizes, the 'deep' form of interdependence within a 'people' is not just an objective fact but also a subjective fact of seeing one another connected in that way, of regarding oneself 'bound' by collective decisions. From that substantive empirical presupposition of a democratic community, a moral-political argument for locating a context of democratic justice where domination needs to be corrected such that those subjected *can become* co-authors looks like a pale construct because of the lack of the ethical-political bindingness condition.

I think that is a problematic view. For it gives priority to certain social contexts that can be described as a common *positive* world of bindingness and political recognition, but then *negative* social contexts of domination, exploitation or contexts of rule and structures of governance beyond borders fall out of the democratic picture. All that remains for these relations is a form of political justification that need not be democratic according to Erman (143f.). That view gives such a high premium on already existing democratic communities that justifiable claims of groups that are ruled by or dominated by such communities can only be dealt with in a reduced political way. But for a world in which 'postcolonial' is an all too euphemistic term to describe relations of 'interdependence' as what they really are, namely relations of rule and/or domination, this is insufficient. It replaces the proper empirical question – that is, which contexts of rule and/or domination exist transnationally speaking – with the wrong question – that is, where do collectives exist which are deeply socially interconnected and in which there is general acceptance of binding political structures and decisions?

In that connection, a remark on Erman's 'equal influence' principle may be appropriate. It seems to me that this is a misleading term, for what we are looking for is a *criterion* of 'affectedness' that is more concrete than merely general 'affectedness' to determine contexts of political justification. The principle Erman suggests says that 'all those who are systematically and over time subjected to an

authority's . . . laws, political decisions and rules . . . should . . . have an equal influence over its decision-making' (137). But then 'influence' is not the criterion we look for, rather, being *subjected* in a particular way is. Equal influence describes what those subjected can claim; it is not the criterion we required as an answer to the boundary question. Thus this answer does not move beyond the 'all subjected' principle. Yet it is in further argumentative steps that Erman presents not just a substantive argument about the kind of influence one can claim but also about its preconditions, namely 'robust participation in both formal decision procedures . . . and informal processes . . .' (138). It is at this point that the idea of 'conditions' of democracy actually leads to a different notion of the criterion of being affected in the relevant way: as already being a member of a self-governing collective which demonstrates a certain quality of democracy. If that interpretation is correct, I think it is her and not Habermas – whom she criticizes for that – who fixes the notion of democracy to an already existing political or legal community.

Furthermore, I think that in her reconstruction of my approach to the B-question, Erman overlooks the point I make of tracking relations of rule and/or domination.⁴⁹ But more than that, if she were right that 'a condition of political rights . . . is that they depend on being exercised jointly with others' (141), and if this refers to the B-question (as I take her to argue), nobody who is excluded from such a joint exercise could claim a right to be included, as disenfranchised groups in the past did and do in the present. So I take her to say that the proper 'exercise' of that right depends on the existence of a democratic practice, rather than that having such a right presupposes that practice. Otherwise, that would reduce to the tautology that only those would possess rights who already have well-functioning rights. But her formulations are ambivalent, which is why I fear that Erman connects in a problematic way an empirical thought about a functioning democracy with the normative argument about who has

⁴⁹ I stress this in 'Transnational Justice and Democracy'.

which rights to democratic participation (and, more importantly, to participation in a practice of *establishing* proper procedures and institutions of justification).

So, to sum up, rather than focusing on the C-question, I would focus on what we can call the D-question: Who dominates whom? *That* defines where the borders of a context of justice as justification lie. To analyse the relevant contexts of rule and/or domination, and on that basis to think of practices of critique and democratization to establish relations of justification, is a difficult task. But we cannot cut this path short by giving priority to the democratic contexts that exist, as they are implicated in relations of domination in so many ways.

The unity of justice

I am grateful to Simon Caney, with whom I share many philosophical and political convictions, for addressing head-on the issues that divide us despite these similarities. I have been benefiting from engaging with Caney's work for a long time, ever since we both worked on the debate between liberals and communitarians. In my own attempts to work out a conception of justice he is a vital and constant dialogue partner.⁵⁰ When – if you permit, for a moment – I muse over our differences in a genealogical perspective, I am reminded of his teacher Jerry Cohen's remark about the difference between 'Harvard people' and 'Oxford people': according to Cohen, the former seek to unify the plurality of values and principles by way of spurious constructivist methods, while the latter have more tolerance for moral pluralism and possible tensions, following the 'sovereignty' of individual judgements about ultimate values.⁵¹ I am not sure about this characterization and shall not comment upon it, except for saying that seen in this light Caney is

⁵⁰ See, especially, his path-breaking *Justice Beyond Borders. A Global Political Theory*. Oxford: Oxford University Press, 2005.

⁵¹ G. A. Cohen, *Rescuing Justice and Equality*. Cambridge, MA: Harvard University Press, 2008, p. 4.

an 'Oxford man' indeed, while a 'Frankfurt man' like me shares enough Kantian constructivism to find himself on the Harvard side, but would essentially differ from both by the notion of discursive autonomy at the core of a discourse-theoretical view. I think that the role played in my theory by this very notion of autonomy as being the author of the norms to which you are subject, both methodologically and substantively, lies at the heart of the disagreement between Simon Caney and myself.

Caney addresses a number of points and raises many important questions to which I better have an answer. But before I come to the issue of the two pictures of justice, or that of the 'nature of justice', let me try to answer the question of scope to clarify the 'all-affected/ all-subjected to what' difference. I will be brief here, as this already played a role in Eva Erman's paper and in my reply to it. Caney rightly points to formulations of mine, some of which are very broad, where I say that the right to justification is triggered wherever persons are 'affected' by other's actions in *morally* relevant ways, and to formulations which are more narrow in which I say that the right to justification is triggered in contexts of social and political *justice* where persons are subject to other persons' power in the form of rule or domination. These different formulations are no accident, but I should have been more explicit about them. I believe that the basic right to justification is a general *moral* right which every person has and can claim whenever others' actions affect him or her morally (which needs to be determined with the help of the criteria of reciprocity and generality). I call that a *moral context* of individual action and responsibility. But contexts of political and social *justice* are more specific: they are contexts in which persons stand in particular relations of rule and/or domination to one another. So when it comes to the right to justification generally, I do indeed hold what Caney calls a 'humanity-centred view' (163), such that we always have *moral* duties of justification towards others (relevantly) affected by us. But when it comes to political and social *justice*, I hold something like the 'systemic view', as he calls it. For justice is a part of (social and political) morality, but a special one. We do owe justifications to all persons morally, regardless of 'systemic' relations, and, for example, a

denial of help if you could help others in need is something that cannot be justified to those concerned. So if in Caney's imagined case,⁵² there were people in a dire situation with whom we have had no relations in the past and still do not have any (and yet we know about them), then we would have duties of moral solidarity towards them to help them out of their misery if we can, on the basis of respect for their humanity. We would have no good reason not to help (if we could), given that we are always in a justificatory community with them, that is, the moral community of all persons, the dignity of whom has to be respected.⁵³ So I agree that we have moral duties towards these people based on the 'respect for their common humanity' (165) – but I would not call them duties of justice, as Caney does, for I do not think it useful to elide the difference between the moral duties you have to help others in need and the duties not to dominate or exploit others – and I think the term 'justice' properly applies to the latter. There surely are cases in between which we need to sort out – such as profiting from an arbitrary distribution of natural resources, which is a justice issue if the profiting establishes unfair and asymmetrical relations between the parties. And I should also add the important 'natural duty of justice', to use Rawls's term⁵⁴ in a different way, to help those who suffer from injustice by others dominating them, even though we have no relation to either group but possess the means to help. Not assisting those who suffer from injustice in such a case makes you the accomplice of the injustice being done. But this does not change my main point, namely that we need a moral grammar to distinguish cases of helping others in need from cases of stopping an injustice as something *committed* by humans.

This brings me to the central issue of debate between us. Briefly put, Caney thinks I narrow the concept of justice too much, while I think he broadens it such that it encompasses too much of morality's other

⁵² I simplify this case here, as Mann's example of an 'ostracized' society is very special and might well be a case of justice, depending on the general context in which this takes place and the relations already established.

⁵³ See Forst, *Contexts of Justice*, chs 4 and 5. See also ch. 4 of *Justification and Critique*.

⁵⁴ John Rawls, *A Theory of Justice*, rev. edn. Cambridge, MA: Harvard University Press, 1999, p. 99.

departments and loses both its specificity and its underlying unity. To be sure, he recognizes the conceptual and normative challenge of a general and unifying use of the term 'justice' – yet I think he gives us two different answers to that question. The one answer says that what possibly unifies proper justice talk is that this always refers to rights claims (161). But I don't think that helps much, as justice is what *grounds* rights claims of a certain kind – and so when we inquire into those grounds we need a different, maybe 'deeper' answer. Implicitly, I think, Caney gives us such an answer, namely when he – in agreement with me – says that the basic opposing term to that of justice is arbitrariness (165). But then we differ as to the forms of arbitrariness we think justice ought to address. As I argue in 'Two Pictures', justice to my mind addresses *social* forms of arbitrariness, that is, those that lead to domination, exploitation and relational asymmetry. Many 'natural'⁵⁵ contingencies play a role in constituting such arbitrary relations, but they only are a matter of justice once they do have certain relational implications. If justice were a term that did not refer to social *arbitrariness* of particular kinds, but generally to all kinds of *contingencies* relevant for human beings and their 'luck', then I think we entered the realm of the metaphysical and left the social behind. For then 'nature' itself – and not the human beings that use it for unjustifiable purposes – is turned into an agent that is 'unjust', and justice is seen as a supernatural force to create a new world overcoming a great number of personal or positional differences between human beings – from their looks to their talents or other characteristics. But that is a matter for the gods, I fear. This does not mean that we ought to be fatalistic and accept contingencies as given and unalterable, but we should have a moral grammar that distinguishes between the cases in which there is no moral reason to overcome a difference between persons from cases in which moral solidarity for people in need is called for, and from

⁵⁵ I use bracket quotes here since the distribution of natural resources in today's world is hardly a natural fact as so much depends on the use of these resources and the relational power goods they are turned into.

the cases in which justice calls upon us to avoid or stop relations of domination and the improper 'use' of persons by others. Injustice is an evil that is *done*, not a malady that is 'there'.

So unlike Caney (157f.), I hold on to the distinction between humanitarian duties and duties of justice, and I think it makes a huge difference whether states, for example, recognize that they have to help others on the basis of humanitarian grounds *or* on the basis of justice reasons. In our world, exchanging these grammars comes at a huge ideological cost, for all too often those states that benefit from a gravely unjust international system 'generously' offer 'help' to those who suffer most from that systemic injustice. Thus contrary to Caney (159), I believe that his elision of the difference in moral grammar is in danger of making a huge 'excision' (Sidgwick) of an essential portion of our moral vocabulary. To say it in a nutshell, giving up the distinction I hold on to not only loses the positive vocabulary of justice as something specific but also takes away our vocabulary of being able to identify phenomena of *injustice* (a point to which I will return).

With these short remarks on what we could call the 'metaphysics of justice', I have already approached the important topic of the 'nature of justice' that Caney raises. He takes issue with my distinction between two pictures of justice, elaborated (and addressing some of Caney's concerns) in the piece that precedes this exchange with my critics. Of the two ways to think about justice I distinguish, one is centred on *outcomes* and desirable states of affairs to be brought about by a distribution of certain goods. Here, the focus is on the recipient side, that is, on the quality and quantity of goods and on the kind of life thus made possible. The other way to think about justice is *relational* in the sense I explained above, namely that it asks in which relation persons stand to one another, what their social status is and whether relations of rule or domination are in place. I call both of these ways of thinking 'pictures' of justice as they are more general than conceptions or particular theories of justice. I should emphasize – as I do in my Two Pictures paper – that I think that a number of theories are not easy to classify with respect to these pictures and often are

ambivalent – as is Rawls's, for example, though I think he is closer to the second picture.⁵⁶

As I argue, one of these two pictures – the goods- and recipient-focused one – holds our thinking about justice captive. Caney agrees at least in part, for he believes that a purely distribution-oriented view is one-sided; but on the other hand, he believes that justice is a 'hybrid' (151) concept, essentially combining a distributive and a political side. There are a number of hugely important issues here, and I shall try and address them.

To start with, I do not deny that political justice and distributive or social justice are important and to some extent distinct *aspects* of a just basic structure. But I do not think that these are two distinct 'types' (148) of justice conceptually and normatively, as they both go back to the basic concept of justice as demanding political and social relations free from arbitrary rule (i.e. domination, in all politically and socially relevant spheres of social life). So contrary to Caney's interpretation (151f.), I do not argue that political justice is more basic or primary, if political justice merely refers to the way a political system is ordered. Rather, I say that justice essentially refers to the standing of persons as justificatory equals – in the political domain of justifying legal norms *as well as* in the contexts of social and economic life more generally. The right to justification is not just a right to political participation and representation but more fundamentally a right to be a justificatory equal in all relevant 'spheres' of justice.⁵⁷

Thus in my view, the just distribution of social benefits and burdens cannot be determined independently from the implications of the right to justification. Which implications are these? Caney believes that the right to justification applies mainly to the question of the legitimate exercise of political power and thus has only few distributive

⁵⁶ See my 'Two Pictures of Justice', above pp. 17–20.

⁵⁷ On this point, see my debate with Nancy Fraser in Rainer Forst, 'First Things First. Redistribution, Recognition and Justification', *European Journal of Political Theory* 6 (2007), pp. 291–304, and Nancy Fraser, 'Identity, Exclusion, and Critique: A Response to Four Critics', *ibid.*, pp. 305–38.

implications. But I would not want to restrict my view of social justice like that. I distinguish between *fundamental* and *full* justice – earlier called ‘minimal’ and ‘maximal’, but that is misleading and sounds too ‘minimalist’. When it comes to fundamental justice, a ‘basic structure of justification’ needs to be in place in which social status and social and political power of citizens are equal to the extent that discursive justice can be set in motion as an autonomous political enterprise. Such discursive justice then applies to *all* relevant distributions of goods and to the sphere of production itself, such that based on this kind of *background justice* (to use Rawls’s term) every important social scheme of production and distribution of goods is the subject of discursive distributive justification. In these discourses, when it comes to basic questions of social standing, the ‘worst off’ have what Rawls (in the revised edition) called a ‘veto’.⁵⁸ Hence I interpret the difference principle as a discursive principle.⁵⁹ Discursive social justice understood in that way not only calls for a certain plateau of basic rights, but also demands distributive justice all the way down, as resulting from an autonomous discursive practice of equals. And it is here, by the way, that my view is more pluralist than Caney’s – since contrary to him, I would leave the concrete determination of distributive justice in the single spheres to the participants themselves who will (on the basis of fundamental justice, to be sure) have to find ways to identify the right criterion and determination of justice when it comes to questions of the organization of the market, institutions of education, health provision, etc. Here is where the unity of justice allows for a plurality of criteria and perspectives.⁶⁰

Given my interpretation of the difference principle as providing the ‘worst off’ with a veto, Caney and I may not differ much in our generally egalitarian approach to social justice, but we differ in our account of how to think about distributive justice. I think about it in political and discursive terms, while Caney believes there is an independent

⁵⁸ Rawls, *A Theory of Justice*, p. 131.

⁵⁹ See *RJ*, pp. 115 and 197.

⁶⁰ See *RJ*, p. 197f. et passim.

moral truth as to the right end-state of distributive justice. Yet absent an omniscient (an epistemic point) and authorized (a moral-political point) 'egalitarian distributor' (Cohen as cited above), we *must* leave the determination of forms of full justice to those who have to live in that system for precisely these epistemic and moral-political reasons. Justice is an *autonomous* achievement under certain conditions, not an independent ideal to be realized, as Caney argues.

What exactly is at stake here? Caney takes issue with the four critiques I level against the first picture of justice, and I want to briefly respond to his careful analysis and critique.

(1) When it comes to questions of production, I agree that 'very many' (154) theories have a historical component – yet I would add that it has to be an *appropriate* one and not one of a Nozickian or luck egalitarian kind. The first is a libertarian fantasy, while the latter (to some extent, a cousin of libertarianism in stressing individual responsibility) also has a story to tell, but one so abstract that it can hardly be applied to complex social circumstances. And if it is applied, I agree with Anderson,⁶¹ for example, that it would be unjust and demeaning. When it comes to a relevant and realistic understanding of the genesis of injustice, I would use words such as exploitation or oppression, not descriptions of 'brute' or 'option luck'. This seems to me to look in the wrong direction. Rawlsians, however, and here I agree with Caney, can and should have an adequate story, but as I said, I do not count Rawls as primarily belonging to the first picture camp. So I don't think Caney can count Rawls in his team. As I argue in my book,⁶² my view of social and distributive justice is much in agreement with Rawls's thorough critique of the allocative justice of 'welfare-state capitalism' and with his relational rationale for 'pure background procedural justice' in the form of a 'property-owning democracy', for example, the point being to establish a system of social cooperation that is precisely not in need of goods-redistribution to passive recipients.

⁶¹ Elisabeth Anderson, 'What is the Point of Equality?', *Ethics* 109 (1999), pp. 287–337.

⁶² *RJ*, p. 199.

(2) In separating distributive from political justice, Caney argues that 'a political actor may be exercising power legitimately even if they do not pursue . . . egalitarian ideals so long as they can justify their decisions to those they govern' (156). At this point, he uses a notion of 'legitimacy' which I am not sure I know how exactly to relate to 'political justice'. On p. 152 he calls the question of the 'justified exercise of political power' the question of 'political justice or legitimacy', but I am not sure he would identify the two terms. Caney seems to be ambivalent between a strong and a weak reading of legitimacy – the strong reading connects it to reciprocal and general justification (160), the weak reading merely gives subjects reasons to 'obey' the political authority as long as there is some public justification, even if rejectable from a justice point of view (156). Conceptually, I take the notion of legitimacy indeed to be malleable and not at the same level as that of justice, for normatively speaking it is considerations of basic justice that determine what counts as legitimate. In my justice-based view, contrary to the weak reading of Caney's notion of legitimacy, the exercise of power cannot be justifiable and thus cannot be politically just if it violates reciprocally non-rejectable demands of egalitarian distributions, that is, fundamental justice. Things look different with disagreements over full justice, but I take Caney's critique to be referring to issues of fundamental justice. In that connection, one at times gains the impression that he counts a core of political justice plus some of its distributive implications (socio-economic basic rights) among the essentials of justice, while relegating disputes among 'ideals' (156) of distributive justice to a realm of reasonable philosophical disagreement, as if these ideals (his own egalitarian one among them) were mere 'comprehensive doctrines' in a Rawlsian sense. I think that would be a very unfortunate move, lowering the normative validity of distributive claims and conceptions too much.

(3) This leads to Caney's completely apt question of what 'justifiable' means. He suggests an important distinction between 'justification required for political legitimacy (political justification)' and 'philosophically correct' justification (156). Again, I see a weaker and a stronger reading of what a 'correct' philosophical justification is. The weaker

reading calls it 'sound' (157) and counts Rawls, Dworkin or Nozick as candidates, the stronger reading would reserve 'correct' for the conception Caney thinks right. I believe he intends the weaker version, but even for the stronger one I think he would, as he does, argue that it 'may not be enforced through the exercise of political power without some kind of process of political justification' (157). To me, this sounds like a priority argument in favour of the discursive dimension of justice, which Caney tries to refute, but I leave that aside here.

Rather, I want to develop further the discourse-theoretical notion of justification already discussed in my reply to Tony Laden. There I defended the independence of philosophical justification in a certain way; here I need to stress the interdependence of philosophical and moral and political justification (again adding the moral between 'philosophical' and 'political'). For even though I believe that the reconstruction of the principle of justification is epistemically and philosophically correct and true, and even though I think that on that basis one can construct a substantive moral argument for a conception of fundamental justice, I still believe that the determination of the right – and generally and reciprocally justifiable – kind of distribution should be a matter of discursive justice as an *autonomous practice* within a basic structure of justification that rules out unjustifiable power relations dominating discourse. That does not mean that we lose our autonomous philosophical plus moral judgements about justice and hand them over to a collective; but it means that the first task of justice is to aim for forms of political justification that are not deaf to morally justifiable claims of those subjected and possibly marginalized or overlooked. A society aiming for justice moves towards closing the – never to be fully closed – gap between philosophical, moral and political justification by way of discursive and contestatory practice.

Philosophically at issue here, of course, is the question of the role or place of practical reason in philosophy, morality and in politics – or in older terms, the relation between theory and emancipatory practice. I cannot go into that further here, but this refers to what I had in mind when I spoke about the peculiar type called a 'Frankfurt

person.' If justification can become a *practice*, it does not cease to be a transcending *idea* at the same time, but is not a mere *ideal* opposing reality. In a process of enlightenment, Habermas says, 'there can only be participants'.⁶³ Ultimately, in the reflexive form in which I defend it, the philosophical justification of a conception of justice calls for the realization of practices of justification among justificatory equals that would aim at discursively constructing justice for those subject to it.

(4) With regard to the illuminating way in which Caney distinguishes between a weak version of my emphasis on the importance of domination and a strong one which says that the 'very essence of injustice is exploitation, subjugation and oppression' (159), that is, forms of domination, I go – given what I said above – for the strong version. I believe that justice is a man-made Goddess invented for a particular purpose: to make things right that have gone wrong between human beings. Her task is not to create a completely new world with new human beings; rather, she aims at a world free from domination that exists between them. The task of justice is the eradication of the humiliation of persons and of the denial of their dignity, and that denial is a human act.

Limits

The cover of *The Right to Justification* shows a beautiful picture by Paul Klee from 1927 called 'Grenzen des Verstandes' – the limits of understanding or rationality. These limits play a role in my theory in many ways, such as when I speak about reasonable disagreement with respect to ethical or metaphysical views which reason can neither prove wrong nor right, or when I stress the finitude of our attempts at philosophical or practical justification, calling for recursive self-correction. But now, at the end of this attempt to respond to the many challenges my dear critics and friends have posed to me, this

⁶³ Jürgen Habermas, *Theory and Practice*. Boston: Beacon Press, 1974, p. 40.

picture gains a different meaning. It reminds me how limited my understanding of the issues we are discussing is. But if I ever make some progress, it is by gaining a better understanding of these limits, and that is due to the privilege I have in being read and criticized by such great minds as these six to whom I had the honour of replying. I will be forever in their debt.