

Review essay

Picturing Justice

The right to justification: Elements of a constructivist theory of justice

Rainer Forst

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Justice, democracy and the right to justification: Rainer Forst in dialogue

Rainer Forst

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Rainer Forst is known among German and English reading political philosophers for his work on the debate between liberals and communitarians (Forst 2002). In his relatively recent book *The Right to Justification*, he extends the scope of his work to many of the most central topics in moral and political philosophy. Though originally published by Suhrkamp Verlag in 2007, an English translation of *The Right to Justification* was not published in hardcover until 2011, and thus English reading philosophers have had to catch up. It would appear, however, that a number of them have now done so. Bloomsbury's recent anthology *Justice, Democracy and the Right to Justification: Rainer Forst in Dialogue* contains a series of English essays, by noteworthy philosophers, about Forst's book. In my paper, I'll discuss some of the main themes contained in each of the above mentioned books. Particular attention will be paid to an exchange between Forst and Simon Caney concerning the manner in which justice should be 'pictured', as well as to a related question concerning how the distinction between duties of justice and duties of humanitarian assistance should be drawn.

The Right to Justification is divided into three parts. The first concerns a number of foundational topics in moral and political philosophy, e.g., the nature of practical reason, the distinction between the right and the good (or between morality and ethics, as Forst puts it), and

the appropriate method for justifying principles of justice. The second defends Forst's conceptions of various political concepts, including autonomy, democratic legitimacy, and social justice. The third and last section is about human rights, and issues of justice that pertain to the global context.

The book's central concept is what Forst calls the 'basic right to justification' (I'll be referring to it as the BRJ). According to Forst, the BRJ is implicitly at the heart of much contemporary political philosophy, specifically the sort of philosophy associated with the second of two dominant 'pictures' of justice. Whereas the first picture of justice is (according to Forst) primarily concerned with the distribution of goods, the second picture sees justice as primarily about justifying power relations. On the second picture, justice requires, first and foremost, that relationships involving the exercise of power be justified to those who participate in them. Individuals' holdings remain important, but mostly insofar as distributing goods a particular way is relevant to justifying power relations (pp. 3-5).

The BRJ is a kind of moral veto right: it's the right to demand that the social relations one participates in be beyond reasonable rejection. Though Forst conceives of this right quite broadly – he thinks that all moral norms must be justified to those whose behavior they govern - in political matters, at least, the BRJ functions as a right not to be subject to power relations that can be reasonably rejected (pp. 111-112, 246-248, 255-257). A relationship is beyond reasonable rejection, Forst claims, when it is justified *reciprocally* and *generally*. A reciprocal justification is one that doesn't demand "more from others than one is also willing to concede" and doesn't project "one's own interests and convictions onto others" (p. 80). A general justification is one that doesn't "exclude anyone concerned and their needs and interests" (p. 80).

With the BRJ in hand, Forst proceeds to address a wide array of questions in political philosophy, and for the most part he adheres to the following pattern of analysis when doing so: first, he identifies two popular answers to the relevant question, each of which possesses its own particular merits and demerits. Second, he proceeds to show that the BRJ can be utilized to supply an additional alternative, one that avoids the pitfalls associated with the two he previously identified. For example, in chapter 7, Forst seeks to justify an interpretation of democratic legitimacy that he considers superior to liberal interpretations, most notably Johan Rawls's, and to communitarian interpretations as well. A Rawlsian interpretation, on the one hand, has trouble explaining the role that a political conception of justice plays in limiting the scope of public reason. If, as is suggested by the idea of an overlapping consensus, the primary basis upon which a citizen accepts that conception of justice is from within her own conception of the good, then why would she accept a 'duty of civility' that requires her to refrain from advocating her conception of the good except when she can do so using the language of the political conception's values? It would seem that more must underlie citizens' shared acceptance of a political conception of justice if they are to accord it the significance they supposedly must in public debate. If a Rawlsian interpretation of democratic legitimacy is too thin, however, then a communitarian interpretation is too thick. By requiring something along the lines of a shared conception of the good, communitarianism threatens to be an exclusionary view that fails to respect the fact of reasonable pluralism in modern democracies. The alternative, Forst claims, is an interpretation grounded in a shared, moral commitment between citizens to justify their political proposals to one another. In other words, Forst suggests that democratic legitimacy is possible so long as citizens share a commitment to respect each other's right to justification (pp. 178-179).

Overall, *The Right to Justification* is an impressive book. Forst's goal of unifying a diverse array of topics under a single central concept: the BRJ, is a prodigious one, and Forst pursues it intelligently. Of course, such a grand goal is difficult to achieve in full, and thus I think it would be wise for readers to be somewhat skeptical. It is not the main purpose of my essay to be critical, however, so rather than attempting to produce (and justify) a list of places where Forst fails, I will merely say that even if Forst has not fully managed to achieve his goal of unification, partial achievement is still an impressive enough feat.

The second book of interest to us: *Justice, Democracy, and the Right to Justification*; is a recent anthology devoted to Forst's work in *The Right to Justification*. It was published as part of Bloomsbury's Critical Powers Series, and like other members of that book series, it possesses the following dialogical structure: it begins with a lead essay written by the author whose work is under analysis (Forst in this case), follows with a series of essays that analyze the author's work, and ends with the author's replies to those essays. Since Forst's lead essay contains a summary of many of the key ideas from *The Right to Justification*, the essays which follow it will not be unintelligible to those who haven't yet read that book. That said, I think readers who've already read *The Right to Justification* are likely find those essays more rewarding.

Forst's lead essay is entitled "Two Pictures of Justice", and as one might expect, it's purpose is to expand upon his claim that two dominant 'pictures' of justice are present in contemporary political philosophy, as well as to further justify his claim that the power relations picture is preferable to the distributive picture. As Forst clarifies in his paper, a 'picture' of justice is different from a 'conception' of justice. Whereas a conception aims to specify the content or 'essence' of justice, a picture is primarily linguistic: it's meant to capture the way the word 'justice' is used in linguistic practice, and thus a picture of justice may have multiple

competing conceptions associated with it (pp. 3-4). According to Forst, the main problem with the distributive picture is that it fails to adequately account for a number of matters essential to justice: namely production, political power, public deliberation, and concrete instances of injustice (pp. 4-5). To back up his claims, Forst discusses a number of views from the contemporary literature that he thinks should be grouped (either fully or partially) under the distributive picture and proceeds to argue that they suffer from one or more of the above mentioned problems. For example: in response to the sufficientarian claim that what's important in matters of distribution is whether people have a certain threshold level of goods, e.g., enough to meet their basic needs or to live an autonomous life, Forst argues that focusing on levels of goods leaves out the question of whether a person's insufficient holdings is caused by an agent or by something else. Insufficiency that's caused by another agent is an injustice and the duty to rectify it is a duty of justice. Insufficiency caused by a natural catastrophe, for example, is allegedly not an injustice, and the duty to remedy it is categorized differently: it's a duty of assistance.

The section following Forst's lead essay is comprised of a series of essays analyzing Forst's work in *The Right to Justification*. In general, I think these essays will be helpful to Forst's readers. The exegetical summaries they contain serve to clarify a number of Forst's claims, particularly when read in combination with the clarifying remarks Forst himself makes at the end of the volume. Furthermore, the authors make a number of insightful criticisms. That said, their criticisms are, for the most part, familial. Many of the authors in this volume share Forst's constructivism and/or his critical theoretical perspective, and thus their criticisms are made from within the methodological framework he employs, broadly conceived. As such, I think readers' enjoyment of this volume will vary to some extent depending on whether they

share Forst's methodological perspective. Whereas fellow constructivists and critical theorists may come away from the book feeling that Forst's commentators asked most of the right questions, those who occupy other theoretical perspectives will perhaps feel somewhat neglected. A noteworthy exception to the book's familial character, however, is Simon Caney's essay. As Forst himself notes when reflecting upon Caney's work, the latter's style of writing and approach to political philosophy are what might be called 'Oxfordian'; i.e., highly analytic and permissive of value pluralism, among other things (pp. 205-206). Somewhat unsurprisingly, then, Caney challenges Forst's claim that the power relations picture of justice is superior to the distributive picture, as well as his related claim that distributive justice is entirely derivable from the former picture.

Caney's thesis is that the two pictures of justice should not be thought of as competing alternatives, but rather as two aspects of justice, one of which is an account of how benefits and burdens should be distributed, the other of which is a procedural account concerning the justified exercise of political power. Furthermore, Caney claims that the distributive aspect is not reducible to the procedural aspect: though an account of the justified exercise of political power has distributive implications, those implications may come apart from the requirements of the necessary independent account of how benefits and burdens should be distributed. As such, in order to formulate a justified, all-things-considered assessment of whether a distribution is just, it is necessary, according to Caney, to take into account both whether it was produced via a legitimate political procedure, and whether it satisfies the appropriate, independent distributive criterion, e.g., a principle of distributive equality.

Though Caney doesn't explicitly say so, he appears to be employing a distinction G.A. Cohen draws between two alleged aspects of justice: namely fairness and legitimacy. Fairness,

on the one hand, is a property a distribution possesses in so far as it satisfies the right pattern - we'll assume the right pattern is one version or another of distributive equality - whereas legitimacy is a property it possesses when "no one has the right to complain about it" (Cohen, 2011: 129). Assuming that Forst's BRJ is the correct conception of legitimacy, a distribution would be legitimate whenever it is inter-subjectively justified to shareholders, especially the worst-off.

That legitimacy is not reducible to fairness is putatively supported by the judgment that an egalitarian distribution secured in an authoritarian fashion is nonetheless illegitimate.¹ That fairness is not reducible to legitimacy is supported by the judgment that an inegalitarian distribution is unfair even if secured via a set of deliberative democratic procedures respectful of Forst's BRJ. To see if you agree with the latter judgment, compare two societies: one where distributive egalitarianism is firmly entrenched in the background political culture, the other where it is less so. In the latter society, the talented would not work as hard without economic incentives, nor would the untalented expect them to. In that context, the inequality associated with economic incentives can be justified to the worst-off so long as the greater productivity created works to their benefit. In the former, more egalitarian society, however, the talented are happy to work just as hard without incentives, and the untalented quite frankly expect as much. In this context, economic incentives cannot be justified to the worst-off, and their lack allows for a greater degree of distributive equality without any loss to productivity. Though both societies

¹ I have reservations about this judgment. It's a near universally accepted liberal truth that fairness requires an equal distribution of liberties, and that the right to political participation is such a liberty. If we grant as much, then it is false that a distribution (of all the relevant goods) secured in an authoritarian manner could ever be completely fair, as authoritarianism presupposes an unequal distribution of the right to political participation.

possess an inter-subjectively justified distribution, is it not the case that the more egalitarian distribution is fairer? If so, then fairness is not reducible to legitimacy.²

By employing the distinction between fairness and legitimacy, Caney is able to address a number of the issues Forst raises about the distributive picture. He indicates, for example, that political power and deliberation may very well be important to consider when theorizing the legitimacy aspect of justice, but that doesn't mean they must be taken into account when theorizing the fairness aspect of it (pp. 155-157). Interestingly, though, Caney does not use the fairness/legitimacy distinction to address Forst's claim that the distributive picture misunderstands the distinction between duties of justice and duties of assistance. Caney simply claims that there's no reason why we should restrict our use of the term 'injustice' to cases where disadvantage is caused by an agent, e.g., to cases of exploitation or subjugation, and that there is a tradition in contemporary political philosophy of using the term more broadly than Forst does (p. 159). Though I think Caney is right to press this point, I also think that Forst is right to insist, as he does in his reply to Caney, that we need room for a distinction between duties of justice and duties of assistance. What's more, I think he's right to insist that there's a sense in which exploitation and subjugation are injustices, while disadvantage caused by sheer bad luck is not (pp. 206-207). To account for the concerns voiced by both Caney and Forst, I suggest that advocates of Caney's/Cohen's pluralistic picture of justice should adopt two distinctions. The first is between duties of distributive justice and duties of assistance. The second is between duties of distributive justice and duties of rectificatory justice (Aristotle 1998: Book V, Section 2).

Regarding the first distinction, duties of distributive justice are comparative: they concern who has what relative to others, whereas duties of humanitarian assistance are absolute: they are

² For similar thoughts, see Cohen 2008: 126-127.

about ensuring that others have enough to meet their basic needs. Thus, for example, a duty owed by a rich group to a poor group because the poor group has *less* is a duty of distributive justice, while a duty owed by a rich group to a poor group because the poor group has *less than enough* to meet its members basic needs is a duty of assistance (Nagel 2005: 118-119). Of course, distributive justice, on the pluralist view, is more than just comparative: it also contains the element Cohen calls 'legitimacy'. However, if fairness is essentially comparative, and if it is a necessary condition on duties of distributive justice that they also be duties of fairness, then all duties of distributive justice are comparative.

Regarding the second distinction, whereas duties of distributive justice apply in any case where the worst-off can rightly complain about their (relative) disadvantage, duties of rectificatory justice apply only in cases where an agent has caused another's disadvantage and is thus responsible to that agent (the latter one) for rectifying the grievance. Thus, for example, a rich group owes a duty of distributive justice to a poor group, even when the former bears no responsibility for the latter's deprivation, in so far as the poor group has the right to complain that the rich group has not done enough to reduce the inequality between them. Such a duty is a duty of distributive but not of rectificatory justice. Were it the case that the inequality between the rich group and the poor group reflects an exploitive relationship between them, however, then the duty owed by the former would be one of both distributive and rectificatory justice. Permitting a distinction between distributive and rectificatory justice suffices to accommodate both Forst's and Caney's points: namely that there's a sense (the rectificatory sense) in which the duty to remove exploitation and subjugation is a duty of justice while a duty to help the victims of sheer bad luck is not, even though there is another sense (the distributive sense) in which a duty to alleviate disadvantage traceable to sheer bad luck is a duty of justice.

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