Thinking About Justice

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Abstract: This paper develops and defends the approach to distributive justice the author presents in his 2012 book *On Global Justice*. Characteristic of that approach is that the notion of distributive justice is understood as capturing the most stringent moral demands while at the same time being broadly applicable. This is unusual: normally, distributive justice is either understood very stringently, or as broadly applicable, but not both. Immanuel Kant does the former, Ernst Tugendhat does the latter. This paper argues that the author's approach should be preferred to both of those other approaches. One result of this inquiry is also to display the conceptual unity in the author's approach to global justice in terms of different *grounds* of justice.

1. "Justice is a prestige-laden and confused idea," so philosopher Chaïm Perelman once concluded in a classic discussion of that concept ((1963), p 59). *On Global Justice* is about distributive justice at the global level. Since justice is not only prestige-laden and confused, but also among the perennial topics of philosophy my view will benefit from elaboration and defense. My view brings a broad range of human affairs under the purview of justice but also thinks of demands of justice as the most stringent moral demands. As opposed to that, influential accounts of justice conceive of justice either as broadly applicable but not as stringent the way I do, or else as similarly stringent but not as broadly applicable the way I do. Ernst Tugendhat exemplifies the former approach, Immanuel Kant the latter.

Their approaches generate an objection to mine. Justice, this objector may say, can either be defined, as Tugendhat does, in terms of the kind of situation to which it applies, and then would plausibly apply to a much broader set of contexts than what my theory accommodates. Or else justice can be defined in terms of its stringency, as Kant does, but then not even all those contexts where I talk about justice qualify. In response, I

argue that it is sensible to limit justice to a narrower range of situations than Tugendhat allows, while thinking of the stringency of justice in such a way that a broader class of cases is covered than Kant allows. This takes us to something like my view.[1]

Kant famously insists that there is no point for human beings to live on earth unless justice prevails (*Metaphysics of Moral*, 6:332).[2] But for him, justice only applies to a very limited range of human concerns. Kant's *Groundwork for the Metaphysics of Moral* and *Metaphysics of Morals* offer an influential distinction between perfect and imperfect duties. Duties of justice are perfect duties, which must always be met and cannot conflict with other duties. Roughly speaking, these are duties not to deceive and use illegitimate coercion. Since duties of justice in my sense include positive obligations, not all duties of justice on my account can be Kantian perfect duties and thus Kantian duties of justice. I need to explain why my view would be preferable to Kant's.

In his *Vorlesungen über Ethik* (*Lectures on Ethics*) Tugendhat delineates a role for justice in moral discourse drawing on seminal ideas about justice that go back to antiquity. For Tugendhat distributive justice applies broadly to human affairs. His topic is what ethics is all about, and it is as part of that foundational inquiry that he also turns to

[1] "Justice" normally is "distributive justice." I say "something like my view" because other possibilities remain open as well of course. For the concept of justice generally, see Campbell (2010), Raphael (2001), and the classic Del Vecchio (1952) and Perelman (1963). For wide-ranging discussions of the phenomenology of justice, see also John Stuart Mill, *Utilitarianism*, Chapter V, and Henry Sidgwick, *Methods of Ethics*, Chapter V. See also Wiggins (2006), Part II. I am grateful to George Letsas for having put the challenge to me that the paragraph above formulates and that this paper tries to answer. I am also grateful to the participants of the Legal Theory Workshop at the Faculty of Law at the National University of Singapore, especially to Nicole Roughan, Michael Dowdle and James Penner. I am grateful also to Julian Culp for helpful comments and discussion.

[2] I quote Kant's works with reference to the standard edition of the Prussian Academy of Sciences edition. So "6:332" means Volume 6, p 332. Many other editions use these references in the margins.

justice as well as human rights, offering them pride of place at the end. *On Global Justice* does not offer a foundational inquiry about ethics but one about justice that is meant to be compatible with a range of foundational approaches to ethics. But like me, Tugendhat takes issue with Kant's narrow approach to justice. And like me, he brings the subject of human rights (and through that common humanity, a ground of justice on my account) into the sphere of justice. At the same time, he emphasizes that justice is merely part of the good, and for that reason makes no room for the kind of stringency I attribute to justice. I need to explain why my approach would be preferable to Tugendhat's.

An engagement with Kant and Tugendhat is bound to be illuminating in its own right. More importantly, their approaches are sensible ways of developing common ideas of justice. A discussion of the objection their work raises to mine creates a challenge to reflect on the role of justice in our lives and thus on how philosophical inquiry should conceptualize it. If my theory is fundamentally mistaken about the notion of justice, there cannot be much to it. But I argue that it is not. Philosophical theories are weakest when it comes to rebutting sensible competitors. Nonetheless much is gained for my approach if I can explain why I think it is preferable to both Kant's and Tugendhat's.[3]

Section 2 summarizes my account. Since it is in many ways complementary to mine I turn to Tugendhat's approach next, in sections 3 and 4. This order makes sense although Tugendhat too engages with Kant. Section 5 addresses a worry about the very

[3] To be sure, there are other approaches to justice I could contrast with mine. But it is especially fruitful to do so with regard to these two approaches because they respectively share some major commitments with mine. The same is true also for Forst's approach that I discuss in section 5. It would be less fruitful, say, to contrast my approach with luck-egalitarianism. For instance, G. A. Cohen points out that his "animating conviction in political philosophy with regard to justice (…) is that an unequal distribution whose inequality cannot be vindicated by some choice or fault or desert on the part of (some of) the relevant affected agents is unfair, and therefore, *pro tanto*, unjust ((2008), p7)). But this approach immediately excludes relational grounds from a theory of justice. The relevant philosophical debate then is that between Rawls and Cohen, which is by now well-charted

notion of distributive justice that was articulated by Rainer Forst and Axel Honneth. That worry can be dispelled. The remainder of this paper is about Kant's view of justice.

2. Philosophical tradition distinguishes between rectificatory and distributive justice. Rectificatory justice seeks to undo unacceptable deviations from existing holdings in goods or burdens. Distributive justice assesses what counts as an acceptable distribution of holdings. A theory of distributive justice explains why certain individuals have particularly stringent claims to certain relative or absolute shares, quantities, or amounts of something whose distribution over certain people must be justifiable to them. This distinction originates with Aristotle. Later we encounter the passage where he draws it.

Let me elaborate on the idea of "stringent" claims. The word "stringent" derives from the Latin "stringere," which means to draw or pull tight. The words "string" and "strain" too derive from that root. Stringent reasoning, or a stringent argument, is one where premises tightly draw the conclusion: there is little doubt that the conclusion is indeed supported by the premises. When an agent engages in moral reasoning she aims to derive what she ought to do, all things considered. "All things" here include the range of considerations that are generally considered as moral or morally relevant (which is important to note because non-moral considerations too may bear on the agent's deliberations, and depending on the subject matter may or may not be decisive). Different considerations enter with different weight. The more weight they carry, the more they bear on the conclusion, or as one might say, using the image of "drawing close," the more strongly they draw or pull the conclusion.

A stringent moral claim is one that bears strongly on the conclusion. It is a consideration that is difficult to set aside. The weight of other considerations must be substantial to set aside a stringent consideration. For the most stringent considerations it is hardest to find other considerations to set them aside, and they can do so only in a cumulative manner. At the same time, the most stringent moral considerations may not be moral absolutes. They may not always dictate the result. Among the moral considerations, considerations of justice, I submit, are the most stringent. Below we will encounter the Platonic understanding of justice as "everybody getting what they deserve," what is *theirs*. Justice, that is, is concerned with desert in the broad sense understood as fittingness or appropriateness. For it to be true, then, that claims of justice are the hardest to overrule we must be sure to spell out what is *theirs* in such a way that the significance for human life of the matter in question becomes clear.

Principles of distributive justice are propositions about the distribution of some good in some population. They take this logical form: "The distribution of good G in population P is just only if …" These principles entail further propositions about duties and claims. People in population P are in the *scope* of the principles. Whatever it is whose distribution is at stake is the *distribuendum,* metric, or currency of justice. The *grounds* are those considerations or conditions based on which individuals are in the scope of principles. Grounds are properties of the set of individuals in the scope, and thus properties of populations: they state what it is about a population that makes it the case that only such and such distributions within it of such and such good are just. Principles, distribuenda, grounds, and scopes must form a coherent theory.

The major views in the contemporary debate about global justice can be explained in terms of the distinctions between *relationism* and *non-relationism*. Relationists think principles of justice only hold among persons who stand in some essentially practice-mediated relation. According to *statists* this relation is shared membership in a state. According to *globalists* it is shared membership in the global order. Non-relationists think such principles may apply among those who stand in no such relation. Statists, globalists and non-relationists disagree about the grounds of justice.

Relationists are motivated by the moral relevance of practices in which certain individuals stand. Relationists think of principles of justice as only regulating those practices, rather than every aspect of the lives of those who share them. Relationists can recognize duties to those with whom they do not stand in the relation that is relevant for justice. But those would either differ from duties *of justice*, or else in some other way differ from *those* duties of justice that hold among those who share the relevant relation. Nagel (2005) adopts the former approach, insisting that principles of justice only hold within states. Rawls (1999b) adopts the latter. The duty of assistance to "burdened societies" in *Law of Peoples* is one that Rawls thinks of as a duty of justice but not one of *distributive* justice ((1999b), p 106, pp 113-120). Non-relationists seek to avoid the alleged arbitrariness of restricting justice to regulating practices. Since non-relationists do not limit justice in this way, they will plausibly apply principles of justice to the whole range of advantageous and disadvantageous events in a life. For non-relationists justice is a property of the distribution of advantage, broadly understood.

Disagreements among statists, globalists, and non-relationists notwithstanding, they all assume a single justice relationship associated with a fixed set of principles.

Alternatively one may deny that there is a single justice relationship. Proceeding in that way, *internationalism* – my view -- shares with statism a commitment to the normative peculiarity of the state (the view that principles of justice apply in the state that do not apply otherwise), as well as the commitment that nothing as egalitarian as Rawls's account of justice applies outside of states, though it applies inside the state. At the same time, internationalism accommodates multiple grounds some of which are relational and some not. To emphasize that aspect of internationalism, I also talk of *pluralist internationalism*. Pluralist internationalism's eponymous pluralism about the grounds of justice transcends the distinction between relationism and non-relationism.

On Global Justice explores five grounds: common humanity, shared membership in states, humanity's collective ownership of the earth, membership in the global order, and subjection to the global trading system. For common humanity the distribuendum is the range of things to which a certain set of natural rights entitles human beings; for shared membership in a state it is primary goods; for humanity's common ownership of the earth it is the resources and spaces of the earth; for membership in the global order it is again the range of things to which a set of rights generates entitlements; for subjection to the global trading system it is gains from trade. For concreteness I assume the principles of domestic justice are something like Rawls' principles.

For each ground we must demonstrate "distributive relevance." We must show that principles of the form "The distribution of good G in population P is just only if …" hold within certain populations. I offer such a case for the five grounds I consider. A heavy burden is on those who wish to introduce additional grounds. (Membership in the EU is a contender.) But proliferation is not too troublesome anyway. Certain grounds

stand out because human affairs render them salient before the background of political realities and philosophical sensitivities. "Social justice" demarcates the relevance of membership. "Global justice" demarcates the salience not of one but several grounds.

3. I say more about my view as needed, but let us proceed. Ernst Tugendhat has been one of the most influential post-World-War-II philosophers in German-speaking areas. However, his considered views on ethics, the *Lectures on Ethics* (*Vorlesungen über Ethik*), have yet to appear in English. Tugendhat explores what we are doing when engaging in moral discourse, proposes a principle of morality in close interrogation of Kant, elaborates on that principle by way of engaging with other philosophers and offers an account of how human rights and justice fit into his approach (and with each other).

Tugendhat's principle of morality is to respect everybody equally, and not to instrumentalize anybody. This is Kant's Categorical Imperative. But Tugendhat accepts neither Kant's defense of it, nor what he takes to be his too narrow view of its contents. Moral discourse is about what rules should structure cooperation. The generic moral test asks whether a proposed measure is acceptable for any arbitrarily chosen person in the cooperative scheme. It is beings capable of cooperation who are in the scope of morality. It is those beings who are capable of commanding respect and who have claims against us, and towards whom we have obligations. Our obligations as cooperators primarily are obligations to the community of cooperators, to maintain that community. The moral community exists over time. Children grow into it, old people fade from it, comatose patients drop from it, but all belong to this community.

Tugendhat submits that ordinary reactions of moral praise and blame presuppose

that we see others as subjects and not merely as objects. Seeking to be moral is a way of making sense of reactions we naturally have, and that are pivotal to how we structure our lives. If somebody chose to exit the moral community she would forfeit her capacity to pass everyday judgments and thus become detached from normal patterns of life. Seeking to be moral is also required to escape from egoism. After all, partiality is a kind of egoism because it must be justified from one's particular standpoint.

Using a striking and useful image, Tugendhat argues that Kant understands morality as if it were concerned "with knights in full armor and with lowered visor" (p 295) who mostly need to respect negative duties and occasionally do things for each other. But the moral principle as Tugendhat proposes it, and as he thinks Kant should understand his own principle, also requires genuine sympathy for and caring about the other. Once we understand Kant's principle properly, as Tugendhat suggests drawing on Adam Smith, we go beyond duties of cooperation and embrace a genuine emotional openness towards each other.

Human rights enter straightforwardly. The starting point for their derivation is human needs. Needs imply rights, Tugendhat claims, in the sense that impartial judgment makes the protection of needs through rights appear desirable. That is all there is to the existence of human rights. These claims against the community then give rise to duties. This reasoning also delivers the desirability (and obligatoriness) of institutions where human rights are enforceable.

People should, and normally wish to, help themselves. In that sense Tugendhat accepts a certain priority of negative duties. But sometimes assistance is needed. Kant misunderstands his own outlook by overstating the primacy of negative over positive

duties. Kant thinks the only duties that always apply between any two human beings are negative duties. Positive duties leave much to discretion. Tugendhat takes this to be a prejudice of a capitalist age unduly focused on able-bodied males. All duties always apply, but positive duties need to be acted upon only occasionally (except in the case of groups with special needs, like old people). Social and economic rights are among the human rights. Here Tugendhat draws on Shue's (1980) classic argument that the acceptance of any kind of right entails both security and subsistence rights.[4]

Tugendhat emphasizes that the two central points of orientation in our thinking about justice originate in Plato and Aristotle. To begin with, there is Plato's definition in the first book of the *Republic* (331e, 332-b-c), *to proshekon hekasto apodidonai*, which Ulpian translated as *suum cuique tribuere*, which Tugendhat in turn translates as everybody getting what they deserve. Justice is concerned with desert, in a broad sense understood as fittingness or appropriateness.[5]

The other passage is Aristotle's discussion of distributive and corrective justice in chapter 5 of the *Nicomachean Ethics* (1130b30-1132b20). Corrective justice addresses a moral or legal situation that has come off balance and needs to be restored. Aristotle distinguishes between two kinds of corrective justice (NE 1131a 1ff) that roughly

[4] Tugendhat's sense that Kant reflects prejudices of a capitalist age is also confirmed by a remark in Kant's Lectures on Ethics (Collins Notes): "A man who is never generous but never trespasses on the rights of his fellows is still an honest man, and if everyone were like him there would be no poor in the world." (27:432-33) There is a certain naïvete to this kind of view. The same kind of naivete also appears when Kant states, at the end of the first supplement in *On Perpetual Peace*: "For the spirit of commerce sooner or later takes hold of every people, and it cannot exist side by side with war" (8:368). The spirit of commerce itself has given rise to many wars, especially in colonial contexts where markets were often forcefully opened up.

[5] See Perelman (1963), pp 67 ff for a discussion of the impact of this passage. Perelman submits that Plato's account is so important because it has swayed "the minds of Western thinkers" (p 67) to identify ideal rules of justice rather than to conceptualize what a person ought to in terms of customs. For the idea of justice as a kind of fittingness, see also Cupit (1999).

correspond to civil and criminal justice (depending on whether the relevant interaction is voluntary or not). We can talk about distributive justice whenever one needs to distribute goods or evils, within a family, a joint venture or especially in the state. Equal distribution is appropriate unless there are reasons that speak in favor of deviating from equality. It is impartiality in the assessment of what is deserved that creates unity in the concept of justice. The opposite of justice is arbitrariness.

Nothing about the notion of justice requires that particular things be distributed, says Tugendhat. Distributive justice only applies once we have a set of distribuenda, and then requires that the distribution not be arbitrary. An unjust distribution might be morally better than a just one. Collective well-being, for the sake of maintaining the community of cooperators, is an important aspect of goodness. He criticizes Rawls for folding utilitarian considerations into the concept of justice (in the Difference Principle). What Rawls should have said is that an unequal distribution can be *morally better* than an equal one but not that *justice* requires such a distribution.

Justice and human rights are often theorized separately, but Tugendhat connects them. He begins by drawing attention to the debate about what a society has at its disposal for distribution. Liberals and libertarians, for instance, disagree vehemently about that. Libertarians insist that society does not have a large heap of resources to distribute. But regardless of the outcome of that debate, human rights provide what Tugendhat calls a minimal version of justice. The argument for human rights generates a basic set of security and subsistence rights, in a way that should be acceptable to all participants in the debate about what society ought to distribute among its members.

By making this connection between justice and human rights Tugendhat integrates common humanity into a theory of justice. In *On Global Justice* I do the same. But notably Brian Barry (1982), drawing on T. D. Campbell (1974), chapter 3, has insisted on a clear separation between justice and humanity.[6] According to Barry, justice is concerned with control over resources, broadly understood, and its demands do not depend on what the person who gets something would do with it, or their state of being. Demands of humanity are goal-directed, and do depend on the person's state. The relationship between justice and humanity is uneasy, and not generally codifiable. Both Tugendhat and I disagree and argue that at least to some extent that relationship is codifiable. Common humanity, as I would put it, is one ground of justice.[7]

4. Tugendhat's theory can be interpreted as making an important addition to mine. There is also a way of thinking of mine as developing his. But once I have explained how his theory and mine are complementary, I turn to an important difference.

Tugendhat's account of justice creates unity between rectificatory and distributive justice: justice is impartiality in the assessment of what is deserved. This understanding of the concept of justice leaves open many questions that we can answer in different

[6] That approach in turn sits well with a pluralist approach to morality as proposed for instance in Berlin (1998): morality involves different values that get priority under different circumstances but whose relationship cannot be straightforwardly defined.

[7] (1) It should be clear, though, that what is at stake here is conceptual clarification. Thinking about the relationship between justice and common humanity the way Tugendhat and I do brings us no closer to clear practical advice than Barry's and Campbell's approach. (2) One might object as follows. In the case of a natural disaster the distribution of certain things matters greatly for human life but nevertheless we would not want to call the help in response to the catastrophe a requirement of justice. But the reply is to deny the point. In virtue of our common humanity we have certain obligations to each other. These obligations may be triggered by an oppressive government or by a natural disaster. In the latter case, it may not have been because of underlying injustice that the problem arose, but not doing anything about it would nonetheless be an injustice.

ways. Fleischacker (2004) reminds us that modern thinking about justice incorporates several assumption that capture particular commitments in fleshing out that concept. A first assumption is that each individual has a good that deserves respect: individuals are due rights and protections to that end. Justice is not (merely) a matter of realizing, say, a divine order. A second assumption is that some share of material goods is among the rights and protections everyone deserves. A third is that what each person deserves is rationally and secularly justifiable. A fourth is that the distribution of these goods is practical: it is neither a fool's project nor self-undermining like attempts to enforce friendship. A final assumption is that it is for the state (and conceivably other political entities) to achieve justice.[8]

The grounds-of-justice approach can readily integrate Tugendhat's proposal for what unifies the concept of justice and Fleischacker's identification of the presuppositions underneath our contemporary understanding of that notion. My approach adds a theory of the conditions under which it not merely so happens that groups have something to distribute, but in which the distribution of something among a group is of great moral significance and people deserve to have certain things in the appropriately loose sense that Tugendhat employs. Fleischacker only identifies some constraints on this subject. Tugendhat leaves it open how to determine the groups that have something to distribute, and what they distribute. As far as the domestic context is concerned, for instance, Tugendhat offers no view about the distribuenda of justice, conceding to

[8] Chan (2008) argues that the Confucian tradition as developed by Confucius, Mencius and Xunzi provides the same notion of justice that in the Western tradition makes its appearance in Plato. But by way of contrast with Western tradition, Confucianism has always considered material well-being as among the concerns of justice and the alleviation of poverty as among the tasks of good rulers. In the Western tradition these concerns were not present all along although they are now among the defining features of justice.

libertarians that they may sensibly doubt that the state has much to distribute. My theory spells out what makes the domestic context a ground of justice, namely, that people who share a state share an intense kind of coercive and cooperative relationship.

This complementarity does not merely serve the needs of my theory. In some contexts certain groups *ought to* distribute certain things. An inquiry into that kind of situation is a natural part of a theory of justice. Tugendhat offers no systematic exploration of that topic even though he ventures into it by connecting needs to human rights and human rights to justice. Thereby he implicitly recognizes that what is needed to satisfy basic needs is a distribuendum of justice, common humanity being the relevant ground and the realization of certain basic rights being the associated principle. But once this much is acknowledged as a component of a theory of justice, the significance of inquiries of the same sort in other contexts should be too. Principles, distribuenda and grounds of justice depend on each other, and should be theorized together.

So while my theory does offer a pluralist understanding of distributive justice it is important to be clear on what this means. The concept of justice does have a unity, as captured, at the most abstract level, by Plato's definition. Aristotle's distinction between the different types of justice then makes clear that the unity of the concept nonetheless harbors a diversity: what it means to talk about something's being *mine* or *yours* or *theirs* amounts to very different things in different contexts. The concept of distributive justice itself than has its own internal plurality, and it is that plurality that my approach works out. So talk about "pluralism" here is not the same as talk about "fragmentation," a term that would denote the absence of an underlying unity.[9]

[9] Also, since what we are talking about is pluralism internal to one concept (or diversity internal to one value), no commitment is implied to any kind of meta-ethical standpoint on the unitary or fragmentary

This complementarity notwithstanding, there is an important difference between Tugendhat's approach and mine. Tugendhat's notion of justice is wide open in its applications. While the grounds-of-justice approach offers a way of thinking about which combinations of groups and distribuenda come under the purview of justice, it also adds a stringency condition. I admit combinations of groups and distribuenda under the purview of justice only if the additional condition is satisfied that it must be a matter of great moral significance – the kind that makes it the case that claims about this distribution are among the most stringent demands of morality – that the distribuenda in question are properly distributed. Whereas Tugendhat brings justice into play whenever groups distribute goods or evils, I limit its applicability to a proper subset of the contexts to which he applies it. I would not classify many distributional questions of day-to-day life as matters of justice. A case is needed for why the matter is sufficiently weighty.

The contexts my theory identifies as grounds of justice – where it is of the greatest moral urgency that certain groups distribute certain things -- are worthy of a name. There is no better name for it than one in terms of distributive justice. And as we noticed, one reaches the notion of a ground of justice from within Tugendhat's theory, by acknowledging the difference between situations where groups happen to have something to distribute and those in which they ought to do so with great moral urgency. The legacy of the notion of justice contains both the breadth of application that Tugendhat emphasizes and this idea of stringency. After all, that latter idea appears prominently in

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nature of value. What I say about justice is consistent with there being an overall unity among values, and it is also consistent with the overall structure of value being fragmented. However, my claim about the claims of justice being the most stringent ones in the moral domain does make a commitment on that account. Whatever else is true, the structure of values cannot be completely fragmented so as not to allow for the kind of comparative statement about the stringency of the demands of justice that I have made.

Kant. Like me, and unlike Tugendhat, Kant thinks the most stringent moral claims are matters of justice.[10]

My claim that demands of justice are the most stringent moral demands does not imply that precisely those grounds *On Global Justice* explores under the heading of "global justice" capture the full range of these claims. I do not insist that those grounds exhaust the domain of global justice. What is more important, there might be quite a range of other grounds. Tugendhat's account of justice – using the Platonic definition and the Aristotelian differentiation as hallmarks – creates unity in the concept of justice, and my pluralist account of the grounds of justice further develops the plurality that was initially introduced through Aristotle's distinction between the two types of justice. But which of these grounds of justice are relevant under the heading of "global justice" is largely practice-driven: the term "global justice" picks out a number of grounds that are politically relevant in a transnational manner.

5. Before proceeding to Kant let me discuss one objection that might be raised to my discussion. Forst (2011) and Honneth (2010) formulate a general concern about thinking of justice as (exclusively or largely) *distributive*. They make similar points, and a similar response applies. I limit myself to Forst's version. Forst argues that justice should instead be understood *reflexively*. He distinguishes between what he calls *two pictures of justice*. According to Picture 1, what matters is what people receive. The focus is on goods people have. Injustice is a matter of lacking things one should have. Forst traces this picture to Plato's account we encountered above. According to this view, how people are

[10] Conceivably one could distinguish a narrow notion of justice (mine) from a broader notion (Tugendhat's), where the broader notion applies whenever the narrower does but not vice versa.

treated in social structures cannot easily get on the agenda of inquiries about justice. According to Picture 2, what matters is how people are treated in a cooperative scheme. Injustice is a matter of not counting as a full participant.

Forst favors Picture 2. He insists that justice does not primarily demand that people possess certain goods, but that they are recognized as equal participants in a basic structure, as having a *right to justification* vis-à-vis the ways in which power is exercised. A theory of justice then becomes a critique of the conditions under which power is exercised. Such a theory is reflexive by conceiving of individuals not as recipients but as active participants in a public discourse. It is because he draws this distinction between two picture of justice and favors this second that Forst can make the right to justification fundamental to moral and political thought (Forst (2007)). Ostensibly Forst poses a radical challenge. After all, Plato is among the protagonists of the rejected picture. So is Tugendhat, who sought to account for the importance of power for a theory of justice by making it a distribuendum. But the problem with this way of giving credit to the importance of power, says Forst, is that it presupposes an authority that gets to distribute power. Instead, power is constituted by relationships.

This distinction between "two pictures" is flawed in a way the grounds-of-justice approach illuminates. Of course, the notion of distributive justice, where it applies, requires that there is something that must be distributed and that entities and mechanisms exist to perform the relevant measures. It is conceptually *possible* that entities that distribute goods exist independently of the recipients, much as the mother distributes the cake among the children, or God sends manna down to the Sinai. But nothing about the idea of justice *necessitates* the existence of an external distributor. And that is all how it

should be. At the conceptual level nothing about the idea of justice has implications about how the distribution should occur (i.e., about whether there is an external distributor). Otherwise that idea would be captured too narrowly, excluding, for example, the logical possibility of divine justice (and so the applicability of the notion of justice in a theistic universe). There is no inconsistency between the notion of justice and the idea that people are recipients of goods. But nor does the one imply the other.

On the grounds-of-justice view, how to conceptualize those who are in the scope of principles of justice depends on the ground. If the ground is shared membership in a state, then the very description of the ground captures a particular *relationship.* That description shows that distribuenda (Rawlsian social primary goods, on my view) are generated within a certain cooperative and coercive arrangement. Those who are in the scope of domestic principles of justice therefore are participants in a social setting and producers of social primary goods. So this ground is spelled out in a way that includes a reflexive dimension. On the other hand, to the extent that human rights are derived from needs, what matters is that people are entitled to certain goods, not how they are involved in their production. The point is that such involvement is *irrelevant*. The grounds-of-justice approach allows us to capture human beings in different capacities. Some of them are more active than others. But there is no need to choose one "picture" of justice over another. Justice is inherently multifaceted.

A right to justification still enters this account, but it is not its foundational starting point. In chapter 17 of *On Global Justice* I argue that duties of justice generate duties of account-giving. That is, those charged with bringing about justice owe an account of how they go about this to those in the scope of the relevant principles of

justice. Those people in turn have a corresponding right against the duty-holders that such an account be given. But such a right arises because (and, more importantly, only when) we already have a theory of distributive justice in place.

In a nutshell, Picture 2 is no competitor to Picture 1 but captures features that some grounds have and others do not. Forst's distinction runs together two levels of abstraction that we should distinguish: the level of the concept of justice, and that of the various grounds.[11]

But perhaps I have mischaracterized Forst's argument. Julian Culp has suggested an understanding of "reflexivity" in Forst that would undermine my argument. I have assumed that a conception of justice is reflexive in virtue of understanding human beings as participants in a social setting and as producers of things like primary goods.

[11] (1) Let me mention two oddities in Forst's argumentation that further support my claim that his distinction is untenable. First of all, Forst counts Rawls as a representative of Picture 2 and Tugendhat as a representative of Picture 1. Tugendhat is taken to task for conceptualizing power as a good. But Rawls does the same. Among his primary goods we find opportunities and powers, as well as the social bases of self-respect. These goods are distribuenda of domestic justice and are *also* being constituted through interaction characteristic of a state. Perhaps Forst's point is that, unlike Rawls, Tugendhat does not much engage with the question of how to characterize shared membership in a state as a ground. (Rawls does not do so much either, but does to some extent – see Risse (2012), chapter 2.) But that omission should and can be fixed in a way that does not affect the claim that power is among the distribuenda. It is also curious that the clearest example of a theory of justice that regards people as passive recipients is utilitarianism. Forst takes Peter Singer to task for criticizing global poverty merely for its deficiencies, rather than for its dependencies and rampant exploitation. But utilitarianism has a notoriously strained relationship with the notion of justice. Chapter 5 of John Stuart Mill's *Utilitarianism* is famously devoted to that subject, and, for instance, Shelly Kagan's (1997) introduction to ethics, which creates much space for the importance of consequences, has little use for the notion of justice. So on the one hand, Forst characterizes Picture1 as a traditional view of justice that goes back to Plato. On the other hand, the clearest example of a theory that exemplifies this picutre is one that has a notoriously difficult relationship with the notion of justice. (2) Forst denies the conceptual possibility of an external provider of what justice requires, pointing out that it would be "a nice thing" (p 38) if a Leviathan were to distribute manna, but it would have little to do with justice. But then, in a universe where that is how people get by, justice would not apply. In our universe we must think of justice differently because people do not get by in this manner. Forst's response might be that that is precisely the distinction between the two pictures of justice: only Picture 1 permits for divine justice, and Picture 2 sensibly does not. But surely when we read in the Book of Deuteronomy that "thou shalt do that which is right and good in the sight of the Lord" (6:18), which we may safely assume to be also about distributive justice, the problem is not a conceptual confusion *about justice*. The authors of Deuteronomy are not in the grip of a wrong picture of justice. If they fail, they fail because theism is wrong. But conditional on theism being right they are perfectly entitled to talk about justice the way they do.

According to the alternative view, a theory's being reflexive means that it addresses the theorist's role in the justification of principles of justice. Crucially, the theorist is merely one among the citizens who should be able to participate in the discursive justification of principles of justice. Qua theorist she can put forward only principles required for enabling a public discourse that in turn generates principles of justice. A theorist cannot tell his fellow citizens the entire truth about justice that they would merely have to implement.

Forst (2007) makes clear that he thinks a theory of justice is essentially concerned with power. Its central idea must be that people are not being dominated (rather than that they possess certain things). That thought is well captured by my reading. Theorists do not normally exercise power of a sort from which (to make the point in terms of the domestic context) other citizens need protection. Forst would be less interesting if he were primarily concerned with limiting the power of theorists.

At the same time, this alternative understanding also offers an unnecessarily constrained view of what political philosophers do. Specifically in the domain of justice political philosophers are people who have thought longer and harder than others about what principles of justice might be. But the way in which their thinking should (and the only way in which normally it could) affect political reality is by persuading those who must look after the realization of principles of justice on its merits. We can understand this in terms of persuasion in the world-as-we-find-it, or in terms of an ideal-speech situation in which hypothetical justification occurs. Either way, political philosophers have expertise only in virtue of having thought longer and harder about questions that

concern everybody and that are for everybody to decide. Their arguments yield power only by convincing others.

Presumably the kind of emancipatory theory Forst favors would think of those others either in actual persuasion or in an ideal-speech situation as capable of judging arguments. Therefore they should not be threatened by the power wielded by political philosophers. On the contrary, they should welcome their efforts as a kind of assistance in structuring the debate. But if that is the case then the theory's concern with power is not best understood as pushing for limiting the role of the philosopher.

6. Let us proceed to Tugendhat. Tugendhat thinks the *Kantian* approach implies that we owe people more than *Kant* himself allows, and that especially Kant's distinction between perfect and imperfect duties understates what we owe. To this topic we must return. My disagreement with Tugendhat is about my assertion that claims of justice are the most stringent moral claims, which implies a *narrowing* of the notion of distributive justice as Tugendhat understands it. My disagreement with Kant is the same that Tugendhat has with him, to wit, that obligations of justice should be understood *more broadly*.

There is a received view on what Kant thought about duties of justice that has taken on a life of its own in moral and political thought. That received view is this. Kant distinguished perfect from imperfect duties. Perfect duties do not permit discretion. They apply on every suitable occasion, and what they require can be determined precisely. Perfect duties are enforceable. And they do not conflict with other duties, either perfect or imperfect. As opposed to that, imperfect duties allow for discretion in both execution and

content. They do not exact a particular action on every suitable occasion, and we have leverage in deciding what is required. Imperfect duties are not enforceable. No particular person has a right against us that we execute the duty in an encounter with him. And imperfect duties can conflict with other duties. Perfect duties are duties of justice (and vice versa), imperfect duties are duties of beneficence (and vice versa).

Notice how contemporary authors put this distinction to work. Onora O'Neill (1986), chapters 7 and 8 thinks the content of duties of justice is not to deceive and not to coerce illegitimately.[12] Even though Kant understands justice rather narrowly, illegitimate coercion and deception identify basic evils of human interaction, especially of international politics. A world free from illegitimate coercion and deception would be very different from ours. Crucially, O'Neill argues that basic needs must be met so that people are not susceptible to coercion and illegitimate deception. This step considerably enhances the reach of Kant's notion. Duties of justice then include a requirement to create conditions under which people are not easily victimized by deception and illegitimate coercion. Tan (1997) and Pogge (2002) make similar points.

James Griffin (2008), however, insists on the limitations of Kant's duties of justice. These duties – thus all duties *everybody* owes to *everybody* else - are negative. Griffin's theory of human rights delivers positive duties, duties that in some sense everybody owes to everybody. They could not be imperfect, but for Kant could not be perfect either. These duties cannot be accounted for on Kant's scheme. Griffin argues that Kant's approach is insufficient to account for the duties that correspond to human rights.

[12] Kant's own clearest statement to the effect that this is how he understands justice appears in the First Appendix to *Perpetual Peace* where he says that justice bars cunning and force (8:379).

Griffin's proposal is to spell out the idea that there are positive duties that everybody owes to everybody by assigning positive duties to entities in terms of their ability.

The *locus classicus* in Kant's work for the distinction between perfect and imperfect duties is in the *Groundwork*, in the context of Kant's introduction of the universal-law formulation of the Categorical Imperative: "Act only in accordance with that maxim through which you can at the same time will that it become a universal law" (4:421). O'Neill (1975, 1989) argues that this formulation offers a decision procedure for moral reasoning. In a first step, one should formulate a maxim that captures one's reason for acting as one envisages. Next one should recast that maxim as a universal law for all rational agents. Third, one should assess whether one's maxim is even conceivable in a world governed by that law. If so, then, finally, one should wonder whether one could rationally *will* to act on one's maxim in such a world.

If one can will to do so, the action is morally permissible. For maxims that fail the third step, there is a perfect duty that admits "of no exception in favor of inclination" to abandon that maxim (4:421). For maxims that fail the last step there is an imperfect duty not to act on that maxim. That is, the agent is required to pursue a policy contrary to his originally intended maxim that can, however, admit of exceptions. Kant's examples of perfect duties include the duties not to commit suicide to escape from unhappiness, and not to make promises one does not intend to keep. Examples of imperfect duties include the duties to assist others in pursuit of their goals and not to let one's talents rust.[13]

Justice is not a topic in the *Groundwork*. However, justice is discussed in the Doctrine of Right, *Rechtslehre*, the first part of the *Metaphysics of Morals*. Or that is, the

[13] For Kant on perfect and imperfect duties, see also Mahon (2006); see also Schaller (1987), and for general discussion, Hill (1992) and Wood (1999).

topic there is what people can be forced to do. Kant delineates right (*Recht*) by stating three conditions that must be met for something to be enforceable (6:230). First, right concerns only actions that have influence on other persons, directly or indirectly. Duties to oneself are excluded here. Second, right does not concern desires but choices that generate actions. Third, right does not concern the matter of the other's act but only the form. That is, no particular desires or ends are assumed on the part of the agents. As an example Kant mentions trade. To be rightful, trade must have the form of being freely agreed by both parties but can have any matter or purpose the traders want.

The central thought in the Doctrine of Right is the Principle of Right:

> Any action is right if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law (6:230).

Precisely what the connection is between the Categorical Imperative and the Doctrine of Right is not straightforward.[14] For our purposes, however, we can think of the Principle of Right as the application of the Categorical Imperative to the political context where strangers live together under one jurisdiction and where coercive state power implements public choices. In the Feyerabend Natural Law lectures, Kant notes succinctly that right concerns those morally correct actions that are also coercible (27:1327).

So right concerns acts independently of motive, whereas virtue, the subject of the second part of the *Metaphysics of Morals*, the Doctrine of Virtue, concerns the proper motive for dutiful actions. In the introduction to the Doctrine of Virtue Kant further develops his theory of duties. It is here that we can reconnect to the terminology in the *Groundwork*. Duties of right are those which others can be *coerced* to perform if need be

[14] See Ripstein (2009), appendix.

(6:383, cf. 6: 239-42). Duties of right are narrow duties, which seems to be the same as perfect duties. Such duties do not allow for "playroom," latitude of discretion (6:390). Different formulations and criteria appear, and one may worry about how they all fit together. What is safe to say, however, is that right concerns external action that affects others regardless of the agent's motivations; right corresponds to perfect duty; and the hallmark of perfect duty is its enforceability. It is apparently because of its enforceability that a perfect duty cannot allow for latitude or for any conflict with another duty with the same priority for the agent.

Kant has a peculiar way of using the term "distributive justice." The condition of distributive justice, he explains, simply is *the rightful condition,* the condition under which a state, one way or another, realizes the Principle of Right (6:307). When Kant uses Ulpian's formulation *suum cuique tribuere*, he explains it as follows: "enter a condition in which what belongs to each can be secured to him against everyone else" (6:237). As opposed to that, the state of nature is not unjust but devoid of justice, where disputes cannot be settled by competent judges (6:312).

So crucial about the rightful state is not that Kant provides a list of prescriptions for laws. Instead, it is that there is a procedure for resolving conflicts about what people consider *theirs*. What the state "distributes" is access to institutions that make sure everybody gets what is theirs. Distributive justice just is public law securing private right. In that spirit Kant defines a judge's verdict as "an individual act of public justice (iustitiae distributivae)," (6:317). The right sort of public administration cannot involve any deception and illegitimate force (force not needed to remove a hindrance to freedom, 6:231). After all, the state arises from the uniting of wills of the individuals subject to it.

Therefore it must be subject to all conditions that must be presupposed for a uniting of wills to occur, including the absence of deception and unjustifiable coercion.

Kant offers a decidedly formal notion of distributive justice as a state of affairs where free beings live together under public law. But the form does impose constraints on what laws can be passed, as becomes clear, for instance, when Kant insists the state has no business promoting people's happiness. The next section explores in more detail how the form imposes constraints on what laws are acceptable.

7. On what I take to be the mainstream reading of Kant the state's ability to interfere with individual behavior is limited. Kant famously insists that there is only one innate right: "freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law" (6:237). The state is justified to coerce only to remove a hindrance to freedom.[15]

But while in the Doctrine of Right freedom appears as the only underlying principle, in *Theory and Practice* freedom appears as the first of three principles (8:290): freedom of every member of the state as a human being; equality of each with every other person as a subject; independence of every member of a commonwealth as a citizen. Freedom involves the right of all individuals to conceive of happiness in their own way. A state cannot legitimately impose a conception of happiness on its citizens. Equality is formal equality before the law, including formal equality of opportunity. Access to

[15] Kersting (1984), for instance, insists that Kant is not concerned about social justice at all (p 108 and pp 243f). Distributive justice is only about access to law. Further-reaching ideas of social justice in would contradict Kant's ideas about freedom and independence. Penner (2010) defends the same view. Nussbaum (2000) agues that Kant's narrow understanding of justice goes back to Cicero and criticizes what she considers Cicero's problematic legacy.

privileges such as officer rank must not turn on hereditary status. But, crucially, no substantive redistribution is envisaged. Independence concerns citizens as subject to laws they give themselves, that is, as co-legislators of the laws. It should be clear that the Doctrine of Right and *Theory and Practice* develop the same thought as basic to Kant's endeavor, but merely present it differently.[16]

However, Kant advocates the duty of support fellow-citizens who cannot support themselves, and gives the state the power to provide this help (6:326). Ripstein (2009), pp 25/26, argues that the state has such obligations because nobody could agree to join a state that supports property arrangement that render some people dependent on the good graces of the wealthy. The point is not that individuals themselves are obligated to respond to the needs of others. Contrary for instance to Grotius, Kant denies that there is even a right of necessity. That is, nobody is allowed to take something from another merely because otherwise her needs would go unmet. The point is instead that individuals cannot live together in a state unless they make the state (rather than private philanthropy) responsible for the support of the poor.[17]

[16] We should notice that citizenship understood as participation in the legislative process does not include women, or people who are not economically self-sufficient. See 6:314 for a discussion of active and passive citizenship. This again is evidence of Kant's capitalist prejudices.

[17] (1) Weinrib (2003) too argues that, even though Kant himself does not argue for the point systematically, on Kantian grounds the state does have the obligation to support the poor. Höffe (2006) thinks that Kant here endorses a state "that compensates for the loss of power of the society prior to the introduction of law within a social state" (p 110). (2) In the Doctrine of Virtue, section 3, Kant says that there is a duty "of beneficence towards those in need… because they are to be considered fellow human beings, that is, rational beings with needs, united by nature in one dwelling place so that they can help one another" (6: 453). But this is an ethical not juridical duty, and it is general and specific to the state. But one could push this further. In the Doctrine of Virtue Kant also talks about the obligation to develop friendships and to participate in social intercourse (6:469–74). And at the beginning of Book 3 of the *Religion within the Boundaries of Mere Reason* (6: 94-5), Kant discusses the development of an "ethical commonwealth" in which human beings strengthen one another's moral resolve through their participation in the moral community of a church.

But what Kant says in 6:326 is not so much that nobody could agree to a state that allows for dependency but that the wealthy owe their existence (presumably *qua* wealthy people) to state protection. One could read this in the spirit of my characterization of shared membership in the state as a ground of justice. What makes such shared membership a ground is the intensely cooperative and coercive scheme that is constitutive of that arrangement. It is within such a scheme that anybody could acquire wealth, which for Kant would have to be understood formally, as having the right to exclude others from certain material objects. Those who succeed in such a scheme would owe those who also help maintain it.

Either way, the state is obligated to support the poor. So in this manner the form of the law imposes constraints on its contents. Moreover, the state is charged with maintaining itself, and to that end has the power to "administer the state's economy, finances and police" (6:325). In *Theory and Practice* we learn that when the state

> gives laws that are directed chiefly to happiness (the property of the citizens, increased population, and the like), this is not done as the end for which the civil Constitution is established, but merely as a means for *securing a rightful condition*, especially against a people's external enemies. (8:298)

So nobody can be expected to serve private purposes of others, but there is potential to justify measures for the maintenance of the whole on public terms.

Even though Kant does not champion the redistributive state we can now see that there are various strategies to argue, on Kantian terms, for an extended view on state responsibilities. First of all, the state may have an obligation to regulate the economy precisely so that it can preserve everybody's freedom, independence and equality, properly understood. This takes us to a familiar debate. Substantial economic inequalities might create a situation where the freedom of some is much constrained by that of others,

where some can use money to shape public opinion, and where equality before the law is undermined because some have much better access to the legal apparatus than others.

Among other things, it might have been for reasons like these that Rawls added his second principle of justice to the first. Rawls's first principle is much like Kant's Principle of Right. But Rawls also wants to make sure that political liberties have fair value for everybody. Those liberties concern the right to hold public office, to affect the outcome of elections and so on. For these liberties Rawls requires that citizens be not only formally but substantively equal. Citizens of similar talent and motivation should have the same opportunities to hold office and to influence elections. Kant worried about the privileges of the nobility, the advantaged of his day. Today the advantaged are different people, but a concern about their privileges is behind Rawls's second principle.

This first strategy of arguing for extended responsibilities is internal to ideas of justice that have already been presented. A second strategy is to argue that the state has responsibilities beyond what justice requires, as Rosen (1993), chapter 5, does. Rosen thinks that even though Kant understands justice in rather minimal terms, this does not mean the state has no further-reaching responsibilities towards its subjects, to wit, responsibilities of benevolence. Citizens have imperfect obligations of beneficence to each other, and rulers have them towards their subjects.

This strategy could be pushed by looking closely at what it means for duties to be imperfect. Again, perfect duties have several features: they must be enforceable *and* be narrow *and* not conflict with other duties. Logically, imperfect duties are duties that deviate from this conjunction in *some* way. Among such duties we may encounter duties that are not enforceable but normally sanctioned by heavy social pressure versus duties

whose violations trigger only mild disapproval; duties that must be met most of the time versus duties that only need to be met occasionally; duties that leave little to discretion versus duties that leave much latitude; and combinations thereof. Recall Tugendhat's insistence that while there is a difference between perfect and imperfect duties, the difference does not amount to much. This second strategy could hold that some duties of beneficence (e.g., the state's duty to assist its needy) are very close to duties of justice. In fact, this strategy could also hold that duties of beneficence are as stringent as duties of justice: they have the same significance and demandingness, and they always apply but only need to be acted upon only occasionally (except, as note earlier, in the case of groups with special needs, like old people). Qua duties they are as stringent as duties of justice, but the manner in which they materialize in actions is different.

Both strategies extend to the global level. Kant pays much attention to the international context, adding international and cosmopolitan law to domestic law. As he tells us, for instance, "since the earth's surface is not unlimited but closed, the concepts of a right of a state and of a right of nations leads inevitably to the idea of a *right for all nations (ius gentium)* or *cosmopolitan right (ius cosmopoliticum)*" (6:311; cf. 6:350-52). Freedom of individuals is not properly protected merely because the affairs of their country are in order. The international environment must also be properly regulated. O'Neill extends the first strategy to the international context. One could so extend the second strategy by charging international organizations with global benevolence.

8. Whereas Tugendhat thinks of it very broadly, Kant thinks of distributive justice very narrowly, indeed too narrowly. His approach blocks access to a range of problems that

are naturally classified as problems of distributive justice, problems about the distribution of something in a context where the division matters greatly for human life. While considerations of that sort can become available in Kant's theory, one way or another this must be done while acknowledging the central role Kant gives to *freedom* and *independence*. Since Kant thinks of justice in terms of what independent people can force each other to do at any given moment, justice becomes inapplicable whenever the preservation of independence is not what matters. Independence is the only source of the most stringent claims Kant believes we can make upon each other (perfect duties). [18] Tugendhat's striking image of the knights in full armor and with lowered visors comes to mind. Like Tugendhat I think Kant gets carried away with independence. Independence is not as central to our notion of justice as Kant makes it out to be.

By way of contrast, the grounds-of-justice approach lets us focus on a range of contexts where the distribution of something matters greatly to people's lives and where rather different criteria matter for determining what to do. Rather than the preservation of independence, in the domestic context, for instance, the relevant grounds for determining the most stringent duties is the presence of coercive and cooperative structures. The other grounds determine other contexts where most stringent duties are determined differently.

It follows that not all duties of justice are Kantian perfect duties. In fact, if perfect duties are moral absolutes, in the sense that all things considered they must always be performed, quite plausibly no duties of justice are Kantian perfect duties. On my account

[18] One might say that I have not established that Kant thinks of duties of justice as more stringent than duties of benevolence. After all, while there might be no particular instance in which those to whom duties of benevolence are owed can insist on fulfillment, failure to act on that kind of duty altogether would be as bad as failure to perform a duty of justice altogether (which would in that case be the same as not performing in in any one particular case). But the kind of exalted status that Kant generally accords to justice precludes that he himself could be open to this kind of possibility. Kanti*ans* could be, using the strategy sketched above that seeks to diminish the differences between perfect and imperfect duties.

duties enter as follows. In a first step we establish grounds and principles of justice. In a second step, we assess how the principles apply to different entities. In a third step, finally, we assess which individual or institution has to do what in pursuit of the various principles. "Duties of justice" are duties that different entities have *in pursuit of justice.*

The debate about duties that is so heavily informed by Kant's approach provides useful vocabulary, including the distinctions between positive and negative and perfect and imperfect duties. But we need more fine-grained vocabulary to capture the different duties of justice. In fact, efforts to limit the distinctions in the realm of duties to those just mentioned would be rather obsolete at this stage of thinking about obligations at the global level. As far as human rights are concerned, *On Global Justice*, chapter 11, makes some proposals (to some extent drawing on Nickel (1993)) that we can adapt to the more general question of how to describe duties of justice.[19]

To recapitulate, all entities in the global order – including individuals -- have the duty to "refrain" from human rights violations. Primary responsibility for realizing human rights lies with states. States must "protect" and "provide" human rights to their citizens. They must not only refrain from violating rights, but also protect individuals within their jurisdiction from abuses by third parties. When it is in the nature of the rights in question - think of social and economic rights -- states must provide them to begin with. States must also "assist" other states with the realization of such rights if those are incapable of doing so themselves. They must "interfere" if other states are unwilling to maintain an acceptable human rights record. Duties of assistance and interference are held alongside other states, and may be exercised through international organizations.

[19] This is a "more general" question because human rights are now integrated into a theory of justice.

Since states have these duties of assisting and interfering, they must also "record" the human rights performance of other states, especially those with which they interact regularly (e.g., through trade).

International organizations too must "assist" states in discharging duties, and "interfere" if states are unwilling to maintain an acceptable record. They have the additional responsibility of "supervising" the human rights records of states, in any event in the domain of their activities (e.g., the WTO in the domain of trade). Businesses too have duties, especially transnational corporations with great impact on societies. A 2008 UN report plausibly distinguishes between a duty of states to "protect" human rights and that of businesses to "respect" them (Ruggie (2007), (2008)). States must set appropriate incentives. Companies should be legally obligated to adopt due-diligence standards to ensure human rights are respected.[20]

All of these are "duties of justice" in the sense that they accrue in pursuit of justice. Some are perfect, some imperfect, and the imperfect ones might be wide-ranging in nature (as we noticed earlier). But indeed, not all duties of justice are perfect. They could be only on a very narrow understanding of what justice requires. As far as Kant is concerned, that narrowness consists in the excessive focus on independence, on conceptualizing the moral clientele as knights in body armor and with lowered visors.

9. Let me conclude. Both Tugendhat and Kant offer theories that draw on important aspects of our pool of intuitions of justice, what one may call the language game of

[20] International human rights law features a range of efforts to introduce fine-grained vocabulary to describe human rights duties; see Koch (2005). For an overall account of bringing human rights and business together, see Ruggie (2013).

justice. Tugendhat applies the notion of distributive justice very broadly, to all contexts where goods and bads must be divided up. But he neglects the distinction between contexts where it merely so happens that groups have something to distribute, and contexts where it is of great moral significance that certain groups distribute certain things. He touches on this subject when he argues how human rights should be understood as providing minimal justice, but does not follow through by exploring what it is about other contexts that makes it morally very significant that a certain kind of distribution occur. The grounds-of-justice approach does so. Grounds, distribuenda and principles of justice should be investigated together, in one coherent theory.

As opposed to Tugendhat, Kant has a very narrow understanding of distributive justice. His political philosophy provides tools for arguing for a more substantial understanding of justice than what is captured by absence of deception and illegitimate coercion. But even to the extent that this is possible, such efforts must focus on Kant's central idea that the core normative fact about politics is that it is concerned with independent agents who cannot be forced to devote resources to private purposes of others. Such a narrowing of justice is plausible only if we agree with Kant on the overwhelming significance of this kind of independence. But since we should not do so, we cannot limit duties in pursuit of justice to Kantian perfect duties.

In a nutshell, my theory should be chosen over Tugendhat's because it gives an appropriate place to inquiries into contexts where certain groups ought to distribute certain things. It should be chosen over Kant's because it has an appropriately broader understanding of the circumstances and conditions under which the kind of especially stringent claims arise in human affairs that are characteristic of justice. It is for these

reasons that we should, and coherently can, bring a broad range of human affairs under the purview of justice (though not as broad a range as suggested by Tugendhat) but can also think of demands of justice as the most stringent moral demands.

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