

THE CONCEPT AND ONTOLOGY OF JUSTICE

Ingvar Johansson

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Department of Philosophy and Linguistics

Umeå University

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Thesis: *Justice is to many-directed equal benevolence
what prudence is to many-directed self-regarding desires.*

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1. Concept and conceptions of justice

Most people invoke justice. This is true of children as well as adults, of men as well as women, of minorities as well as majorities; it holds true even of contemplative philosophers. The concept of justice is firmly entrenched in ordinary language, but our everyday discussion of concrete issues of justice relies heavily on tacit presuppositions, which, as the continuing discussion within philosophy shows, are difficult to clearly identify. In the introductory pages of a *Theory of Justice*, John Rawls (following H. L. A. Hart) makes a distinction between the *concept* of justice on the one hand and *conceptions* of justice on the other, and says that the project of his book will be to work out a *conception* of social justice.¹ Thus, in order to get started, Rawls takes some semantic content of the term “justice” for granted; what exactly he takes for granted, I will comment upon in due course.

This paper is concerned with examining Rawls’ very starting point. Specifically it is concerned with the question of what the concept of justice contains (a semantic question), and with the question of what has to exist in order for this concept to be applicable (an ontological question). I will stress the ontological aspect and will take it for granted that clarification of this aspect amounts to providing clarification of the content of the concept as well. My opinion is that to specify the conditions under which a concept is applicable is also to specify the semantic content that this concept contains.

My talk of “the concept” of justice does not imply or presuppose that there is a concept of justice that exists in some Platonic realm. To the contrary, I think that no concept can exist independently of all speech acts, and part of the project of my paper will be to show how I think reflections on justice may be motivated by situations in which no concept of justice was originally involved. The use of the word “concept” is merely meant to indicate the fact that my analysis is intended to be independent of the words used in particular languages such as English, German, and Swedish.

As Rawls is using the concept-conception distinction, the concept of justice can be said to function as a *regulative idea* for conceptions of justice.² This means that it does not provide detailed information about what the conceptions of justice look like, but is nevertheless able to provide some guidance in the search for such conceptions. The goal of my analysis will be to explain what it is in virtue of which the concept of justice is able to play this role.

The concept of justice contains some purely formal desiderata. Where there is justice, there is a *proper balance*, *no arbitrary distinctions* are made, *equals are treated equally* and *unequals treated unequally*, and there is some kind of *impartiality*. Rawls and Hart seem to take such a list of formal requirements as constituting the whole semantic content of the concept of justice.³ In doing so they implicitly identify the concept of justice with what has been called *formal justice*.⁴ I think this is wrong. My contention is that even in the logically primordial concept there is something substantial to be found. After establishing this contention in the main sections of the paper I will argue in section 9 that as a matter of fact Rawls himself assumes there to be more to the concept of justice than merely these formal features.

¹ Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1972), p. 5; H. L. A. Hart, *The Concept of Law* (Oxford: The Clarendon Press, 1961), pp. 155-159. Even though Rawls takes over the distinction from H. L. A. Hart, the terms used are his own. This distinction is neglected in the philosophy of justice – even after Rawls. In the light of Hart’s and Rawls’ distinction, a book like, for example, D. D. Raphael, *Concepts of Justice* (Oxford: Oxford University Press, 2001), had better been called “Conceptions of Justice”.

² A regulative idea has semantic content, but it has not content enough to be directly applicable to anything in the spatiotemporal world. It is only indirectly applicable by means of a conception that falls under it. Nonetheless, it is able to direct search for such conceptions.

³ Rawls, *A Theory of Justice*, pp. 5 and 10, and *Political Liberalism* (New York: Columbia University Press, 1996), p. 14, note 15; Hart, *The Concept of Law*, p. 156.

⁴ Chaim Perelman, *The Idea of Justice and the Problem of Argument* (London: Routledge & Kegan Paul, 1963); he calls the opposite of formal justice “concrete justice”.

“Justice” is a concept that is meant to be applicable in this world. If it has a partly non-formal content, as I just claimed, then it should be possible to describe some possible situations in which this non-formal content is displayed. Semantics and ontology are neither identical nor completely distinct; they overlap. As children learn the content of most concepts by veridical perceptions of the corresponding extensions or by successfully performing the actions that are talked about, philosophers may be able to achieve a clearer view of the content of some problematic concepts by looking at certain non-actual but logically possible situations and actions to which the concepts are relevant.

In order for a non-formal concept to be correctly applied in non-fictional discourses, there has to be something in the world that makes the application correct. With respect to the concept of justice, I would like to distinguish between *general* and *specific* ontological presuppositions for its application. One general ontological condition for the application of the concept justice (and injustice) is the existence of agents that endure in time. In order for there to be justice, there must be both agents that can be treated justly or unjustly and agents who can succeed or fail in performing just actions. Agents here may be either individual persons or collective agents, i.e., groups, institutions, or whole societies. Another general condition for the application of the concept justice is that there exist manifest or latent conflicts. Where not even latent conflicts exist, there can be neither justice nor injustice. In short, in order for the correlative concept pair “justice–injustice” to have meaningful applications, it is at least necessary that there exist both agents and conflicts.

To tell what the specific ontological presuppositions of justice are would be to state the conclusions of this paper. The view I will argue for can be captured in the following motto: *Justice is to many-directed equal benevolence what prudence is to many-directed self-regarding desires.*⁵ The specific ontological preconditions of justice involve a combination of benevolence and practical reason directed at achieving the goals that this benevolence prescribes. In a society where all agents lack either benevolence, practical reason, or both, the concept of justice will, on my analysis, have no applications. In such situations it probably cannot even be learned or taught. Like most mottos, the motto I have just given will have to be stretched a bit in order to fit all examples. Nevertheless, it captures the essence of my analysis.

My views are in no ways contradicted by the fact that when a certain *conception* of justice is an official norm, people can act justly by conforming to such a pre-given conception out of mere habit, out of fear for punishment, or in order merely to satisfy some completely self-regarding desires. But my analysis implies that without benevolent desires (a) no conception of justice can be created, and (b) no just actions can be performed simply for the sake of justice.

In this paper the concept of benevolence is used in a broad sense. It should be understood as a determinable that subsumes a range of more determinate positively other-directed affections; for example, feelings, emotions, sentiments, or attitudes. There is currently no established term for such a determinable, and for various reasons I have chosen “benevolence”. In particular, I will discuss love, friendship, sympathy, and respect as being determinate forms of benevolence. All of these contain (i) a cognitive component that gives them intentionality, i.e., a direction at something, (ii) a positive affective component, and (iii) a general (even if very weak) *tendency* to act in favor of the objects of the form of benevolence in question.

⁵ Compare this motto with Joseph Butler’s statement (1726): “there is a natural principle of *benevolence* in man, which is in some degree to *society* what *self-love* is to the individual.” *Five Sermons* (Indianapolis: Hackett Publishing, 1983), p. 26.

Prudence should be understood as follows.⁶ When one tries to be prudent, one distances oneself from one's immediate desires, beliefs, and situation. This step back is taken in order to make it possible for one's reason to operate in a more objective fashion regarding one's desires and beliefs. Exercising prudence makes it possible to consciously deliberate about how to do the right thing or, at least, how to avoid doing very wrong or foolish things. Thus the very concept of prudence has built into it a distinction between doing right and doing wrong. The reasons that are considered in attempting to determine how one should act, be they general or particularistic,⁷ are not *merely* first-person reasons; they also have an objective content, can be discussed with others, and are applicable in all relevantly similar situations. When prudence is exercised the resulting intention to act is at least partly grounded in reasons, and therefore cannot be regarded as being on a par with brute unmotivated desires such as desires for food and pleasure. If such an intention is called a desire, it must at least be called a *motivated* desire. A prudent person is not completely absorbed in the present when reflecting on what to do. Such a person takes it for granted that she has an enduring personal identity, which means that she must always take into account both what her present desires do look like, and also what her future desires may look like. When such a person is benevolent, she also takes some account of the possible future desires of the intended beneficiaries of her benevolence.

2. Lady Justice

The concept of justice is not only well entrenched in our everyday language, it is well entrenched in our pictorial symbolism as well. There is a rather straightforward route from ancient pictures and sculptures of the Goddess of Justice to the corresponding secularized depictions of Lady Justice that have been created in the modern world. This woman is sometimes carrying a sword and sometimes not, sometimes she is blindfolded and sometimes not, but she is always lifting a scale. The analysis to be presented in this paper will be true both to what varies and to what does not vary in these depictions. Let me outline.

⁶ At least in outline, I take this to be Thomas Nagel's analysis of prudence. See Nagel, *The Possibility of Altruism* (Princeton, N. J.: Princeton University Press, 1970; in paperback with an important postscript, 1978); *The View From Nowhere* (New York: Oxford University Press, 1986); *The Last Word* (New York: Oxford University Press, 1997), see in particular the summary on pp. 108-110. Whatever Nagel thinks in detail, I have made my concept of prudence compatible with John Searle's analysis of practical reason; Searle, *Rationality in Action* (Cambridge Mass.: The MIT Press, 2001). Even though Nagel and Searle focus on different things and argue in different ways when they criticize the classical model of rationality and the belief-desire model of action, there is, not astonishingly, quite an overlap in their positive views. In my opinion, prudence (a term not used by Searle) requires the existence of (in Searle's terms): "desire-independent reasons", "gaps", and "non-Humean selves" that can fill the *gaps* with actions. Nagel, by the way, writes: "the standpoint of decision [...] introduces a subtle but profound gap between desire and action, into which the free exercise of reason enters (*The Last Word*, p. 109)."

⁷ Even though I am leaning towards the form of moral particularism that is expounded in Jonathan Dancy's *Ethics without Principles* (Oxford: Clarendon Press, 2004), I regard the abstract view on prudence that I have presented as being compatible with both particularism and generalism. To me, Dancy's book represents a modern analytic-philosophically improved defense of classic Aristotelian "phronesis". Dancy's particularism is not subjectivist. He writes: "Deliberation is the first-person version of this process [of knowing reasons], but the process itself is not essentially first-personal (ibid. p. 143)." It should also be noted that Dancy accepts the notion of "default reason"; see chapters 6.6, 8.1, 10.2, and 11.2. Even if there are in Nagel's and Searle's writings (see preceding footnote) a generalist tendency, I think that their positions do not need a stronger concept of "general reason" than one of "general default reason that can be overridden by situational holistic reasons". Nagel writes: "we perceive, often inaccurately, that there are certain reasons for action, and go on to infer, often erroneously, the general form of the principles that best account for those reasons (*The View From Nowhere*, p. 148)."

I think there are three highest genera or *kinds of justice*: distributive justice, retributive justice, and commutative justice.⁸ Even though the exact boundary lines are hard to draw, and might even have to be drawn by fiat, there are bona fide distinctions between the prototypical cases of distributive justice (just allocations of things such as money, resources and status or honor), of retributive justice (just punishments), and of commutative justice (just agreements and economic transactions).⁹ When Lady Justice is concerned with retributive justice, she is carrying the sword. Otherwise she is not.

It is often said that Lady Justice is blindfolded in order to symbolize the impartiality of justice. She should not be able to see whether or not she is judging beloved relatives and friends, people towards which she is indifferent, or people towards which she has a negative attitude. But, one may ask, why then is she not *always* depicted as blindfolded? The obvious answer is that she needs no blindfolding when, in fact, she is indifferent. Part of what I will show is that there are cases when she can have strong feelings and nonetheless automatically be impartial with her eyes wide open.

The scale in the hand of Lady Justice can symbolize both the act of weighing and the result of such an act. Mostly, I think, the scale is taken in the latter sense, but I will stress the preceding process as well: the search for justice itself. When one puts two things on a scale and one is trying to find out whether they are of equal or unequal weight, one is *reflecting* on what the weight relation in question is. Similarly, the search for justice involves reflective rationality. Of course, it is possible to conform to a pre-given *conception* of justice and its rules unreflectively (be it spontaneously or by habit), but the *concept* of justice is, I will argue, essentially connected to the perception of problems and reflection on these problems.

Both individuals and collective agents can be just, and Lady Justice can symbolize both. Most philosophers interested in providing a general account of justice think, as Plato famously did, that in order to get a clear view of the concept of justice one should first attempt to determine what a just society should look like, and only then approach the question of what just persons and just personal actions might look like. My position is that it should be taken the other way round. Thus in section four I start with an examination of justice in one man's soul.¹⁰ Section three is devoted to some necessary preceding methodological remarks.

⁸ "Kinds of justice", as I am using the term, differs as a classificatory dimension from both "kinds of *objects* of justice" (e.g., personal justice, national social justice, and international justice) and "kinds of *principles* of justice" (e.g., Robert Nozick's distinctions between historical and non-historical principles and between patterned and non-patterned principles; Nozick, *Anarchy, State, and Utopia*, Oxford: Basil Blackwell, 1974, chapter 7: I).

⁹ My view of this Aristotelian tripartition – *Nicomachean Ethics* book V (1130^b 29–1131^a 10) – is as follows. Aristotle lumps together retributive and commutative justice into *rectificatory* justice, which is, for him, one of only two highest genera of justice; the other being distributive justice. His reasons for such a subsumption schema are hard to understand. Retributive justice is of course always rectifying, but commutative justice seems to be as able as distributive justice to exist non-rectified. Conversely, and obviously, there can be rectificatory distributive justice, either as a simple re-distribution or as a compensatory distribution.

¹⁰ Such an approach to justice is also urged by Robert C. Solomon in "Sympathy and Vengeance: The Role of the Emotions in Justice", in S. H. M. Goozen, et al (eds.), *Emotions: Essays on Emotion Theory* (Hillsdale, New Jersey: Lawrence Erlbaum Associates, 1994), pp. 291-311; see especially p. 309. Note, though, that my approach does not imply that "justice as virtue" becomes the logically primary concept of justice. To the contrary, I think such a view is incoherent. Since a certain virtue is a *habit* to perform actions of some kind, the virtue of justice must consist in a habit to perform just actions, and what constitutes a just action cannot be defined by the habit. That is, the concept of "just action" is logically prior to that of "justice as virtue". A truly just action is, I will argue, a certain kind of benevolent action.

3. Thought experiments, idealizations, and fictional situations

Thought experiments can be of different kinds. Instead of a Rawlsian *original position* that tries to make clear to us the *conception* of social justice, I will present some *original situations* that I think will make our *concept* of justice more clear. This approach requires some words about how different kinds of thought experiments can be useful in relation to different kinds of investigations.

To begin with, it is simply beyond doubt that thought experiments can be useful. The history of science proves this. In the work of men like Galilei, Newton, Maxwell, and Einstein, thought experiments play quite a prominent role. In economics, the traditional approach of microeconomics is based on the concept of *homo oeconomicus*. The true referents of this concept are persons (or households) that show no traces of irrationality and are capable of making, in a short period of time, relatively complicated means-end calculations. However, there are no such persons in the actual world. The perfectly rational man (in the sense of means-end rationality) is an idealization, and so is the market he is placed in. However, despite in this sense referring to an idealization, the concept of the rational man might be regarded as having a real referent. Insofar as one thinks that human beings have a specific capacity of rationality, then “the rational man” can be regarded as referring to this capacity. The actions of real people can thereafter be regarded as constituted by an interaction between a rational capacity and irrational factors.¹¹ Real actions can approximate rational actions either because the irrational influences happen to be weak or because the desire to be rational happens to be strong and sustained by much energy.

The purpose behind the rational man thought experiments of microeconomics is either to improve the understanding of a real causal mechanism or to make very broad predictions (or both). The purpose behind Rawls thought experiment with the original position is quite different, it is to justify. He says:

A final comment. We shall want to say that certain principles of justice are justified because they would be agreed to in an initial situation of equality. I have emphasized that this original position is purely hypothetical.¹²

In order to achieve his justificatory goal, Rawls has to put his “theoretically defined individuals”,¹³ which are idealizations like that of the rational man, not into an idealized situation such as an idealized market, but rather into a completely fictional situation. If the purpose was to improve causal understanding and/or to predict something in actual social reality, this procedure would have been odd, but in a justificatory context it can work. Often in our lives, actions first made because of sudden impulses, for fun, or by pure accident, add up to a pattern from which we later in life can distance ourselves, examine, and ask ourselves such questions as: “If, counterfactually, I had originally been in the position to see this pattern as a possible line of conduct of mine, should I freely have chosen it?” If the answer is “yes”, then the pattern is prudentially justified *ex post facto*. Looked upon in a similar way, social contract thought experiments can give rise to moral-political justifications *ex post facto*.

¹¹ This makes the economic man analogous to a realist interpretation of Newton’s idealization of “free motion”. In order to state his first law of motion (a body in free motion does not change either speed or direction), Newton had to make thought experiments in which he thought of bodies that are not in any way affected by other bodies. He could not observe such bodies in the world, and his theory even implied that they were in principle impossible in a world with more than one body. However, the state of motion characteristic of free motion is nonetheless regarded as real, and it has to be part of the calculation of every motion quite independently of how many other causal factors there are.

¹² Rawls, *A Theory of Justice*, p. 21.

¹³ Rawls, *A Theory of Justice*, p. 147.

Another kind of moral-philosophical thought experiments is often used by people who want to test whether someone else has *really* thought through all the consequences of his or her presumed deontological principles. For instance, pacifists have often to face and give their comments on fictional situations in which it is possible to save many beloved persons' lives only by killing one wicked person.

Now, let it be clear: the purpose of thought experiments in this paper is not to improve the causal understanding of just behavior, to make possible better predictions regarding just behavior, to justify a certain conception of justice, or to test whether justice can be regarded as a deontological norm. Rather, the purpose of thought experiments here is to make possible a better understanding of the very concept of justice and its ontological presuppositions. In this undertaking, it does not matter whether the thought experiments refer to idealized situations or to purely fictional ones. What my procedure concretely means cannot be told beforehand. As the proof of the pudding is in the eating, the proof of my method comes with the reading.

I call the idealized or fictional situations that I will describe “original”, since they do not contain any explicit concept or conception of justice, i.e., they are original in relation to linguistic expressions for justice. This means, among other things, that my “original situations” do not, by definition, contain any “sense of justice” *in Rawls’ sense*. He makes such a sense dependent on an explicit pre-existing conception of justice and says: “A sense of justice is the capacity to understand, to apply, and to act from the public conceptions of justice which characterizes the fair terms of social cooperation.”¹⁴ My project here is to show that there is also a more primordial sense of justice.

Even though my thought experiments are concerned only with justice, I do not presuppose that justice is an absolute moral principle, or that justice is, in Rawls words, “uncompromising”.¹⁵ At least when it comes to personal justice, the imperative “Be just!” is easily overridden by imperatives such as “Keep contracts!” and “Don’t lie!”. In the original situations to be presented, generalists can regard justice as a *prima facie duty* (in W. D. Ross’ sense¹⁶) that has become an actual duty simply because all other possibly intervening moral factors have been abstracted away. Similarly, particularists can regard justice here as a *default norm* that in the situation at hand is the actual norm.¹⁷

4. Creating distributive justice for others

In this and the next two sections, I will only present original situations concerned with distributive justice. When this has been done, I will say some words about how the analysis can be extended to retributive justice (section 7) and to commutative justice (section 8).

(a) *Benevolence in the form of agape love*

The first original situation to be presented is as follows. In a hunter-gatherer society there is a parent with two very young children. He loves his children, wants to give them a good life,

¹⁴ Rawls, *Political Liberalism*, p. 19; see also *A Theory of Justice*, p. 567.

¹⁵ Rawls, *A Theory of Justice*, p. 4.

¹⁶ W. D. Ross, *The Right and the Good* (New York: Oxford University Press, 2002; first published 1930), chapter 2. A *prima facie* duty becomes an actual duty when it is not overridden by another *prima facie* duty. Ross regards justice as one of several *prima facie* duties.

¹⁷ Dancy’s book *Ethics without Principles* contains the concepts “default reason”, “default value”, and “default meaning”, but not that of “default norm”. I think, however, that Dancy’s particularism easily allows for such an extension. As computers need default positions in order to function in general, human beings need default norms in order to function in society. I subscribe to what might be called “ethics with only default norms”. From this perspective, the norms defended in applied ethics can be reinterpreted as default norms for specific sectors of society. For more comments on Dancy’s particularism, see footnote 7.

and desires several things on their behalf. More abstractly speaking, his parental love contains strong other-regarding desires, i.e., desires that become satisfied only when other person's (the children's) desires become satisfied. Of course, he has self-regarding desires, too, but in many situations there is no conflict between his self-regarding and his children-regarding desires. In situations of conflict his children-regarding desires usually win, but now and then his self-regarding desires triumph instead.¹⁸ One day, however, a problem arises that creates a conflict for his children-regarding desires, one that does not involve his self-regarding desires at all.

The situation is as follows. Both of the children are very hungry, but the parent is not. He has been trying to get food enough for both his children, but he has only been able to snare one small animal; and the prospects of acquiring more food in the near future are very bad. They are out in the forest, and the children are so hungry that both of them try to take the prey from the parent, and keep it out of the reach of the other sibling. The children's age, along with the situation at hand, causes them to become completely egoistic and lose the limited capacity they have for waiting. Since the father not only loves his children, but loves them equally, he wants spontaneously to do the impossible: give the animal to both his children.

This situation resembles that of Buridan's ass. Instead of having two equally strong self-regarding desires to *take* something from two different places at the same time, the parent has two equally strong other-regarding desires to *give* one and the same thing to two different "places" at the same time. Buridan's ass was paralyzed by the situation, but since the parent is not an ass, he distances himself from his conflicting desires and starts to think.

He realizes that his children are wholly egoistic and, due to their age, this is to be expected. Therefore, the problem is his problem and his only. The external fight between the children is mirrored in his soul by a conflict between his two child-regarding desires.¹⁹ For some seconds he toys with the idea of just giving the food to one of the children in order to have the situation settled, but this seems to him to be wrong. In his reflective attitude, he has got what we, as modern spectators, can call "a will to be just".

Since the parent loves his children in such a way that he wants their best as individual human beings, he can from our philosophical perspective be described as implicitly being a small-scale Kantian, i.e., his love has such a character that he regards both his children as being ends in themselves. He does not even think of taking their individuality away, since this would mean taking his parental love away as well. Therefore, even though one of the children is much more of a finding-pleasure-in-food kid than the other, the parent does not entertain the idea of solving his problem by trying to maximize the overall pleasure without any regard to the individuality of his children. Such a move would in effect mean that in order to solve his distributive problem he would let a utility principle take away the individuality that gave rise to the problem. In this small-scale setting, the truth of Rawls' remarks that utilitarianism

¹⁸ Satisfying other-regarding desires does not imply "being an altruist" or "acting altruistically" in the everyday sense of the latter expressions. Outside of philosophy, an altruist is a person who seldom takes his self-regarding desires into account, and to act altruistically in a certain situation means to act other-regardingly *at a cost to oneself*. I find many philosophers' identification of "altruism" with "other-regarding behavior" linguistically unhappy. See, for instance, Thomas Nagel, *The Possibility of Altruism*, p. 16, note 1, and John Searle, *Rationality in Action*, chapter 5: III. Nagel and Searle are also, but consequently, tending towards a similarly odd identification of "egoism" with "self-regarding behavior"; Nagel, *ibid.* p. 84, and Searle, *ibid.* pp. 149-151. Satisfying self-regarding desires does not imply being an egoist or acting egoistically. An egoist is a person who either almost lacks other-regarding desires or seldom takes them into account. To act egoistically is to act self-regardingly in such a way that it brings foreseen costs to other persons. However, in many situations one can act self-regardingly without bringing forth such costs.

¹⁹ Of course, a "power balance" between the children may by accident give rise to the same distribution as the ensuing parental act of justice deliberately does. An analogous remark can be made about real social justice, too.

“does not take seriously the distinction between persons” and that it extends “to society the principle of choice for one man” comes out clearly.²⁰

Rawls’ remarks notwithstanding, the parent can make utilitarian-like deliberations while still keeping the individuality of the children in mind. Perhaps, he asks himself, he should take into account the fact that one of the children is much more prone to suffer from envy than the other? No, it does not seem right to give more to someone only because this person has a negative character trait. Should he give more food to the older child? Perhaps, but then only a little more. Normally, the children eat about the same amount of food. Perhaps he should give more to the kid who showed the most enduring desire to be helpful? Or to the one who really was inventive? These would be possibilities, but as a matter of fact neither child was really helpful or inventive; both were too tired. The parent continues to think for a while, entertains other proposals, but slowly a stable conclusion emerges: he will try to cut the prey into two equally large parts and give each kid one half, even though both of them needs the whole; if one part happens to become a bit larger, then he will give this part to the older child.

The situation described is intentionally constructed in such a way that it contains a this-worldly version of what many Christian theologians call “agape love” in contrast to “eros love”.²¹ Even though eros love normally contains many other-regarding desires, it is dominated by an overarching self-regarding desire that says: “I love you, I *want you!*” In eros love, we desire our beloved one mainly for our own sake. However, when such love is mutual it can, despite its self-regarding character, function nicely. It is then nested in such a way that on both sides there is the structure: “I want you, who want me, who want you”. An agape love, on the other hand, is dominated by an other-regarding desire that says: “I love you, I *want your best!*” It is a love of someone else for the sake of that person’s mere existence, not for his or her physical appearance, character traits, feats, or achievements; it is a love that merely wants to give, not to have or to take. Theologians who use this distinction claim that God loves all his “children” in this agapean way, i.e., he loves them unconditionally, equally, and quite independently of their more or less sinful deeds. In lucky cases in this world, parental love is similar. But since ordinary parents are not omnipotent and omniscient, they may have to face also agape love conflicts, and then use their reflective practical rationality as best they can.

Both godly agapean love (if there is a God) and parental agapean love (and parents there are) are top-down forms of love; cases where the loving person has much more power than the ones beloved. Therefore, the parental action described is a case of top-down justice. It is justice brought about by some power or authority for the sake of others; in this case it is justice created by a parent for the sake of his children.

The parent’s reasoning in this case involves at least five features; features that characterize ordinary prudential reasoning as well. First, there is agency. When the parent has distanced himself from the situation, he can deliberate freely (which, of course, does not mean that he can deliberate without restrictions). The resulting intention (or motivated desire) to give each child half of the prey was not among the original desires, and it did not come about by any pre-determined addition of the original desires.

Second, the resulting intention takes on a motivating force just as automatically as do intentions that are the result of self-interested means-end deliberations. A just action is for the parent the best means to reach his goal, namely to solve the problem of his conflicting other-

²⁰ Rawls, *A Theory of Justice*, p. 27; see also pp. 29 and 185-187. Utilitarianism simply has no concept for justice between persons. In what is called “justice from a utilitarian point of view”, the utility principle is allowed to override ordinary justice.

²¹ The classic is Anders Nygren, *Agape and Eros*, I and II (Philadelphia: Westminster Press, 1953). I take it here for granted that other-regarding desires cannot be reduced to self-regarding desires in which the agent thinks he should behave benevolently only in order late in life to benefit from his present seeming agapean love; more about this in section 7.

regarding desires. And, as Kant long ago pointed out, a rational person who wants an end has to want the means too.²² Or, to put it in Thomas Nagel's words: reason and motivational influence "are transmitted across the relation between ends and means."²³ John Searle rephrases the same insight by saying: "If I intend an end *E*, and I know that in order to achieve *E* I must intentionally do *M*, then I am committed to intending to do *M*."²⁴ Since the parent intends to solve his desire conflict (*E*), and he knows that in order to achieve this he must intentionally give each of the children half of the prey (*M*), he is committed to intending to give each of them half of the prey (*M*).

Third, the parent's other-regarding practical reasoning is, just like his self-regarding practical reasoning in other situations, concerned with desires that he himself has.

Fourth, in relation to self-regarding practical reason (prudence) it makes no sense to accuse an agent of being partial. Similarly, it makes no sense to accuse the described parent of being partial. Only other-regarding practical reason is at work, but he becomes automatically impartial because he loves his children *equally*. Therefore, there is no need to blindfold him in order to enable him to act justly.

Fifth similarity: the search for both prudent actions and just actions needs a regulative idea. When one searches for a concrete kind of thing, there is often a clear test of whether or not one has found what one is looking for. For instance, if one searches for a key that can open a door that is locked, then any key one finds that opens the door is the thing that was being searched for. However, many types of search for knowledge involve the predicament that Plato formulated as Meno's paradox: the search for knowledge is either superfluous or impossible. When one starts, one either knows what knowledge one is looking for, or one does not. In the former case, one already has the knowledge one is looking for, and there is no need to search for it. In the latter case, since one does not know what one is looking for, one cannot even begin the search. Therefore, the search for knowledge is necessarily either superfluous or impossible, whether the knowledge is sought by theoretical reason, by practical self-regarding reason, or by practical other-regarding reason. As far as I can see, any attempted solution that rejects Plato's conception of how knowledge is gained (knowledge by recollection) has to make at least implicit use of the notion of *regulative ideas*. Since, as a matter of fact, we can search for and sometimes find at least relatively true assertions and prudent actions, there must be something in the questions whereby the problems are posed that gives us some direction as to how to go about searching for and evaluating potential answers. This "something" is the specific regulative idea involved in the question at hand. When, in our case, the parent asks himself the question "What shall I do with my prey and my two very hungry children?", there is already in the question itself a regulative idea that makes him able to search for an answer.

It should be noted that there is a sense in which the parent here *finds justice*, since he *finds a solution to a problem*. This notwithstanding, there is also a constructive element; he also has to make *the decision* that what appears to him to be a solution really is a solution. From a modern legal point of view, the parent in the original situation is, at one and the same time, both a law-maker and a law-applier, but this is not logically strange. Many pre-modern societies, for instance the Nordic Viking societies, were law societies in spite of the fact that they did not distinguish between a law-making parliament and law-applying judges. Instead, wise men were appointed judges who should both apply some informally accepted pre-given rules and find and declare the law for non-rule situations.²⁵

²² Kant, *Foundations of the Metaphysics of Morals* (many editions), second section.

²³ Nagel, *The Possibility of Altruism*, p. 33.

²⁴ Searle, *Rationality in Action*, p. 266.

²⁵ See Mikael M. Karlsson, "Criminal Law and Judge-Made Law", in E. Attwoll and P. Comanducci (eds.), *Challenges to Law at the End of the 20th Century: Sources of Law and Legislation* (Stuttgart: Franz Steiner Verlag, 1998), pp. 142-167, sections 1, 2, and 12.

In the situation that I have described above there is an agent with a conflict, and thus the two *general* ontological presuppositions for justice that I have put forward are met. Also, the *formal* presuppositions of justice are met: the parent can truly be described as seeking a proper balance between his children, as trying to avoid arbitrary distinctions between them, as treating them as equals equally and as un-equals unequally, and as being impartial. But there is more, there is also a form of benevolence, parental love, and there is other-regarding practical reasoning. This benevolence and this practical reason constitute in the situation at hand the *specific* ontological presuppositions of justice. In short: the parent's just action is to his two-children-directed equal parental love what his prudential actions are to his self-regarding desires when they point in several directions at one and the same time.

The general point I want to make implies that factors that can make a difference with respect to justice – be it merit, need, work, age, or rank – can make such a difference only against a background of equality, specifically equality of benevolence. This has the interesting consequence that a complaint regarding unjust treatment can mean one of two things: either that factors such as merit and need are wrongly estimated, or that there is a lack of adequate benevolence. For instance, siblings may spontaneously think that they ought to be equally loved

(b) Benevolence in the form of friendship

Parental love contains top-down benevolence and unrequited caring. Friendship, on the other hand, contains mutual benevolence and some mutual caring, but only in the long run. In the short run, and even in the not-so-short run, it can and usually does also contain unrequited caring. Friendship has a peculiar feature of allowing intermittence. Friends that have not been in contact for years can, when they meet, start to speak as if they are just continuing yesterday's conversation. Furthermore, friendship-caring is not of the supervising type; when a friend needs help, she is normally capable of asking for it. Some friendship relations are deep and involve a great deal of intimacy and self-disclosure, whereas others are relatively superficial, being related mainly to work ("they are colleagues and somewhat friends"), hobbies ("they are fishing friends"), or some more undetermined spare time activities. There are other dimensions as well, as can be seen in distinctions such as that between male and female friendship. In all cases, however, friendship involves the understanding that "friendship duties" can easily be overridden, be it by parental love, eros love, work duties, or something else. The obligations typical of friendship are soft obligations. This being said, I will present an original situation for justice that depends on the existence of friendship.

An ethical nihilist is on holiday abroad. It is the last day of his holiday – tomorrow he will be back in his home town – and he is in a bookshop. Here, he discovers that this very day is the simultaneous release day for two new books, and in both cases the author belongs to his best friends' favorites. The nihilist immediately buys one copy of each book, and a warm feeling enters his body when he thinks about how happy his friends will be about the books. However, in the evening, on the flight home, he realizes that his benevolence towards his friends has created a problem for himself.

Our nihilist has in fact three very close friends, and in the situation at hand he wants to be equally kind to them, but his impulsive buying seems to have made this impossible. These three friends like to own the books they read. If there had been only two friends, he could have given them one book each. "But", he asks, "what is the right thing to do with three friends and two books?" After some thinking, he comes to the following conclusion: "I treat them for a beer and make a lottery with three lots and two winners; the winners, however, have to lend the prize books to the loser whenever he wants; even before they have read the books themselves." He tells himself that in matters like these one cannot be too pedantic; especially when the situation is complex. He feels relaxed again, and looks back with joy at the event of his impulsive buying.

When the nihilist solves his distribution problem, he does not think at all in terms of the concept of justice. He regards such talk as mere metaphysical nonsense. To him, justice is merely a term used in order to make people conform to norms that only the ruling elites benefit from. Nonetheless, he is (like the parent in the first example) able to think and act in a way that, from the outside, can be described as an attempt to treat other people (his friends) justly. And he can act justly without blindfolding, since he is equally benevolent towards his three friends.

Let me summarize. In the situation that I have now described (the second original situation), there is an agent with a conflict, and there are all the formal features of justice. The nihilist can truly be described as seeking a proper balance, as trying to avoid arbitrary distinctions between his friends, as treating his friends as equals equally, and as being impartial. But essential to the situation is also his friendship benevolence and his practical reason. In short: the nihilist's just action is to his three-friends-directed equal friendship benevolence what his prudential actions are to his self-regarding desires when they point in several directions at one and the same time.

(c) Benevolence in the form of sympathy

Here comes the next original situation. There is a person who has been raised in a small village but presently lives somewhere else. He is quite sympathetic towards the whole village and its inhabitants, where, by the way, some good friends and relatives are still living. One fall the village becomes flooded by the near-by river. How should he help? All the people in the village need money in order to re-build their homes. He has money and he wants to help everybody, but should he really help everyone equally? Shouldn't he help his friends and relatives more? Or alternatively, shouldn't he help those with the greatest damages more than the others? He thinks about it, and his first conclusion is that this is such a special occasion that he should not think in terms of relatives, friends, and others. This situation, he tells himself, has more to do with his general sympathy for all the people in the village than with his relations to friends and relatives. Thinking in these terms, his reflections end in a decision to differentiate his gifts according to the damage suffered.

The man described does not think in terms of "How shall I act justly?", only in terms of "What shall I do to help them?" or "What is the right thing for me to do?". Since he considers only his own (other-regarding) desires, the last question has the same form as a corresponding prudential question. Nonetheless, he can from our spectator point of view be described as searching for the just approach in his gift distribution. Here then is another case of top-down justice directed towards others.

In this third original situation, as in the former ones, there is an agent with a conflict, and there are all the formal features of justice: proper balance, no arbitrary distinctions, equality/un-equality, and impartiality. There is also benevolence and other-regarding practical reason, but this time the benevolence comes in the form of sympathy; love and friendship have for the moment been put within parentheses. In short: the person's just action is to his many-others-directed equal sympathy what his prudential actions are to his many-directed self-regarding desires.

5. Creating distributive justice for oneself by means of oneself

In this section, I will briefly sketch how justice can enter situations where some of a person's self-regarding desires are, by that person himself, put on a par with some of his other-regarding desires.

(a) Self-love versus benevolence in the form of agape love

The next (fourth) original situation takes place in the same hunter-gatherer society as the first one, and involves the same parent. This time, however, he is out in the forest with only one child. He is very hungry, and so is the child. He has been trying to get food enough for both of them, but he has only been able to snare one small animal. His hungry child tries, but fails, to take the whole prey from him. What shall the parent do? Spontaneously, he wants both to eat the prey himself and to give it to his child. Since he has all the power, and it is meaningless to try to discuss the situation with his very young child, the problem is his alone. He is faced with a conflict between his self-love and his parental love.²⁶ He has one self-regarding desire and one equally strong but conflicting other-regarding desire. After some reflections on his own well-being, his child's well-being, and the prospects of getting more food tomorrow, he thinks that the right thing to do is to take two thirds himself and to give one third to the child. I think it can be called a just decision. The parent lets his self-love become restricted by his parental love and his parental love by his self-love. Because of this, he is able to create justice between himself and his child. Since he has all the power, he might be said to create justice for himself wholly by means of himself.

In this situation the formal features of justice include: proper balance between parent and child, no arbitrary distinctions between parent and child, the absence of un-equal treatment all "local" needs considered, and – because of all this – impartiality. Since self-love might be called self-benevolence, I can even here apply my motto and state: the parent's just action is to his self-and-child-directed equal benevolence what his prudential actions are to his many-directed purely self-regarding desires.

(b) Self-love versus benevolence in the form of friendship and sympathy

Parental agapean love can become restricted by self-love, and vice versa. Trivially, friendship and sympathy can become restricted by self-love. However, I am not sure that, conversely, friendship and sympathy can restrict self-love to more than a marginal degree. In general, they seem to be too weak to be able to contest a person's central self-love. Now, whether I am right or wrong, this is my reason for not presenting an original situation where one creates "justice for oneself by means of oneself" in relation to friends and sympathetic persons.

6. Creating distributive justice in mutuality

In the original situations presented so far, all the conflicts are conflicts between desires that belong to one and the same person. Both in "justice for others" and "justice for oneself by means of oneself", the problem of justice is a one-person affair. In this section, however, I will discuss conflicts between desires that belong to different persons. When the persons involved – together – find the right thing to do, I will say that they create "mutual justice". Two new forms of benevolence will now enter the picture, two different forms of respect, esteem-respect and reverence-respect, respectively. Love, friendship, and sympathy, which I have used as illustrations so far, seem to have such a character that they cannot ground justice; why will be made clear in subsection *a* below. In subsection *b*, I will present an original situation that contains a small group of people with mutual esteem-respect, and in subsection *c* I will sketch an account of how reverence-respect in principle can ground national social justice and global justice.

²⁶ The concept of *self-love* used must not be conflated with any concept of *true* self-love. Self-love is here contrasted with benevolence (cf. Butler and Hume), whereas true self-love may essentially include benevolence.

(a) *Mutual justice in relation to love, friendship, and sympathy*

Even between people where there is mutual love or friendship, problems about how to distribute goods and services may arise. These problems are similar to those that arose in the original situations already discussed. There is benevolence involved, and when a loving pair or a group of friends try to solve such problems, they will in their deliberations in all probability adhere to the formal features of justice. Nonetheless, it might be argued that in such cases all of the requirements for justice are not necessarily met. Since the existence of conflicts is an ontological presupposition for the applicability of the concept pair “justice-injustice”, it might be claimed that in cases of love and friendship conflicts cannot genuinely arise, and that thus “justice” and “injustice” are not strictly applicable to such cases. With respect to mutual agape love this might well be by definition true, but not so with eros love and friendships. Most of these do in fact involve a dose of conflicts. This notwithstanding, according to some romantic ideologies that surround love and friendship, the latter *ought not* contain any conflicts. Because of this, many persons see conflicts as non-natural parts and a degradation of the relationship.²⁷

This view leads to a tendency to think that justice is needed only where true love and true friendship fail. In other words, the idea is that where there are strong forms of mutual benevolence there should be no conflicts and, therefore, no problems of justice. When we look at mutual benevolence in the form of mutual sympathy, we meet the converse case. Mere sympathy is, it seems to me, mostly too weak a feeling to be able to restrain different people’s conflicting self-regarding desires. Mutual respect, however, is neither too weak nor too strong to ground mutual justice.

Respect for a person is often respect for this person’s more powerful position, but power-respect is not the only form of respect, and not a form that can ground justice. There are at least two kinds of respect that are not power-based and that contain a grain of benevolence; one grows out of competitions and one comes from principles. From a historical-philosophical point of view, the analysis of competition respect can be associated with Nietzsche and the other with Kant. Since the first analysis brings in esteem and the second reverence, I will call them “esteem-respect” and “reverence-respect”, respectively. Pure power-based respect does not contain any benevolence and so will not be discussed

(b) *Benevolence in the form of esteem-respect*

It is an empirical fact that personal respect often emerges as a result of a fight or some kind of competition. In such cases, when the struggle is (at least for the time being) over, the persons involved distance themselves from the struggle and ascribe to each other a certain degree of excellence with regard to a capacity that was important in the struggle. Politicians belonging to different parties can in this way respect each other as politicians; philosophers of different opinions can respect each other as philosophers; boxers can respect each other as boxers; etc. – even if they happen to dislike each other as persons. If they don’t, they may become friends in spite of continuing competition. Esteem-respect can also often be found among children. At the extreme, as history tells us, we can even find people who respect each other despite the fact that only a short time ago they were trying to kill each other; in such cases people can be said to feel esteem-respect for each other’s capacity as warriors or soldiers. Esteem-respect always focuses on a specific capacity of the person respected. When one says that one respects a person *as a person*, one often means that one respects this person’s moral integrity, i.e., his moral *capacity*.²⁸

²⁷ They ought to read the sociologist Georg Simmel’s classic (1908), *Der Streit* (“Conflict”; many editions). Simmel makes it clear that conflicts are sometimes integrating and sometimes disintegrating.

²⁸ The statement “I respect him, *as a person*” is about another kind of respect than the respect spoken of in the statement “I have respect for persons”, meaning that – on principle – one respects all human beings. The latter is a kind of reverence-respect.

According to Nietzsche, as soon as a “noble soul” has accepted that his egoism “is justice itself”, such a soul also acknowledges that “there are other equally privileged ones”, and then:

he moves among those equals and equally privileged ones with the same assurance, as regards modesty and delicate [esteem-] respect, which he enjoys in intercourse with himself [...] It is an *additional* instance of his egoism, this artfulness and self-limitation in intercourse with equals—every star is a similar egoist; he honors *himself* in them, and in the rights which he concedes to them ²⁹

To ‘honor oneself’ must here be interpreted to mean ‘honor one’s great capacities’. In my opinion, Nietzsche’s remark contains a kernel of truth; esteem-respect for another person’s capacity does often in disguise contain some self-love of one’s own similar capacity. However, he overstates his case. Such respect is always also an appreciation of the corresponding capacity as such. If Nietzsche’s analysis of respect were the whole truth, then talk of *respect for nature and the elements* would not even make metaphorical sense. In a way, farmers, gardeners, hunters, mountain climbers, etc. are fighting or competing with nature, and, normally, they respect nature, since they know quite well both the strength of their “opponent” and their own capacity. But it would be false to say that they honor themselves in nature. In spite of quite a number of acute observations of how man’s self-interest can set itself through in seemingly other-regarding actions, Nietzsche’s attempt to show that all other-regarding desires are self-regarding desires is a failure.³⁰

Esteem-respect resembles admiration, but is distinct from it. Admiration is (like power-respect) asymmetric, but face-to-face esteem-respect is symmetric. Esteem-respect is respect among equals. In cases of pure admiration of another person’s capacity, one thinks of oneself *either* as not at all being able to compete with the admired person, *or* as being in principle able but not in fact so competing. In the latter case, there is a potential conflict, in which case admiration and esteem-respect become neighbors. For example, I would never say that I respect a good musician as a musician, I am simply too unmusical; I just admire them. However, with regard to good university bureaucrats, things are a little different. Although I can admire such a bureaucrat as a bureaucrat, this admiration differs from my admiration of musicians. It has a stroke of respect in it. The bureaucrat is in general the real expert, but I can imagine situations where I would have a good but competing opinion about what to do. In short, I am not able to quarrel about music with the good musician whom I will always just admire, but there are potential quarrels with the bureaucrat whom I now admire but later may come to respect.

Esteem-respect has an affinity not only with admiration, but also with a very different emotion or attitude, fear. There is in esteem-respect something like a fear of being beaten or being non-victorious. This comes out more clearly in those cases where the emergence of esteem-respect does not lead to continued competition, but to avoidance of competition. Many a school-yard has witnessed how a boy that has been repeatedly teased and beaten, one day, in an outburst of anger, turns back on his tormentors and shows a strength that is at least equal to theirs. After this event, the former tormentors show esteem-respect for their former prey, and there is in their respect an obvious fear of being beaten by him. Nonetheless, esteem-respect has such a nature that it contains benevolence, too. Where there is equality in capacity but no respect, there is no benevolence.

The fact that esteem-respect resembles both admiration and fear, does not mean that it consists in a fast oscillation between admiring and fearing. On the contrary, it is distinct from

²⁹ Nietzsche, *Beyond Good and Evil* (many editions), paragraph 265.

³⁰ For remarks on flaws in Nietzsche’s analysis of fellow-feeling and pity, see Max Scheler, *The Nature of Sympathy* (London: Routledge and Kegan Paul, 1954), pp. 17-18 and 39-42. It is of course also a flaw in Nietzsche’s philosophy that he too easily takes esteem-respect to be the only kind of respect there is.

both and has a nature of its own. Otherwise, it would not be the peculiar form of benevolence that it is.

By creating the expressions “tragicomic” and “love-hate”, we have made it possible to refer directly to at least two emotional experiences that contain a complete fusion of negative and positive affections directed at the very same object. In a similar vein, esteem-respect can be called “fear-admiration”. It is a distinct Gestalt in which, from an analytical point of view, we can discern both a negative and a positive attitude directed at one and the same capacity of one and the same person.

The following is an original situation that has esteem-respect as its form of benevolence. There is a small chess club with fifteen members; a year ago they were sixteen. For most of the members it holds true that they like some other members as persons, are indifferent towards some, and very much dislike a few. Some members have become good friends, and they meet quite often also outside the chess club; there are at the moment even two members who have fallen in love with each other. As chess players, however, all the members do really esteem-respect each other mutually and equally. For reasons of old political animosities, the regulations of the club contain a paragraph that says that, in club meetings, the members are not allowed to discuss politics and political philosophy. At the moment, the club has a distributive problem. A member that died last year has donated quite a sum to the club, with the prescription that it should “be used to make it possible for the members to participate in more foreign chess tournaments”. Since all the members are keen on playing abroad, it is not an easy task to divide the sum between them. When they meet to discuss the issue, and to take the decisions needed, the following happens.

The two members that are in love have at first a strong impulse to argue that, because of their well known relationship, they should be allowed to go to the most expensive tournament, which only allows two participants from their club. In each circle of friends, there is at first a tendency to think that they and their friends should get a more substantial amount than those who they dislike. However, it doesn’t take long before everyone starts to think that only their chess capacity, which is equal, should count when they try to find the *right* decision. They voluntarily, so to speak, blindfold themselves with respect to personal feelings. Since they are accustomed not to use terms with political flavors, no one uses the words “just” and “justice”. Nonetheless, they come unanimously to decisions that an egalitarian should be quite pleased with. From the egalitarian’s perspective, the decisions are just.

One thing has here to be added. I have chosen an egalitarian situation in order to make the reasoning simple. If the club had ranked their members, which is quite common, the members would probably have decided to distribute – in a just way – the travel money according to rank. As stressed by Perelman, the formal features of justice are applicable even in cases of what might be called hierarchical justice.³¹ Rank is then not regarded as an arbitrary distinction, which means that proper balance becomes proper balance between different ranks; people of the same rank should be treated equally and people of different ranks unequally. The impartial spectator is supposed to find the ranking adequate.

To summarize, in the situation described (the fifth original situation), there are to begin with fifteen agents with some conflicting desires. After a while, however, all of them seek to find a proper balance between themselves as chess players; they try to avoid making arbitrary distinctions amongst themselves as chess players; and as chess players they try to treat equals as equals and un-equals as un-equals; the latter they do in an impartial way. They can behave like this because: (i) they feel the kind of benevolence that is contained in mutual esteem-respect, (ii) their esteem-respect is equal, and (iii) they are capable reflectively to relate to their mutual respect. These respectful persons’ just decisions are to their many-others-directed equal esteem-respect what their prudential actions are to their self-interest.

³¹ Perelman, *The Idea of Justice and the Problem of Argument*. See also the comments on Perelman made by D. D. Raphael, *Concepts of Justice*, pp. 168-176.

(c) *Benevolence in the form of reverence-respect*

If there is a form of benevolence that can ground justice outside families, friends, small groups, and tribes, it has to be such as to make the benevolence flow even towards completely anonymous and unknown people. Love brings with it neither a need nor a requirement to love unknown persons; not even if they happen to resemble one's already beloved one exactly. Similarly, friendship brings with it no need or universalizability requirement that says that one should become friends with all persons that resemble one's best friends. There is here rather an anti-universalizability principle at work; one does not want to love too many, and one does not want everybody as one's friend.³² Sympathy is different, but only a little. It is natural to find sympathetic all people who resemble those one has already found to be sympathetic, but only if one meets them. Not even in sympathy is there a need or requirement to extend one's affections from those who one knows to those who one does not know. Therefore, benevolence in the form of love, friendship, and sympathy can ground justice only in small groups. And the same is true of esteem-respect. Even though it focuses on the general feature of having "a certain capacity to a certain degree", there is no anonymous esteem-respect. In order to find a form of benevolence that is directed towards known and unknown persons alike, we have to bring in the Kantian notion of "reverence-respect" and its kind of universalizability.

As a foil for Kant's view on reverence-respect, I will use a quotation from one of the founding fathers of sociology, Emile Durkheim:

We say that an object, whether individual or collective, inspires [reverence-] respect when the representation expressing it in the mind is gifted with such a force that it automatically causes or inhibits actions, *without regard for any consideration relative to their useful or injurious effects*. When we obey somebody because of the moral authority which we recognize in him, we follow out his opinions, not because they seem wise, but because a certain sort of physical energy is imminent in the idea that we form of this person, which conquers our will and inclines it in the indicated direction. [Reverence-] Respect is the emotion which we experience when we feel this interior and wholly spiritual pressure operating on us.³³

Durkheim is a causal determinist, and he has no place in his sociology for real agency or, to speak with Kant, for "causality of freedom". Therefore, Durkheim takes it for granted that reverence-respect simply "conquers our will". According to Kant, with whom I agree, the story is a bit more complicated. We also freely *choose* to be conquered. Although I think that Kant's defense of The Categorical Imperative fails completely, I still think he gives a better phenomenological description than Durkheim of what reverence-respect in front of a – real or merely apparent – categorical moral rule looks like. There is something in the world of emotional attitudes that Kant has, with his notion of respect, captured better than others. He writes:

What I recognize directly as a law for myself I recognize with [reverence-] respect, which means merely the consciousness of the submission of my will to a law without the intervention of other influences on my mind. The direct determination of the will by the law and the consciousness of this determination is

³² Perhaps this anti-universalizability is rooted in the fact that one loves and is friends with individual *persons*, not with any specific combination of character traits. Cf. Nozick, *Anarchy, State, and Utopia*, pp. 167-168.

³³ Durkheim, *The Elementary Forms of the Religious Life* (London: George Allen & Unwin, 1976; originally published 1912), p. 207.

[reverence-]respect; thus [reverence-]respect can be regarded as the effect of the law on the subject and not as the cause of the law. [Reverence-]Respect is properly the conception of a worth which thwarts my self-love. Thus it is regarded as an object neither of inclination nor of fear, though it has something analogous to both. The only object of [reverence-]respect is the law, and indeed only the law which we impose on ourselves and yet recognize as necessary in itself. As a law, we are subject to it without consulting self-love; as self-imposed on us by ourselves, it is a consequence of our will. In the former respect it is analogous to fear and in the latter to inclination. All [reverence-]respect for a person is only [reverence-]respect for the law (of righteousness, etc.) of which the person provides an example.³⁴

When we reverence-respect a moral rule, then we freely subordinate ourselves to the rule. The rule becomes, in Kant's words, "self-imposed on us by ourselves", and it is "a consequence of our will". In my opinion, this kind of respect can arise quite independently of whether the moral rule that is respected is regarded as grounded in a transcendental faculty (as Kant has it), in a transcendent God (as religious Christians, Muslims, and Jews have it), or in something spatiotemporally immanent (as I, like Thomas Nagel, would have it).³⁵ As soon as one accepts that moral precepts can be broken by free agents – something which every law court all over the world takes for granted – one has also to accept that no such precept can create a *reflectively conscious* instance of itself without a self-legislating person who says "Yes, this moral precept applies to me here and now." On pain of an infinite regress, all *reflective* ethical generalist non-nihilists have to stop in front of some rule(s) and say that they ought to conform to the rule(s) whether or not they benefit from abiding by that rule. When they do so, I conjecture that they will be reverence-respecting the norm in question. Ethical particularists will in this way have to respect "default norms" and situation-bound categorical precepts (see end of section 3). If ethical subjectivists and nihilists experience reverence-respect, they will have to regard it as a kind of hallucination.

According to Durkheim, reverence-respect "inclines [the will] in the indicated direction". Kant has a more nuanced view: what we reverence-respect is "an object neither of inclination nor of fear, though it has something analogous to both". This kind of respect resembles at one and the same time both love and fear. One wants to have the norm and, so to speak, live near by it – as one wants to live near someone one loves. But one also – in a peculiar sense – fears it. Perhaps because norm breaking is associated with punishment; be the association to external punishment, to internal punishment from bad conscience (as religious people have it), or internal punishment from the super-ego (as many modern secularists have it). Therefore, as esteem-respect can adequately be called "fear-admiration", reverence-respect can be called "fear-love".³⁶ Pure power-respect, on the other hand, is literally a form of (weak) fear.

Reverence-respect for a person is logically secondary to reverence-respect for a moral rule. Depending on what the content of the rule is, it will require reverence-respect either only for known persons or for unknown persons, or for both known and unknown persons alike. This

³⁴ Kant, *Foundations of the Metaphysics of Morals* (Indianapolis: Liberal Arts Press, 1959), footnote pp. 17-18. I have consciously chosen a translation (by L. W. Beck) where *Achtung* is translated with 'respect' instead of the other alternatives, 'reverence' and 'awe'. In *Foundations*, Kant is reluctant really to admit that respect is a feeling, but later in *Critique of Practical Reason* (part I, book I, chapter 3) he admits it. He claims, however, that respect is the only feeling that is caused by the causality of freedom.

³⁵ Nagel, *The Last Word*, chapter 6.

³⁶ This analysis is worked out in more detail in section 7 of my Swedish paper "Hume, Kant och sökandet efter en modern moralfilosofi," in the Danish journal *Philosophia* 27 (3-4, 1999): pp. 5-43. An almost identical English version is linked to my personal web page under the title "Hume, Kant, and the Search for a Modern Moral Philosophy".

is easily seen in relation to the ten commandments of the Old Testament. Reverence-respect for the first of these imperatives, “You shall have no other gods before me”, implies reverence-respect only for God; reverence-respect for the tenth commandment, “You shall not covet your neighbor’s house, etc”, implies such respect only for one’s neighbors; whereas similar respect for the sixth categorical imperative, “You shall not kill”, extends the reverence-respect to all human beings, known and unknown alike.

Back to Kant and his views. In reverence-respect for a person one does not esteem-respect a capacity that this person has, one has reverence (Kant: “Achtung” or “Ehrfurcht”) for a moral rule that applies to the person in question. At bottom, according to Kant, this respect has to be reverence-respect for The Categorical Imperative. In all likelihood, he means reverence-respect for the combination of the form and the matter of this imperative – with stress on the matter. The *form* is “Act only according to that maxim by which you can at the same time will that it should become a universal law”,³⁷ and the *matter* is “Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only.”³⁸ According to Kant, every man with reason who clearly sees the content of the categorical imperative will freely choose to reverence-respect it. In so doing this person also begins to reverence-respect each and every human being. He becomes, in the form of reverence-respect, benevolent towards everyone. The content of this reverence-respect is, in contradistinction to that of the Ten Commandments, of such a nature that questions of distributive justice can appear. The question of how to distribute something in a group of people whose mutual and equal benevolence make them want to treat each other “always as an end and never as a means only” raises problems of the same kind that I have discussed in the original situations presented.

Let us now make the thought experiment that all of us on earth – soon 6,500,000,000! – in the midst of all our conflicts, reverence-respect each other in the Kantian way, and all to the same extent. Could this be a basis for a discussion of global distributive justice?³⁹ Well, to put it extremely mildly, the epistemological problems would be extremely great. However, this is no worse than the epistemological problems that have bedeviled utilitarianism since its birth. In neither case do the epistemological problems make the concepts used meaningless; epistemology and semantics are not identical. Already in the second original situation, which concerned justice only between three people, the man searching for a just action had to say: “in matters like these one cannot be too pedantic”. As a general rule, the larger a group is, the less pedantic its justice can be. But even non-pedantic justice is justice.

Taking the last remarks into account, I think I have been able to indicate how the concept of justice can function as a regulative idea even for conceptions of distributive justice that concern whole nation states and global justice. Where there is mutual reverence-respect, mutual justice can be politically discussed; where there is not, large-scale mutual justice can nonetheless be theoretically discussed on the counterfactual assumption that there is mutual and equal reverence-respect.

Those who want global justice should, by using their capability of reflective practical reasoning, try to find a proper balance between all people, try to avoid arbitrary distinctions between them, try to treat equals equally and un-equals unequally, and try to be impartial from the perspective of the form of benevolence that comes with equal reverence-respect for all human beings. Such reverence-respectful persons’ imagined or real political actions would

³⁷ Kant, *Foundations of the Metaphysics of Morals*, pp. 39 and 54.

³⁸ Ibid. pp. 47 and 54.

³⁹ The question is not purely academic. United Nation’s *Universal Declaration of Human Rights* (adopted and proclaimed by the General Assembly in 1948) has some affinities with Kant’s stress on treating human beings as ends in themselves. It says: “Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.”

be to their many-others-directed equal reverence-respect what their prudential actions are to their self-interest.

7. Retributive justice

I have now argued that the non-formal content of the *concept* of justice can – with respect to distributive justice – be captured by saying that justice is to many-directed but equal benevolence what prudence is to self-interest. But can the analysis be generalized to all kinds of justice? What, for instance, about retributive justice? Can retribution be connected to benevolence? This is a crucial question for my view, since conceptions of retributive justice arose earlier than conceptions of distributive justice; at least in the public sphere of society. Robert C. Solomon puts the point bluntly:

At the very beginning of our historical sense of justice (antidating our own rather ethnocentric notion of “distributive justice” by several millenia) is the sense of justice as revenge and outrage. [...] Vengeance is the original passion for justice. The word “justice” in the Old Testament virtually always refers to revenge. In Kant [*Philosophy of Law*] and Hegel [*The Philosophy of Right*], the word “Gerechtigkeit” refers to retribution, and throughout most of history the concept of justice has been far more concerned with the punishment of crimes and the balancing of wrongs than it has been with the fair distribution of goods and services.⁴⁰

If utilitarianism is right, then there should be no real backward-looking retribution, and the traditional concept of retributive justice could be left to historians. I think, however, that utilitarianism is here, as in several other respects, wrong. Along with writers such as Solomon, D. D. Raphael, and Leo Zaibert, I think that punishment and revenge cannot be completely separated.⁴¹ Therefore, I think that retributive justice is of importance in present societies, and will remain so in the future.

In relation to distributive justice, I have presented original situations for (i) justice for others, (ii) justice for oneself by means of oneself, and (iii) mutual justice. With respect to retributive justice, I will rest content with presenting a case of retributive justice for oneself by means of oneself.

Retribution lives close to revenge, and revenge is a realization of a malevolent desire. In revenge, one desires to harm others. According to what Hume regards as systematic observations, he claims that human nature contains three main kinds of desires or impulses to act: self-regarding desires, benevolent other-regarding desires, and malevolent other-regarding desires.⁴² The sub-title of his *A Treatise of Human Nature* is: *An attempt to introduce the experimental method of reasoning into moral subjects*. Today, his classification of desires gets support from both gene-based group and kin selection theories in evolutionary psychology,⁴³ and from the kind of everyday observations that Hume himself practiced. In several sports, for example soccer, people who have no “blood relations” form fan clubs by means of which they – at least seemingly – acquire an outlet both for malevolent other-

⁴⁰ Solomon, “Sympathy and Vengeance: The Role of the Emotions in Justice”, p. 304. See also D. D. Raphael, *Concepts of Justice*, chapters 21 and 22.

⁴¹ Solomon, *ibid.*; Raphael, *ibid.* (esp. p. 248); Zaibert, *Punishment and Retribution* (Aldershot: Ashgate, 2006), chapters 3-4.

⁴² Malevolent desires are not necessarily other-regarding. Truly self-destructive persons have self-regarding malevolent desires.

⁴³ See e.g. Robert Wright, *The Moral Animal* (Pantheon Books 1994), chapter 7.

regarding desires (by beating the members of other clubs) and benevolent other-regarding desires (by helping in various ways other members of the club). Hume writes:

the direct passions frequently arise from a natural impulse or instinct, which is perfectly unaccountable. Of this kind is the desire of punishment to our enemies [other-regarding malevolence], and of happiness to our friends [other-regarding benevolence]; hunger, lust, and a few other bodily appetites [self-regarding desires].⁴⁴

What Hume regards as “unaccountable”, we explain by means of evolutionary theory, but either way I think this quotation presents a philosophical-anthropological truth.

The original situation to be looked at now contains two male friends in a hunter-gatherer society; let me simply call them A and B. One day when A has had an extremely lucky hunt and B a correspondingly unlucky one, B becomes envious. In the evening, when A is away, B suddenly becomes a bit mad and throws some of A’s clothes into the near-by river. A is told about this event before he comes home. At first, he gets a strong malevolent impulse to run to the village, destroy B’s whole hut, and then beat B; this he can do without any problem, since he is much stronger than B. However, on his way back A calms down, forgets for a minute what has happened, and smiles for himself when he thinks about what a marvelously good hunting day it has been. He starts to think about several nice hunts that he and B have done together; after all, B is usually a very good guy. Perhaps, A says to himself, he should just forget what B, obviously in a sudden outburst of envy, has done? A becomes distanced in relation to the whole situation, and starts to reflect seriously on what is the right thing to do when he comes back. Slowly, a decision emerges. Upon returning to the village, A walks in a calm mood to B’s hut, takes some of B’s clothes and throws them into the river. Even B has calmed down, and he watches what A is doing and says nothing. Two days later, they go hunting together again.

In my opinion, there can be malevolent parts in an overarching benevolence, as there can be hard quarrels in loving relations, and schisms in friendship relations. Perhaps, in order to accept this from an abstract philosophical point of view, one has to accept a concept of organic unity. I do, but I will not discuss this issue here. A reference to the writings of G. E. Moore and Franz Brentano on this topic will have to suffice.⁴⁵

The story just told is by no means meant to show that retributive justice has to fit the form “an eye for an eye, and a tooth for a tooth”, only that it can. This being said let me show how I think that my *Lex Talionis* story can, with a little twist, be made to fit the motto: Justice is to many-directed but equal benevolence what prudence is to many-directed self-regarding desires. Obviously, the motto does not fit directly, since A’s conflict is primarily a conflict between one benevolent desire and one *malevolent* desire; both directed at B. The twisting needed looks as follows.

There is a complexity in other-regarding desires that it has not been necessary to take into account in the earlier original situations, but which has to be addressed now. In other-regarding desires, there are two desiring persons involved: the one with the other-regarding desire (A above) and his intentional object (B above). When A is benevolent, he wants to satisfy some of B’s desires, but when A is malevolent he wants to dissatisfy some of B’s desires. Necessarily, the satisfaction of a benevolent desire involves the satisfaction of two desires, one in B and in A.⁴⁶ This does not mean that it is impossible for A to sacrifice himself

⁴⁴ Hume, *A Treatise of Human Nature* (many editions), 2.3.9.

⁴⁵ See, e.g., G. E. Moore, *Principia Ethica* (Cambridge: Cambridge University Press, 1993; first published 1903), Roderick Chisholm, *Brentano and Intrinsic Value* (Cambridge: Cambridge University Press, 1986).

⁴⁶ This fact is the rational ground for all mistaken attempts – from the Sophists via Hobbes and Nietzsche to their present-day followers – to deny the existence of true benevolence. Since there are two satisfactions, it is always

for B. If A has to neglect one of his important self-regarding desires in order to satisfy his benevolent desire towards B, then there is sacrifice. The paradigmatic example is of course a parent that risks his/her life in order to save a child. Let us next take a look at malevolence.

Person A will have his malevolent desire satisfied if he can do something that in a relevant way frustrates some of B's desires. Even here, it may in fact be the case that A has to sacrifice some self-regarding desires in order to be able to satisfy his other-regarding malevolent desire. There are people who quite consciously sacrifice much in life just in order to please their hate. In the original situation described, A begins with the spontaneous desire to take hard vengeance, but then he discovers the conflict between his malevolence and his benevolence. Thinking about it, he discovers that he cannot let his benevolence towards B win a total victory; this would mean that he completely loses the self-satisfaction that comes with taking at least some vengeance. That is, his reflective *self-benevolence* requires that his friend-benevolence cannot win completely. In other words, there is in his soul a conflict between his friend-benevolent desire and that part of his reflective self-benevolence that is concerned with his friend-malevolent desire.

In this way, A's punishment of B can be seen as a solution to the problem of how to reconcile A's benevolence towards himself with his benevolence towards B. A creates retributive justice for himself by means of himself.

In the (sixth original) situation discussed, there is a conflict, and all the formal features of justice are met. The punisher can truly be described as seeking a proper balance, as trying to avoid arbitrary distinctions, as treating himself and the punished equally, and as being impartial. There is here a form of benevolence in the midst of all anger and malevolence, and there is both self-regarding and other-regarding practical reason. In short: the punisher's just action is to his self-and-his-friend-directed equal benevolence what his prudential actions are to his pure self-interest.

On my analysis of distributive justice, there can be no questions of justice where there is no benevolence, and this applies to retributive justice, too. However, retributive justice has also a further condition of existence: where there is no malevolence, no questions of retributive justice can come into being. My view that no society can completely avoid issues of retributive justice is based on my philosophical-anthropological belief that there is in human nature a deep-seated disposition to have, in certain kinds of situations, malevolent impulses. I think that the decrease of retribution in the juridical sphere of the Western world is only marginally due to the influence of utilitarianism. It depends mainly, I conjecture, on a decline in malevolence, which, in turn, is due to two factors: (i) insurance systems, be they private or societal, make people today suffer less from crimes committed against them than in earlier epochs; (ii) those who suffer from crimes in the contemporary world seldom meet the persons who are guilty of their suffering. In short, I think that it is the growth of insurance systems and the growth of anonymity that has made us less prone to retribution than our ancestors. I regard this as a good development.

possible, and sometimes reasonable, to ask what the true satisfaction searched for is. Basic to this paper is the view that there are cases where persons primarily want to satisfy other person's desires, and where their own concomitant satisfaction is merely an unintended result. Nonetheless, there is no reason to deny that it is often also the other way round. Seemingly benevolent persons are using other person's satisfactions merely as a means for their own satisfaction. Surely, there are people who do what Hobbes is famously reported to have said he did: give alms merely in order to feel better.

8. Commutative justice

In the wake of David Hume's analysis of justice, many philosophers have come to think that, necessarily, discussions of justice are discussions of principles or rules.⁴⁷ As a general thesis, I have in the preceding sections denied this view, but with respect to commutative justice I think it is true; so long as commutative justice is kept clearly distinct from distributive justice. Let me explain.

In an event of commutation or exchange between two persons, for instance, in an act of barter, the following three kinds of situations can obtain:

- (i) both the persons act out of benevolence; in this case there is mutual distributive justice in the form of love, friendship, sympathy, or respect; such situations were discussed in section 6;
- (ii) one of the two persons acts benevolently and the other egoistically; in this case the benevolent person will probably create justice for himself by means of himself; this was the topic of section 5;
- (iii) both the persons act egoistically; in this case questions of real commutative justice can enter the scene; such situations have not been discussed so far in this paper.

A real commutative exchange involves two (or more) egoistic agents who trust that they shall make an exchange without fighting or threatening each other. If someone is forced to sell, to buy, or to sign a contract, then this is simply not a real case of the kind of commutation (exchange, trade, agreement) that I wish to discuss. Commutative justice is justice in *free* buying and selling and in making other kinds of *free* oral or written agreements.

In exchanges between two persons (or tribes) that, apart from their exchanges, live lives that are not in any sense interdependent, there will be no conflicts. Consequently, questions of justice and injustice will not arise; one ontological presupposition for justice is then simply lacking. When two people freely meet in order freely to barter, one may be stupid and one may be smart, and the former will lose in the barter. But this is nonetheless not an unjust act of barter, even if from some other moral point of view the more intelligent party might be regarded as having failed to act in a fully moral fashion. The situation in genuine commutative exchanges can be compared to that involved in the playing of games. When the rules of a formalized game are accepted, then *within* the game no questions of justice can arise, only questions of whether or not the rules have been broken. In chess, for instance, there can be moves that are smart, foolish, daring, cautious, kind, and even merciful, but there can be neither just nor unjust moves.⁴⁸

When, on the other hand, there are exchanges between persons whose lives are so interdependent that the exchanges in question have repercussions even on a "third party", things are different. The third party is not a free agent in the trade, but the trade does nonetheless affect him, and, therefore, questions of distributive justice can now arise. This is, for instance, the case as soon as there is a money issuing authority involved: How much is a fair tribute to this authority, which makes the trading easier? Such justice has then *rules*, not *actions*, as its primary objects. If one looks upon the market the way (Hume's friend) Adam Smith did, i.e., as a common institution that should be to the benefit of everyone, then one can discuss the rules of the market even from the point of view of distributive justice.

⁴⁷ Hume, *A Treatise of Human Nature*, book 3, part 2.

⁴⁸ If one regards the society as a whole as a game in which all the participants have agreed to let one man, the sovereign, change the rules as he wants to, then it is adequate to write as Hobbes does: "By a Good Law, I mean not a Just Law: for no law can be Unjust. The Law is made by the Sovereign Power, and all that is done by such Power, is warranted, and owned by every one of the people; and that which every man will have so, no man can say is unjust. It is in the Lawes of a Commonwealth, as in the Lawes of Gaming: whatsoever the Gamesters all agree on, is Injustice to none of them." Hobbes, *Leviathan* (London: Penguin Classics, 1985), p. 388.

Again, an analogy with games can be made. In games that are repeated, and where the players have an overarching common goal, one can sometimes discuss the rules from the point of view of justice. If the goal is to have a thrilling competition, then one can introduce individual handicaps (as is done in e.g. golf) and discuss what fair handicaps look like, one can introduce weight classes (as in done in e.g. wrestling and boxing) and discuss what fair weight limits look like, and one can introduce a division between professionals and amateurs (as once was done in most sports) and discuss what a fair definition of an amateur is.

An original situation for commutative justice would be a situation in which rules or principles for trade and agreements are being chosen. I will not try to construct one. However, if there is to be a meaningful discussion of alternative rule systems, then there has to be some kind of benevolence towards many of the persons involved. If the rules are made by a good and enlightened Leviathan, then his just rules are to his equal benevolence towards his subjects what his prudential actions are to his self-interest.

9. Rawls on justice and benevolence

This paper took its departure from Rawls' distinction between the concept and conceptions of justice. Now, being close to the end, I would like to say some words about how my stress on benevolence is related to Rawls' views. He writes:

A conception of justice should not presuppose, then, extensive ties of natural sentiment. At the basis of the theory, one tries to assume as little as possible.⁴⁹

Does my analysis with its stress on ties of benevolence then conflict with Rawls' analysis, even though I am interested in the basic concept and he in a specific conception? To be sure, there are nowadays two Rawlsian analyses to consider: Rawls' view as originally put forward in *A Theory of Justice* and the result of his later transformations as presented in *Political Liberalism*. On my interpretations, the original and *unconditional* Rawls lays claim to have shown what all rational persons in all cultures have to regard as being the basic principles of social justice, whereas the later and *conditional* Rawls only thinks that he has shown what all "reasonable persons" with "reasonable comprehensive doctrines" have to regard as being just principles. It is the same three principles – the principle of greatest equal liberty, the principle of equality of opportunity, and the difference principle – "except an important change of phrase in the first principle".⁵⁰ With respect to the conditional Rawls, there is not much to discuss for me. As he describes reasonable persons, these persons must simply be capable of having benevolent desires and related feelings and emotions.⁵¹ Therefore, I need to make more detailed comments only on the unconditional Rawls. There are three remarks I would like to make.

First, Rawls dismisses on two occasions benevolence because it is "at a loss" when it encounters situations involving conflict; for instance, situations of the kind that I call original situations.⁵² However, it is equally true that conflicting self-regarding desires are "at a loss" before prudential reasoning starts. Unreflective benevolent desires should be compared with

⁴⁹ Rawls, *A Theory of Justice*, p. 129.

⁵⁰ Rawls, *Political Liberalism*, pp. 290-291. In the first principle the phrase "equal right to the most extensive total system of equal basic liberties" is substituted by "equal right to a fully adequate scheme of equal basic liberties".

⁵¹ It can though be noted that the conditional Rawls uses "idea" as a term that covers both "concept" and "conception", but that he does not thereby dismiss this distinction. See, *Political Liberalism*, p. 14, note 15.

⁵² *Ibid.* pp. 191 and 476.

unreflective self-regarding desires and not with prudence, as Rawls on these occasions tends to do.

Second, if my analysis of justice is true, then there can be no concept of justice in a community of absolute psychopaths. I take an absolute psychopath to be a person who is completely unable to have benevolent desires and to feel affections such as empathy, compassion, and regret, but who can learn to mimic benevolent, empathic, compassionate, and regretful behavior in order to further the only kind of desires he has, self-regarding desires.⁵³ In a world of only psychopaths there would be nothing of the sorts to mimic, and, according to my analysis, there could then be no talk of justice. Nonetheless, psychopaths would probably in a Rawlsian original position be capable of discussing what rules and principles the society outside of the veil of ignorance ought to have. But they would not be able to stick to the rules after the veil of ignorance is taken away. Therefore, on Rawls own analysis there could not be principles of justice in a society of psychopaths.

Third, let us assume that all persons in the original position are hard-headed egoists, i.e., they do not, as psychopaths, lack other-regarding desires altogether, but in cases of conflict between their other-regarding and self-regarding desires, they will always let the latter win. However, behind the veil of ignorance egoists will have to care about others as if these others were themselves. The veil functions as a mechanism that turns self-regarding desires into other-regarding desires, and turns egoists into benevolent persons. In passing, Rawls tells his readers that this is the case:

Now the combination of mutual disinterest and the veil of ignorance achieves the same purpose as benevolence. For this combination of conditions forces each person in the original position to take the good of others into account.⁵⁴

In the original position, people have to behave *as if* they have as much agape-love as self-love. This is also the reason why, in the unconditional Rawls' approach, pure prudence and justice coincide. Benevolence is not as absent from *A Theory of Justice* as at first one may be tempted to think.

I have argued that where equal benevolence is absent, justice cannot be discussed. In Rawls original position, justice can be discussed because people are artificially made to behave *as if* they are equally benevolent towards everyone. Since, according to Rawls, the original position is logically prior to any conception of justice, he must have construed it on the basis of only the concept of justice. This means that, in fact, even Rawls finds more in the concept of justice than merely formal desiderata.

10. Justice, passions, and cool reflection

In its stress on benevolence, my analysis of the concept of justice comes close to a view argued for by Robert C. Solomon. He writes:

What is essential to justice, I want to argue, is our supposedly unphilosophical sense of compassion and various other passions, too long swept under the carpet laid down by Kant and so many other sarcastic critics of “melting compassion” and the “inclinations.”

Justice is not, first of all, a set of principles or policies; it is, first of all, a set of personal feelings, a way of participating in the world.⁵⁵

⁵³ About real world psychopaths, see e.g. Robert D. Hare, *Without Conscience* (Guilford Publications, 1993).

⁵⁴ Rawls, *A Theory of Justice*, p. 148.

However, in his attempt to counter the overemphasis on rationality in traditional philosophy of justice, Solomon moves too far in the other direction. On his account, instead of only rationality we get only passions. Admittedly, Solomon claims that these passions contain both cognitions and intelligence. But, as I hope to have shown, the relevant reflective practical reasoning is *directed at*, not *contained in*, the feelings and inclinations of benevolence that I have discussed. The ontologically primary attitude of trying to be just is, in comparison with warm-blooded and passionate loving and hating, a cool and calm attitude. In order to be able to reflect on one's affections and desires, one has to distance oneself from them. And this one cannot do without cooling down somewhat. But one need not become indifferent. On the other hand, when a certain *conception* of justice and a connected sense of justice already exist, then the search for justice and the fight against injustice can be as passionate as anything else.

In a poem, a Swedish writer and historian once wrote: "Each pain and torment has its cry, but health it lives in silence."⁵⁵ Similarly, feelings of injustice cry higher than those of justice. What deserves the label "feelings of justice" are mostly only simple feelings of satisfaction over the fact that a just action has been carried out or that a just state of affairs obtains. There is a special word for mild anger directed at injustice, indignation, but no corresponding word for being pleased about justice.

In history, many social and political movements have had justice on their banners in a rather inarticulate way, i.e., they have not bothered to tell what principles their positive conception of justice contains. But this need not be as irrational as it may look from a purely principle-based account of justice. Fights for justice can, to start with, be a cry only for more benevolence. The other side of the ontological justice coin, the related practical reasoning, can be turned up later when there is more benevolence around. Fights for love and respect can, conversely, be fights whose real aim is to make the persons in question members in some already existing realm of justice.

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⁵⁵ Solomon, "Sympathy and Vengeance: The Role of the Emotions in Justice", pp. 291-311; the quotations are from pp. 292 and 293, respectively.

⁵⁶ My own translation from Erik-Gustaf Geijer, *Odalbonden* (1811): "Var plåga har sitt skri för sig, men hälsan tiger still."

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Department of Philosophy and Linguistics
Umeå University, Sweden

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