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From a Pluralism of Grounds to Proto-legal Relations: Accounting for the Grounds of Obligations of Justice.

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A. Outline

The paper focuses on two aspects of Mathias Risse's paper 'Responsibility and Global Justice'. First, I shall suggest that for his pluralist account of the grounds of justice to hold together one need presuppose a monist standpoint which ultimately contributes to grounding principles of justice. Second, I will point out that Risse's understanding of obligations of accountability and justification is rather narrow in that it functions as an *addendum* to obligations of justice. To begin with, he presents the obligation to give account for or justify our actions to others as one that is added, on the side, to obligations of justice. Furthermore, the obligation to give account is, on Risse's view, a special obligation which might or might not materialise alongside duties of justice. Conversely, I will suggest that the obligation of accountability plays a deeper role: the conditions that ground it feature at the same time amongst the grounds of obligations of justice. Accordingly, the kind of relation that generates a duty among agents to account for their actions must be already in place when obligations of justice obtain. Following up on these remarks I will adumbrate an alternative account of the relation which grounds (enforceable) obligations of justice.

B. Grounds of justice: from Monism to Pluralism

In the first part of the paper I will reconstruct Risse's account of the grounds of justice by positioning it within current debates in political philosophy. I shall suggest that Risse's pluralist account poses a challenge to standard views of justice which embrace a monistic account of the grounds of justice, but not without itself alluding to a monism of sorts. Ultimately my aim will be to suggest that Risse's rejection of the standard monistic picture of justice relies on two central moral concepts, accountability and justification, which create a unified practical point of view, through which principles of justice can be grounded.

In respect of the grounds of justice,¹ Risse argues for a pluralist understanding of which he labels 'Internationalism'. While Internationalism grants particular normative relevance to the state,

* An early predecessor of this paper was presented as a comment to Mathias Risse's keynote lecture 'Responsibility and Global Justice' at the GLOTHRO workshop on Responsibility and Obligations from Global Justice, which took place on the 12 and 13 of October 2013 at the Centre of Law and Cosmopolitan Values, University of Antwerp. I thank Mathias Risse for his generous reception of my comment and other valuable remarks. I have also benefited a lot from the participants' comments on the day, in particular those of Tria Gkouvas, Alexia Herwig, Wouter Vandenhoele and Arne Vandenbogaerde. The work reported on in this publication has been financially supported by the European Science Foundation (ESF), in the framework of the Research Networking Programme GLOTHRO. The author would also like to acknowledge the financial support of the Grant Agency of the Czech Academy of Sciences through a project on 'The Role of the Principle of Proportionality in the Decision-making Process of Courts' (grant ID: 15-23955S).

¹ I will be discussing obligations of justice as part of a wider genus of obligations, namely political obligations. As such I consider all enforceable obligations that pertain among agents who are related in

[...] it qualifies this relevance by embedding the state into other grounds that are associated with their own principles of justice and that thus impose additional obligations on those who share membership in a state (Risse 2016, p xxxx).

Internationalism offers a refreshing take on the recent debate on global justice: while most of the recent theories display a monistic flavor Risse proposes pluralism with respect to the grounds of principles of justice.² To appreciate the novelty of Risse's account we must turn briefly to the discussion on the grounds of justice within contemporary political philosophy.

Instructively, we can illustrate the search about the grounds of global justice as involving two kinds of query: a question about the *site* and another concerning the *scope* of principles of distributive justice (Abizadeh 2007). Considerations of site relate to those single properties which are present when principles of justice are at work; In contrast, the scope of justice refers to the range of persons that are reciprocally connected (be it as addressees or issuers) though claims of justice. The question about the grounds of justice involves considerations of both site and scope. Yet, the picture we get with respect to the grounds, on which principles of justice rest, depends crucially on the emphasis one places on either site or scope. I shall suggest that Risse's account

Accordingly, someone who takes considerations of site to determine the grounds of justice, is usually bound to end up with a monist picture of grounding: any properties (whatever those may turn out to be) which obtain when principles of justice are at work, are assumed to count as *existence conditions* of the principles of justice. Accordingly, any arrangement that does not instantiate those properties falls outside the purview of justice. Hence, the question of site – as one asking about the existence conditions of justice-principles – becomes, on this conception, antecedent to the question of scope, that is, the question about the range of persons who have claims upon and responsibilities to each other, arising from considerations of justice (Abizadeh 2007, 323). To judge whether an agent has a standing in justice, we must ascertain whether the existence conditions of justice have been fulfilled in the particular situation, antecedently to what agents owe to each other.

This understanding of the relation between site and scope leads to a monist theory of grounds of justice, which seems to be the dominant position in the current debate on global justice. As Risse observes, the major rivals in the debate of global justice – relationists (be they statist or globalists) and non-relationists – share the same fundamental view: that there exists only *one* single ground of justice (the one that is favored by each). Along these lines relationists assume that the site of justice requires the existence of a certain essentially practice-mediated relation (Risse 2016, XXX); conversely, non-relationists account for principles of justice without recourse to such

the special manner we call political. Political obligations typically comprise obligations of distributive but also corrective justice. Risse seems to accommodate this point in claiming that most justice relations can be re-described appropriately as distributive (Risse 2016, XXX).

² Risse speaks more abstractly of grounds of justice. I prefer to link grounds to principles of justice, in order to reflect more accurately the fact that what is grounded are principles, rather than sets of principles or justice as a whole.

relations – in their case the relevant site comprises properties that are shared by all members of the global population, independent of whatever relations they happen to be in (Risse 2016, XXX).

Contrariwise, one may have good reasons to start the inquiry with the *scope* of obligations of justice.³ It is actually a substantive question whether two agents stand in a relation of justice, one that is not exhausted by the obtaining of any singular property (or sets of properties) in the static/monist manner we encountered earlier. Along these lines, *site* should not be understood as listing existence conditions but merely *enabling* or *instrumental* conditions. Enabling conditions of justice are conditions which are necessary merely for the realization of obligations of justice but do not determine their existence. Rather, what determines the existence of obligations of justice is the antecedent assessment that a particular normative relation obtains among a number of agents. It is then the scope of that normative relation which functions to demarcate the site of justice, rather than the other way round. Consequently the question about the site of justice is downgraded to a question about the appropriate kind of institutional arrangements, which must be put in place in order to realize a particular type of normative relation.⁴

Phenomena, which we categorize under the heading of globalisation, have taught us that it is very difficult to formalize the grounds of justice into sets of criteria that can generate some invariable formula about what counts as a site of justice, which extends across all conceivable contexts. This shows quite well in respect of statist views about site:

At a time when states share the world stage with a network of treaties and global institutions, philosophers have had to consider not only whether the state can be justified to those living under it but whether the whole global political and economic order consisting of multiple states and global institutions can be justified to those living under it. And in a world in which the most salient inequalities are not within states but among them, philosophers have had to broaden their focus for justice, too, asking not only what counts as a just distribution within the state but also what counts as a just distribution *globally* (Risse 2016, XXXX).

This result can be generalized into arguing that there is no single site (justice relationship or justice-conducive property) which any two individuals either instantiate or do not instantiate. Pace Risse: “One may use ‘principles of justice’ as a collective term for different principles with their *respective* ground and scope” (Risse 2016, XXX).⁵ Along these lines Risse proposes his own *graded* internationalism, that

³ Abizadeh points out that the thesis that the scope of principles of justice coincides with their site does not enjoy the status of an analytic truth but is in need of further substantive argument in order to be established (Abizadeh 2007).

⁴ The advantage of putting things this way is that the account tallies better with our intuition that questions of justice are ‘practical’ and, hence, must be determined not by some agency-independent properties, but by agency-relevant considerations about what is right or just to do with respect to the effects of our actions on others.

⁵ However Risse awards the state normative primacy: “I, for one, have accounted for the state’s coerciveness in terms of legal and political immediacy. The legal aspect consists in the directness and pervasiveness of law enforcement. The political aspect consists in the crucial importance of the environment provided by the state for the realization of basic moral rights, capturing the profundity of this relationship. However, assuming that something like my account succeeds in explaining what is

is, the view that holds “that *different* principles of justice apply depending on the associational (i.e., social, legal, political, or economical) arrangements [...] Graded internationalism allows for associations such as the WTO, the European Union, or the global order as such to be governed by principles of justice, but endorses the *normative peculiarity* of the state. Among the principles that apply within other associations we find weakened versions of principles that apply within states.” (Risse 2016, XXXX)

With the introduction of non-monism Risse suggests we take seriously the idea that some grounds could be relational, whereas others would not be. “We must consider the possibility that there is no deep conflict between relationism and nonrelationism.” (Risse 2016, XXX) As a result, graded Internationalism offers one way of preserving the plausible aspects of nonrelationism, globalism, and statism. (Risse 2016, XXX)

The non-monist graded view leads to an introduction of pluralist grounds of justice. This comes with a more nuanced range of relations between the dimension of site and scope of principles of justice: principles with different scope may be instantiated in the same or overlapping sites, thus claiming their application concurrently rather than exclusively. Further, it turns out that we do not need to adopt an all or nothing attitude with regard to the validity of principles of justice: while the site-based monistic analysis would tend to generate one-to-one correspondences between site and grounds it turns out, on the pluralist account, that several grounds may lay a claim to validity over the same site.

Notably, Risse discusses five grounds for principles of justice:

I recognize individuals as human beings, members of states, co-owners of the earth, as subject to the global order, and as subject to a global trading system. For common humanity, the distribuendum – the things whose distribution principles of justice are concerned with -- is the range of things to which a certain set of natural rights entitles us; for shared membership in a state, it is Rawlsian primary goods (rights and liberties, opportunities and powers, wealth and income, and the social bases of self-respect – all those things that people collectively bring about within a state); for common ownership of the earth, it is the resources and spaces of the earth; for membership in the global order, it is again the range of things to which a set of rights generates entitlements; and for subjection to the global trading system, it is gains from trade (Risse 2016, XXX).

Those may relate to one another in an overlapping manner. Risse talks in this case about embedded grounds:

Let us say that ground G is *embedded* in H if the individuals in the scope of G are also in the scope of H (Risse 2016, XXX).

morally special about shared membership in states, one must still wonder whether this account matters *for justice*, that is, can explain why principles of justice apply *only* among those who share a state. That is the point that globalists push at that stage of the debate.” I do agree that shared membership at the level of the nation state is an instance of the justice-ration, but am more skeptical about Risse’s grounding of his claim that shared membership constitutes a distinct ground of justice.

In introducing the relation of embeddedness, Risse aims to tackle the question about concurrent obligations that lay claims on institutions:

First, we find the ground G most closely linked with the institution (in this case, the ground of state membership). A ground is “linked” with an institution if the operations of the institution are primarily directed at, or most directly affect, the people in the scope associated with that ground. For instance, the operations of a state (or its government) are primarily directed at members of that state. We ask then what principles are associated with that ground, where a principle is associated with a ground if it either arises from the ground in the familiar way (e.g., as the Rawlsian principles arise from the ground of state membership) or arises from another ground in which the first ground is embedded. So this sense of a principle’s being associated with a ground is broader than what we are familiar with. Then we apply this rule: An institution has duties corresponding to all principles associated (in the broader sense) with the ground linked to the institution. This approach to deciding which principles an institution has duties to try to bring about is more restrictive than the view that entities with obligations of justice are responsible for all principles. States, for instance, have no obligations relating to Rawlsian principles in other states or, say, principles applying to people on another planet (Risse 2016, XXXX).

There are several challenges arising for the pluralist picture: instructively, Risse suggests that the grounds of justice are pluralistic. He shows plausibly that justice is owed on many levels and in different configurations for different reasons. But what precisely is pluralistic about the grounds of justice? For a start, the site of justice: this is activated irrespective of state boundaries or only because of a property that pertains to the agents involved (for instance, humanity). But also the scope seems to be pluralistic: if the site of justice is non-monotonic then it ceases to be an existence condition and instead becomes merely an enabling one. As a consequence, one can detect more kinds of site that can ground claims of justice. Thus, in one sense, Risse is absolutely right to argue for a pluralism of grounds; what determines the grounds of justice is the domain of justice, and that domain can be explained independently of any fixed formulas that are employed by the standard picture of justice.

However, there is another sense, in which the pluralism of justice becomes less attractive. The relevant worry is about the thing which makes all the domains of justice domains of the same subject-matter (i.e. justice). How come Risse’s pluralism of grounds does not collapse into the fragmented accounts offered by either the relationist or the nonrelationist theorists of justice? Further, the difficult question about what makes commensurable the various domains of justice?⁶ Risse needs to say something more in order to keep his pluralism of grounds immune; for otherwise his pluralism will cut much deeper than he intends or his account could handle.⁷

⁶ My concern would seem also to bear on the plausibility of Risse’s idea of the embeddedness of grounds of justice. To spell the worry out: Assuming two different grounds G1 and G2, for G1 to be embedded in G2, they must both be types of the same kind of ground. It seems to me that Risse’s pluralist account can at most guarantee that G1 and G2 are normative grounds, but not that they are both grounds of justice. For the latter to be true Risse must also show that there is some overarching relation of justice that explains the unity amongst its plural instantiations (see section D, this paper).

⁷ In this context the debate on constitutional pluralism in the EU is instructive: constitutional pluralists often face the challenge to account for the coherence of the system of obligations within the EU legal

More crucially there is a deeper challenge to Risse's account, one that arises when considerations of scope take over from considerations of site: there the focus of the inquiry shifts toward such grounds of justice as are capable of explaining claims and demands of responsibility that are reciprocally directed amongst agents (Abizade 2007). Notably this shift of focus is *practical* in the sense that it moves one away from lists of existence conditions toward substantive, agency-oriented considerations that identify reasons for the evaluation of actions in the relevant contexts of appraisal. To that extent, there is a sense in which the determinants of the grounds of justice are invested in claims that originate in anyone whose agency is affected by the range of actions, which are the subject matter of appraisal in the relevant contexts. Accordingly, by bringing the dimension of scope to the fore we discover that what fixes the grounds of justice – plural as these may turn out to be – are claims directed to actors by anyone who may be affected by their actions. This, as it were, *second-personal* dimension plays a crucial role in determining the grounds of justice. Further, it constitutes the normative standpoint through which states of affairs in the world become salient for justice *and* through which we get to identify relevant grounds of justice. Yet, no sooner has the standpoint of scope become salient than a minimal content of monism has been re-imported into our account of justice.

One might argue, in a pragmatic spirit, that the normative standpoint I am trying to import is no other than the rather abstract idea that to make sense of normativity one needs to take on board the capacity for agency. But that idea, in its general formulation, is rather uninformative and can do little to usefully illuminate the grounds of justice. Instead, the skeptic would submit, we'd better get down to real work rather than waste time with lofty meta-ethical enquiries. To assert that would be surely misleading. The second-personal standpoint I am discussing makes itself manifest in none other than the ideas of justification and account-giving which Risse takes to be essential supplements of justice-based responsibility, or so I shall claim. To that extent my disagreement with Risse is twofold: first, I do not think that obligations for account-giving and justification exist merely in parallel to those of justice. Rather, I will suggest that such obligations and the claims corresponding to them feature amongst the determinants of the grounds of obligations of justice hence they are part and parcel of the latter. Second, I will propose that the origins of accountability and justification are moral⁸ through and through and do not depend – although may be enhanced plausibly – by either special relations (e.g. the relation between agent and principle) or systems of independent norms, contrary to what Risse argues (Risse 2016, XXX).

All in all, in what follows I shall argue that Risse has downplayed the importance of obligations of justification and accountability and their role in the normative structure of justice. More importantly so, the way in which we understand accountability and justification is key not only to our seeing that justice has plural grounds, but also in understanding how those grounds are activated and managed within multi-layered structures of political governance (see also Pavlakos 2012; 2015).

C. The Role of Justification

order. For a masterly discussion of the matter see (Kumm 2012), who however, tends to downplay the role of principles of distributive justice as grounds of EU legal obligations.

⁸ 'Moral' here is intended to refer to political, not personal, morality.

a. The content of duty of justification

In the last part of his paper Risse argues that in addition to obligations from justice there exist obligations of account-giving and justification⁹ (Risse 2016, XXXX). I shall turn next to this aspect of responsibility within his account and discuss it in three steps: first the condition that account-giving ought to be actual, that is, self standing as opposed to being grounded on the same principles that generate duties in justice; second, I shall discuss more explicitly his views on what grounds accountability; finally, I will comment on the effectiveness of obligations of account-giving.

To begin with Risse requires that an obligation for account-giving be *actual*. It is only then that agents stand in an accountability relationship for, otherwise, the mere existence of duties (of justice) does not imply account giving in that domain:

For any entities A and B that are capable of having obligations, A is *accountable* to B for activities in domain Δ if and only if A (morally or legally) owes B an actual justification for A's activities in Δ . In that case, A and B stand in an *accountability relationship*. The emphasis on actual reason-giving is essential to accountability. If A has a duty to B in some domain, A does not automatically owe B an actual justification of A's activities in that domain. For cases in which we want to say that an actual justification is owed we must argue for that view separately. (Risse 2016, XXX)

Risse seems to conceive of the accountability relationship in a manner one could call *one-sided* or *static*. This is to say that obligations of justification, to which the accountability relationship gives rise, obtain for the actor irrespective of the standpoint of the addressee (or claimant).¹⁰ There is nowhere to be found any mention to the normative claims addressees have over actions that interfere with their agency. Actors incur obligations of justification on a number of grounds in addition to the duties of justice in whose purview those agents act.¹¹ As a result any claim to justification that addressees might have is acquired only *ex post facto*, that is, only after the actor's duty has been ascertained. Consequently such claims are presented as products of the existence of the duty, not conditions of its existence.

Yet this sounds counterintuitive for at least two reasons: To begin with, it implies that *that* which grounds duties of justice and that which grounds duties of justification are disparate items.¹² More detrimentally so, if one were to take the details of Risse's account at face value, none of the aforementioned grounds would be related to the (second-personal) perspective of the addressee. However, notice that were we to

⁹ I will treat justification and accountability as being, more or less, equivalent concepts. Risse distinguishes between them in taking obligations of justification to ground accountability relations among agents. For the purposes of my discussion nothing turns on that distinction.

¹⁰ Risse in fact introduces certain conditions that depend on the standpoint of the addressee, but only when he discusses the *effectiveness* of the accountability relation: "Regarding B, the account recipient: B (c) has the knowledge and competence to judge A's actions in domain Δ ; and (d) can impose sanctions to penalize A if A falls short of B's expectations on actions in Δ (or to reward A if A meets or exceeds expectations)" (Risse 2016, 17).

¹¹ Risse enumerates three such grounds (which he labels 'origins'): principle-agent relations; independent norms and moral duty on the basis of pre-existing principles of justice. It is only the latter instance that explicitly involves the standpoint of the addressee. While Risse takes this case to be one amongst many, I shall argue that it is central for the grounding of obligations of justification.

¹² Compare with n 4, this paper.

condone such a conclusion, we would end up with an account of obligations of justice that are void of any power on behalf of the claimant to sanction the duty bearer. And yet it would seem that such power is central to obligations of justice as opposed to other moral duties, which do not allocate such powers to claimants. In fact Risse himself is eager to distinguish obligations of justice from other moral duties on the basis of their power-conferring capacity. In his words: “One might say professors owe students fair grades, but this does not mean students should be empowered to sanction them if they fail their expectations” (Risse 2016, 20).

I will coin the term *enforceability* to characterize the power-conferring capacity of obligations of justice. Here is what I have in mind: obligations of justice are *enforceable* in the sense that the right-holder has a claim vis-à-vis the duty-bearer that she abide by the relevant course of action or that she be made to perform some other action/omission for failing to uphold the required action. Here the claim of the right-holder is part of the content/meaning of the obligation, which makes it the case that there arises an authorization or ‘standing’ over the duty-holder’s agency that she be made to do as the obligation says. That is to say, the *precise meaning* of any such obligation is ‘you ought to F *and can be made to F*’.¹³

Now suppose, for the sake of demonstration, that I pass on to someone false information in the context of a promise or, more broadly, some other assurance-evoking exchange: e.g. I indicate to Mary that she can have my car tomorrow in order to pick up her friend from the airport, but proceed to give my car to John instead. My obligation to Mary is *enforceable*, for part of its content is that I be made to comply with it, irrespective of whether I am motivated (intend, and so on) to do so or not. This case can be helpfully contrasted with one of a purely moral, *non-enforceable* obligation: Take a general obligation not to lie: suppose I am boasting to someone about being very prominent in some way (say, in being on first name terms with President Obama). Should it turn out that I am lying, the other person may think ill of me or pass negative judgment about my character. However, there is no ground to suggest that they have a claim that I retract my lie or that I otherwise compensate them for having lied to them. As a result *enforceability*, in the sense presented here, sets apart a relevant class of obligations from other moral obligations which in a first instance are owed merely unilaterally. It turns out that what explains, in Risse’s example, why the student does not have a claim to any particular mark is the lack of a claim to justification which in turn signals the absence of an *enforceable* duty of justice.

A plausible reconstruction of the grounds of justice, one that could accommodate the second-personal standpoint of the addressee and the concomitant idea of *enforceability*, would involve the inclusion of claims of account-giving or justification as determinants of the grounds of obligations in justice. This would lead to an understanding of duties of justification as being more basic or antecedent to obligations of justice. But for that to work Risse’s account of the grounds (or origins) of duties to justification would need to be revisited.

¹³ Enforceability, in the sense explained here, must be sharply distinguished from enforcement. The latter comprises merely the actual capacity of institutions to impose sanctions on agents. As such enforcement is not conceptually necessary for *enforceability*. Conversely, only *enforceable* obligations can be enforced. See for more detail (Pavlakos in print).

b. The grounds of the duty to justification

Recall that Risse locates obligations of accountability and justification within an accountability relationship. The latter may originate in three domains:

First, A and B may stand in an accountability relationship because A is an agent and B a principal who delegates tasks to A [...] Second, there may be independent norms in accordance with which A must perform. (Risse 2016, this journal).

A third origin is added later (under section 8): this includes the moral duty of

[...] agents with duties to help bring about a just world also [...] to offer an actual justification to the relevant population (Risse 2016, this journal).

I shall focus on the last origin, the moral duty of actors, as I believe that the two other origins can be subsumed under it: while they may enhance that duty such sources – principle-agent relations as well as independent norms – need to be based on it.¹⁴ Risse offers two arguments for the moral duty: the first is an argument from respect; the other is instrumental in nature: that is, if duties of justice are also coupled with a duty to justification, the likelihood increases that agents will be more observant to the former. Neither of the above is satisfactory in my view.

I think his account gets the moral duty to justification the wrong way round: duties to justification are better conceived of as themselves determining the grounds (and allocation) of duties of justice. In addition, while respect is an aspect of the duty to justification (in fact one that contributes to its fundamentality) there is nothing instrumental to that duty, as Risse would have us believe. Moreover, duties to justification do not arise because we have duties in justice *plus* we ought to respect others (justice + additional moral duty to respect). It is rather the other way round: respecting others – those whose agency we engage through our actions – is manifested by the fact that we owe justification to them, through offering appropriate reasons.

To bring out my point more vividly let me gesture at an alternative picture, one that takes the duty to justification to determine the relevance of obligations of justice for particular contexts. Consistently with a ‘scope’ oriented search for grounds of justice, as the one suggested earlier, the account I am favoring is interested in such grounds that generate obligations of justification in contexts which relate two or more agents to one another. While the context may vary from occasion to occasion (and with it also the relevant grounds of justice) the duty to justification must remain constant, in representing the standpoint from which the question of justice makes sense in the first place. Crucially, on the alternative proposed here, the fundamental role of justification and account-giving is accounted for by a relational structure within which the claims of the addressee determine the grounds of the obligations that pertain to the actor. In this manner the relation of justification is shown to be at the heart of second-personal conceptions of obligation and responsibility.¹⁵

¹⁴ I cannot argue for that view here, but want to believe that it is reasonably plausible.

¹⁵ Further it is only such conceptions that can offer a satisfactory scope-focused (as opposed to site-focused) account of the grounds of justice.

A far-reaching formulation for characterizing the relevant relation of justification has been alluded to by AJ Julius in a series of important recent writings (Julius 2007; 2013a; 2013b). On his proposal relations of justification, of the kind we are interested in, obtain when an agent A has the capacity of directing the agency of some agent B. When this is the case then something along the lines of principle C is triggered off:

C: I should not (do y, intend by y'ing to bring it about that you do x, and fail to believe with warrant that, for some reasons R independent of me, my y'ing facilitates your [doing x because you take R as giving you sufficient reason to x]) (Julius 2013a, 363).

C is a structural principle which places agents in a reciprocal relation that determines the relevant, domain-specific reasons of justice.¹⁶ Such relations between agents, mediated by principle C, may be labeled associative.¹⁷ Associative relations can vary in density and content, depending on the domain of interaction. Accordingly, we may experience variations in the subjects and the site of responsibility: whether it is the individual, a company, the state, or finally the global community that bears responsibility is a matter left to substantive judgment; however such judgment is not unrestricted but bounded by the structure of the associative relation which is described by C.

Notably, an account of the accountability/justification relation as associative in terms of principle C has a further advantage: it accounts appropriately for the fact that obligations of justice are *enforceable* in the sense of conferring power to the claimant to sanction the duty bearer. Leaving a lot of detail out, such relations are valuable in demarcating the space of political obligations. The idea is simple: political obligations (including those of justice) are enforceable associative obligations which arise among agents whose interactions make them accountable to one another.

In the light of the above, Risse's dichotomy between obligations of justice and obligations of accountability/justification threatens to obfuscate the two key characteristics of political obligations: their enforceability and the fact that they are grounded on (associative) relations which place the parties under obligations of justification as described by principle C. Elsewhere I have called such associative relations, which can give rise to enforceable obligations, *proto-legal* (Pavlakos, 2015). I will turn next to adumbrate the idea of the proto-legal relation with an eye to an alternative picture which, in my view, does a better job in accounting for the grounds of obligations of justice (*qua* political obligations).

D. Proto-legal relations

¹⁶ Principle C operates in a similar manner to a definite description: To picture the way this works, take the case of water. A definite description of 'water' would be: 'water is the odorless stuff that surrounds us'. That description helps us pick out the right property in the relevant domain (H₂O on earth; or XYZ on twin-earth, and so on).

¹⁷ In employing this term I do not intend a complete correspondence with Dworkin's notion of associative obligations. However, I do intend to suggest similarities with Dworkin's conception to the extent to which Dworkin was using associative obligations to explain the rise of political and legal obligations (Dworkin 1986, ch 6; 2011, ch 14).

First-off proto-legal relations obtain through patterns of action which engage two or more individuals (*joint patterns of action*). Such patterns are ubiquitous in our lives: from cooking or moving a heavy table together to constructing a levee that contains the flood or planning the economy of our community, we all become subjects of such patterns. Significantly the set of processes which are usefully captured under the label of globalisation, have *created* many new instances of joint patterns of action while typically expanding the circle of actors involved in them: parent companies set up subsidiary companies in distant locations, which in turn engage with the local people through plural and complex patterns of action; immigration policies establish new patterns of action that direct the choices of foreign populations; and so on. Crucially, in compressing the space between agents, globalisation has significantly contributed to transforming many of otherwise ‘unilateral’ choices and actions to instances of joint patterns of action. That is to say, globalisation has intensified joint patterns of action: not just those that are grounded on some shared intention of the parties involved to participate in them (as in the hunting example), but in addition those that join together the actions of agents who do not partake in the same intention, in virtue of the impact their actions have on one another.¹⁸

What is the salient normative effect of those occurrences? Joint patterns of action impose normative constraints on the agency of the parties involved, along the lines that were suggested by principle C earlier.¹⁹ Usefully these constraints can be understood as constraints of permissibility: that is to say, they constrain both parties to perform only actions that are permissible within the joint pattern. This applies to both types of joint pattern of action – those covered by shared intention but also, and more interestingly so, those that join the action of different agents independently of their sharing a common intention.²⁰ To that extent the constraint of permissibility becomes part of or, even, constitutes the *normative structure* of joint patterns of action.²¹ Before I attempt a more detailed formulation of the constraint of

¹⁸ For the standard account of joint action as based on shared intentions see: Bratman 1987, 2009; Shapiro 2011. The account of joint action that I adumbrate in this chapter deems the idea of shared intention insufficient for capturing joint action.

¹⁹ See section C.b. this paper.

²⁰ Joint patterns of action, in the sense employed herein, include almost any interpersonal activity which involves direction of the action of those agents who are involved in it. Patterns that have this feature trigger off a principle (principle of exchange), which imposes a constraint of permissibility on action-direction. This principle is instantiated by *proto-legal* obligations, that is, obligations which render the relevant pattern of interaction an exchange as opposed to an instance of coercion (exploitation, blackmail, and so on). Very roughly, this view presupposes an account of joint agency whose order of explanation is the reverse of the standard view (e.g. Bratman or Gilbert). While in the standard picture what con-joints distinct agents is the sharing of an intention (or *that* plus the normative commitments that flow out of it), in my picture agents are conjoined when their actions track a pattern of behavior that is individuated independently of the agents’ intentions, through reference to the reasons they share. To illustrate the point: on the standard picture two by-passers A and B would have a joint obligation to save a drowning child C, only if A and B already shared the intention to take a walk together along the bank of the river. On the picture I am endorsing, A and B become the joint subject of an obligation *because* the same obligation to save C applies to both (even if they were taking their walk independently of each other). A more detailed account of these ideas at present would burden the paper unnecessarily and distract the reader from the main argument. However the interested reader should refer to Julius 2013b, ch 9, which, to my knowledge is the most detailed account in the vicinity of the view I am defending. I thank an anonymous reviewer for this journal for pressing me to clarify this point.

²¹ Although I cannot discuss this further, it should be noted in passing that the normative structure is itself grounded on the autonomy of the agents engaged in the joint pattern. The capacity of joint

permissibility let me first cast a closer look at the success and pathology of joint patterns of action.²²

On a good day joint patterns turn out as *exchanges* between the parties. This roughly means that each party engages in the pattern for reasons she has independently of the doings and sayings or the motives of the other parties (Julius 2013b). During an exchange the parties, in engaging in the joint pattern, help realize the reasons each of them independently has. Take for instance the joint action [You drive me to the station, I pay the fare] in which we often engage when hiring a taxi. Here the passenger and the driver partake in the joint action [You drive..., I pay the fare] for reasons each has independently of the sayings and doings of the other.²³ Alas, good days often come few and far between.

On a bad day, the joint pattern fails to amount to an exchange and deteriorates into some kind of *exploitative* or *coercive* scenario: a clear instance would be something like [You drive..., I refrain from shooting you]. But other, subtler instances of deterioration come to mind, when for instance the driver is driving the taxi for an exploitative taxi owner; here the joint activity between taxi owner and taxi driver might take the form [you drive the taxi 15 hours a day and give the earnings to me, I let you drive it for 3 more hours in order to make a living]. What makes this activity exploitative is the fact that the driver does not have any independent reason to perform his part of the joint pattern (that is, to drive the taxi 15 hours for another person), other than the fact that the taxi owner has rendered that a condition for the driver to earn a living. A more blunt case of exploitation is blackmail: when the boss says to the employee [you sleep with me, I promote you] the pattern proposed thereby lacks independent justification vis-à-vis the employee who is *coerced* to perform his/her part as a result of the employer's making it a condition for performing his/her part.

Such instances of exploitative action abound in a globalized world. Take for instance the practices of transnational corporations, which increasingly vary their standards of operation depending on the location of their operations. In particular in the developing South corporations often coerce workers to work in deplorable human rights conditions, by taking advantage of the fact that their livelihood depends on these corporations. Consider a case where a transnational corporation or its subsidiary, is the sole employer in a community. Most locals rely on that corporation, for earning living wages. The corporation disposes wastes upstream the only source of drinkable water. At the same time, it makes clear that any complaint would lead to loss of employment. Most employees remain silent of the abusive relationship for fear of

undertakings for mutual impact on the agency of the parties involved renders them answerable to reasons, thus subjecting them to justification. To that extent joint endeavors have a second-personal structure in the sense that the parties who engage in them should look to take on board, or respect, the reasons of one another, ultimately aiming to help one another to realize the reasons each independently has. In other words exchange, not coercion should be the outcome of the joint endeavor. For accounts that place autonomy at the basis of joint action in law and politics see Forst 2010; Möller 2012.

²² I would not have arrived at this account had it not been for the seminal work of AJ Julius (Julius 2013a; 2013b).

²³ Such reasons may be explained either with reference to the reciprocal promises actors make (contract) or – on a deeper explanation – the reasons that predate the promissory act (my reason to go to place X; the driver's reason to make a good living and so on).

losing their job. Extreme as it may appear, our imaginary example finds support in recent allegations of workers who have been coerced to work in deplorable conditions in the apparel industry of Bangladesh.²⁴

The pathology of coercion/exploitation contributes to an understanding of the salience of the *constraint of permissibility* in the context of joint patterns of action. Let me explain how: joint patterns of action succeed (qua exchanges) if and only if they do not contribute to the exploitation/coercion of any of the parties involved.²⁵ Instead cases of coercion/exploitation count as instances of wrongdoing. For the purposes of the present discussion a plausible way to understand wrongdoing is through the idea of hindrance of freedom.²⁶ Under this explication exploitative or coercive patterns hinder the freedom of the coercee, in disregarding the coercee's independent reasons for participating in the pattern.

What may count as a hindrance of freedom, on this understanding, is determined by the impact it has on the capacity of the coercee to determine her participation in the joint pattern according to the reasons she has. Thus any manipulation of the environment by the coercer, or any other intervention that modifies the reasons of the coercee in a manner that prevents the latter from acting on the reasons she actually has, would count as hindrance of freedom (Julius 2013b). If a corporation imposes exploitative terms on its employees or otherwise coerces those who live in the environment in which it is active, these actions would constitute hindrances of freedom, violating the constraint of permissibility of the relevant joint pattern of action.²⁷

The most important normative consequence of the constraint of permissibility is that it requires joint patterns of action to contribute to each person's acting consistently with the actions of others.²⁸ Contribution of the required kind takes place when patterns of action facilitate exchange and, conversely, hinder coercion/exploitation. Patterns that facilitate exchange do so in virtue of certain features they possess

²⁴ Following the collapse of the Rana Plaza (2013), killing over a thousand workers, the commission of inquiry concluded that workers are often intimidated not to expose their condition. I owe the construction of the example and further feedback on real-life cases to Tamo Atabongawung.

²⁵ Julius requires further that these patterns help realize the reasons of those involved (Julius 2013b). We may remain agnostic about this stronger condition for present purposes.

²⁶ Wrongdoing is often defined through harm (see for instance the so-called *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights*). To the extent that the definition relies on a standard understanding of harm as reduction of welfare, one should caution against it. Wrongdoing does not overlap with reduction of harm so conceived, for wrongdoing aims to cover instances of interference with freedom/autonomy which do not amount to any loss of welfare (so-called instances of harmless wrongdoing: say, if I avail myself of your car without your permission, damage it, and subsequently replace it with a better one, I will still count as having wronged you). See for an excellent discussion of the relevant conceptual distinction A Ripstein *Force and Freedom* (Ripstein 2019, 42-50).

²⁷ A more specific aspect of wrongdoing relates to the various kinds of means we each use to achieve our ends. The use of any material resources must comply with such conditions that ensure that the use of, say, chattels and land does not hinder the freedom of others. Notably Kant believes that any unilateral use of property that is not based on publicly promulgated rules would count as wrongful (Ripstein 2009).

²⁸ There exists of course a class of joint patterns of action in which permissibility does not feature prominently or at all. Such cases include *de minimis* infringements or special relations within which the hindrance of freedom is justified through some thick moral reasons (special relations such as family or club membership).

(facilitating features), which are shared by each of them. These facilitating features can be formulated through general principles that generate obligations akin to those we encounter in precepts of justice. Importantly, everyone who partakes in the relevant patterns jointly shares those obligations.

E. Concluding Remarks

Let me take some stock and gesture at a conclusion: my critical reading of Mathias Risse's account highlighted two core features of obligations of justice: their enforceability and their associative character. I then suggested that Risse's account falls short of explaining those features and, instead, proposed an alternative account which might do a better job. I employed the concept of the proto-legal relation to account for the grounds of obligations of justice in a manner that explains their core features without generating a dichotomy between obligations of justice and obligations of accountability/justification, as Risse's account does. I demonstrated further that the normative environment of the proto-legal relation can account for obligations of justice as being jointly shared by every actor who partakes of joint patterns of action that trigger off a constraint of permissibility.

If my account were sound, then one major consequence would be that the proto-legal relation would take us beyond a site-oriented inquiry that is wedded to states. In its place would become salient the normative relation between agents in its own right, not through the social facts that determine one version of that relation (i.e. within the domestic state). Notably the account would be able to draw the conclusion that joint patterns of action *plus* the condition of permissibility (i.e. the two key ingredients of 'proto-legality') are capable of grounding obligations whose content and normative force is not dissimilar to the kind of obligation we usually call legal. Accordingly, it would open our eyes to all those other instances of interaction which can generate enforceable obligations, a fact that had been obfuscated by the dedication of the standard accounts to one specific site of such obligations (i.e. the state). For, in disentangling the content of the salient normative relation from a preconceived test of site, proto-legality helps us recover the normative space, which is prominent in and largely constituted by trans- and supra-national contexts.

In effect, the structure of the proto-legal relation would be able to accommodate Risse's justified demand for a more pluralistic account of obligations of justice without losing sight of the normative glue that renders them types of the same kind: that is, enforceable obligations which establish joint patterns of action that enable each person to act consistently with the actions of others. Absent such an understanding Risse's pluralism would threaten to cut too deep as to be able to generate a shared account of political justice.

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