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The Power of Justification

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The first question of justice, according to Rainer Forst, is the question of ‘the justifiability of social relations and the distribution of the “power of justification” within a political context’.¹ This insight is central to a critical theory of justice, which insofar as it is critical must also be radical, that is, it must uncover the roots of social injustice. The first good of a critical theory of justice is therefore ‘the socially effective power to demand, question, and provide justifications, or to turn them into the foundations of political action and institutional arrangements’ (RJ, p. 5). Similarly, the core idea of a just order is the idea that ‘its rules and institutions of social life be *free of all forms of arbitrary rule or domination*’; guaranteeing this freedom from arbitrary rule or domination is the first ‘task’ of justice (RJ, p. 189). Justice is ‘first and foremost about ending domination and unjustifiable, arbitrary rule, whether political or social in a broader sense; it is about citizens’ status as equals in political and social life; i.e., as persons with what I call a basic right to justification’.²

Hence a critical theory of justice that puts the issue of justification at its centre is one that, as Forst puts it elsewhere, puts ‘first things first’, where this means that it puts the issue of ‘justificatory power’ first.³

¹ R. Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice*, trans. by J. Flynn. New York: Columbia University Press, 2012, p. 4. Henceforth cited in text as RJ.

² R. Forst, ‘First Things First: Redistribution, Recognition and Justification’, *European Journal of Political Theory* 6(3), (2007b), 291–304, p. 295.

³ *Ibid.*, p. 299.

Justice, Forst rightly insists, is a matter not of the distribution of goods but of the subjection of some individuals to the domination and/or arbitrary rule of others. This is why the first question of justice is the question of power.

The essential conceptual or philosophical elements of Forst's critical theory of (in)justice as it is articulated in the *Right to Justification* are the following: (1) a constructivist account of the source of moral (and, derivatively, political) normativity; and (2) an ultimate grounding of constructivism in a conception of practical reason and of what it means to be a human being that cannot itself be constructed (only reconstructed). Using this constructivist strategy together with his account of practical reason and the irreducibly moral dimensions of personhood, Forst develops the notion of a fundamental human/moral right to justification and a principle of justification centred on two basic criteria: reciprocity and generality. Throughout the *Right to Justification*, Forst puts this idea of the basic right to justification to work in a number of insightful and productive ways: in a masterful reconsideration of Rawls/Habermas and liberalism/communitarianism debates, and in original and well-developed accounts of deliberative democracy, social justice, human rights and transnational justice.

My main interest, however, in what follows is not so much on the ways in which the theory can be put to work, but rather on the key conceptual elements of Forst's theory, and of how well they serve his aim of putting first things first, that is, of making the question of power central to his account of justice. I share Forst's sense that the first question of justice is the question of power, so my overarching aim in what follows is to offer a kind of internal critique of his theory, focusing on the question of whether Forst's framework does in fact succeed in putting first things first, in the sense of doing justice to the question of power. My argument is that, as that framework is developed in the *Right to Justification*, it does not, and the reason for this is that Forst tends to envision the power of justification in positive terms – as an empowering force to be wielded against domination, as a weapon

of the weak, as it were – and does not pay sufficient attention to the ways in which practical reason itself can and often does serve not only to legitimate existing relations of domination but also to enact them. Notably, the claim that our notion of practical reason is premised on and serves to reinforce relations of domination and subordination figures prominently in the critiques of reason offered by many feminist, queer, critical race and postcolonial theorists. While this doesn't mean that the claim should be accepted uncritically, it does mean, I think, that a theory that aims to be truly critical should take such claims seriously. The more interesting question, I think, however, is not whether Forst's framework *does* accommodate the idea that practical reason and justification, as these have been understood in the Enlightenment philosophical tradition that we have inherited from Kant, are mechanisms of both empowerment and domination at the same time. The more interesting question is whether or not Forst's framework *could* accommodate such an idea. That's a more difficult question for me to answer, but one that I hope my remarks will at least invite Forst to reflect upon further.

Constructivism, reconstructivism and the problem of ideology

There is a sense in which Forst's project is a foundationalist one, insofar as he seeks to ground his account of political justice – and his related accounts of deliberative democracy, human rights, social and transnational justice – in a fundamental moral right, which is also a human right. This is the right to justification. In this sense, there is an avowedly Platonic aspect to Forst's project, insofar as it seeks to ground all normative phenomenon in a '*single root*' which forms the 'normative core' of talk of justice in all social and political contexts, 'the one basic human *right to justification*' (RJ, p. vii). Indeed, talk of foundations is prominent in this book: the introduction is called 'The Foundation of Justice' and the first section of the book bears the title 'Foundations' while the subtitle of the first chapter is 'the

foundation of morality'. As we will see below, however, Forst stops short of claiming that there is an 'ultimate' foundation or ground for normativity⁴; so all talk of foundations aside, his theory of normativity is non-foundationalist.

If there is no ultimate foundation or ground for normativity, then what accounts for the validity of our moral and political norms, in particular, the fundamental principle of justification? In response to this metaethical question, Forst initially offers a constructivist answer.⁵ Morality rests upon its own validity, it does not draw its normativity or validity from God or any other source. In this sense, morality is autonomous. And yet moral norms are capable of being genuinely valid.⁶ Their validity is a function of their having survived an idealized procedure of practical deliberation, what Forst calls a justification procedure. Forst formulates the core insight of constructivism as follows: 'there is no objective, or in any other sense valid, order of values that takes priority over the justification procedure. Only those norms that can successfully withstand this procedure count as valid' (RJ, p. 48).

On Forst's particular version of constructivism, the justification procedure centres on two criteria: reciprocity and generality. The reciprocity criterion holds that: 'one cannot raise any specific claims while rejecting like claims of others (reciprocity of contents), and one cannot simply assume that others share one's perspective, evaluations, convictions, interests, or needs (reciprocity of reasons), so that, for

⁴ Hence, Forst claims that his theory of justification 'starts from the unavailability of "ultimate" grounds for principles of justice' (*Right to Justification*, p. 81).

⁵ Note that since Forst grounds political norms in a constructivist account of the validity of moral norms, his version of constructivism is more Kantian than Rawlsian. Compare Rawls's classic statement of constructivism, which is limited to a political conception of justice: J. Rawls, 'Kantian Constructivism in Moral Theory', *Journal of Philosophy* 77(1980), 515–72. For Forst's account of the differences between his constructivism and Rawls's, see *Right to Justification*, pp. 111ff.

⁶ In line with Habermas's discourse ethics, Forst focuses on the validity of moral norms rather than their truth. For Habermas's argument that normative validity is analogous to but not a species of truth, see J. Habermas, 'Discourse Ethics: Notes on a Program of Philosophical Justification', in *ibid.*, *Moral Consciousness and Communicative Action*, trans. by C. Lenhardt and S. Weber Nicholsen. Cambridge, MA: MIT Press, 1990, pp. 43–115.

example, one claims to speak in the “true” interests of others or in the name of an absolute, unquestionable truth beyond justification’ (RJ, p. 49). The generality criterion holds that: ‘the objections of any person who is affected, whoever he or she may be, cannot be disregarded, and the reasons adduced in support of the legitimacy of a norm must be capable of being shared by all persons’ (RJ, p. 49). Hence, for Forst, the world of moral normativity is constructed by means of a principle of reciprocal and general justification; the binding force of norms rests on the fact that no good reasons can be offered against them (RJ, p. 50). The relevant sense of ‘no good reasons’ is a way of cashing out the Scanlonian idea of ‘reasonable rejection’. Hence, Forst writes, ‘Normativity is generated by a discursive justification procedure that equips norms with reasons that cannot be [reasonably] rejected. These reasons are the ground on which the normativity of autonomous morality rests’ (RJ, p. 51). But what it means to say that a norm can’t be reasonably rejected is just that it meets the criteria of reciprocity and generality.

And yet, as Forst realizes, there is a limit to the work that constructivism can do. This limit is expressed in the following question: what is the source of the normativity of the justification procedure – the principle of justification – itself, on the basis of which moral and political norms are to be constructed?

Forst’s answer to this question is to assert that the ought ‘brings its own reasons with it so that there can be no question of other reasons’ and that recognizing this just is what it means to be a moral subject (RJ, p. 53). Hence, he claims, ‘the moral law does not need any further justifying reasons over and above the practical knowledge that one is a “justifying being” with a fundamental duty to provide justifications and . . . [that] “being human”, insofar as it necessarily implies being a “fellow human”, already has a normative character that entails the duty to provide justifications in moral contexts’ (RJ, p. 54). So the ‘ultimate’ foundation – keeping in mind that Forst denies that the foundation is truly ultimate – of Forst’s moral and political constructivism is a certain conception of what it means to be human, a conception that

is essentially equated with an account of practical reason.⁷ Forst is quite explicit that this account cannot itself be constructed, though it can be reconstructed.⁸ This is fair enough – it is a common criticism of constructivism that it must either bottom out in some foundation that is not itself constructed but instead forms a realist ground – or end up being circular.⁹ Forst explicitly denies that his constructivism ultimately rests on a moral realist ground¹⁰; this is the basis for his repeated insistence that there is no ‘ultimate’ foundation for morality. Rather, he adopts the strategy of admitting to a kind of circularity to the way in which the construction procedure itself is grounded – he uses the term ‘recursive’ – though he insists that this circularity is virtuous and reflexive rather than vicious and question-begging. This is where the notion of reconstruction comes in.¹¹

But what precisely does it mean to say that the account of practical reasons that underlies Forst’s constructivist procedure can be reconstructed? What does ‘reconstruction’ mean here? Forst doesn’t say explicitly here what he means by this, but his usage of the term seems close, at least in this text,¹² to Habermas’s. As Thomas McCarthy explains, rational reconstruction for Habermas is the reflective articulation, refinement and elaboration of ‘the intuitive grasp of the normative presuppositions of social interaction that belongs to the repertoire

⁷ Note that Forst distinguishes his account of practical reason from Kant’s because he takes Kant to fail to appreciate the intersubjective nature of morality’s demands; see *Right to Justification*, ch. 2, sec. 13. Being human has its normative character for Forst only ‘insofar as it necessarily implies being a “fellow human”’ (*Right to Justification*, p. 54).

⁸ For example, in the Introduction, Forst writes, ‘the “ultimate” foundation of constructivism cannot itself be constructed, but must prove itself as being appropriately reconstructed in an analysis of our normative world’ (*Right to Justification*, p. 5).

⁹ C. Bagnoli, ‘Constructivism in Metaethics’, *Stanford Encyclopedia of Philosophy*, published 27 September 2011 at <http://plato.stanford.edu/entries/constructivism-metaethics/>, accessed 19 January 2012.

¹⁰ See, for example, *Right to Justification* ch. 2, especially sec. 19, where Forst responds to the work of Charles Larmore.

¹¹ Hence, Forst claims that ‘the principle of justification is thus a principle that must be “recursively” reconstructed’ (*Right to Justification*, p. 81).

¹² Note that, as Forst himself notes, it is also possible to approach the right to justification from the point of view of a historical reconstruction of the ways in which discourses of justification have emerged in various social and political conflicts. Forst pursues this kind of reconstructive strategy in his book, *Tolerance in Conflict*, trans. by C. Cronin. Cambridge: Cambridge University Press, 2013a. See Forst, *Right to Justification*, p. 3.

of competent social actors in any society.¹³ For Habermas, rational reconstruction draws on work in the empirical sciences to generate a quasi-transcendental account of the rational-normative potentials built into linguistic communication¹⁴; this quasi-transcendental account plays an important justificatory role in his discourse-ethical constructivism.¹⁵ Although Forst indicates that he does not wish to take on board the whole of Habermas's 'comprehensive theory of truth and argumentation', (RJ, p. 271, n. 29), his use of the term reconstruction in this text nonetheless has affinities with Habermas's. Hence, Forst's reconstructive approach to the moral point of view starts with a pragmatic analysis of moral validity claims and inquires 'into the conditions of justification of such claims' (RJ, pp. 48–9). This recursive, reconstructive analysis generates the criteria of generality and reciprocity, in the sense that by means of a reflexive articulation of what we are implicitly committed to as moral agents it uncovers that what it means for a competent moral actor to redeem a moral validity claim is just for him or her to be able to defend that claim in a reciprocal and general way, in a way that no one can reasonably reject.

So it turns out that all of the talk of foundations of morality notwithstanding, Forst's approach 'ultimately' rests on a non-foundationalist ground, namely, the reconstructive analysis of what we are implicitly committed to as practically reasoning moral agents. This sort of strategy is open to some standard worries that are raised in debates about constructivism: If constructivism ultimately rests

¹³ T. McCarthy, 'Kantian Constructivism and Reconstructivism: Rawls and Habermas in Dialogue', *Ethics* 105(1), (1994), 44–63, at p. 47. Habermasian rational reconstruction plays a similar role in his theory to the role played by the reflective articulation of our considered convictions about justice in Rawlsian political liberalism. For Forst's discussion of the different ways in which Habermas and Rawls combine reconstructivist and constructivist strategies, see *Right to Justification*, pp. 82–92.

¹⁴ J. Habermas, 'What is Universal Pragmatics', in *Communication and the Evolution of Society*, trans. T. McCarthy. Boston: Beacon Press, 1979; and J. Habermas, *The Theory of Communicative Action, volume 1: Reason and the Rationalization of Society*, trans. by T. McCarthy. Boston: Beacon Press, 1984, especially ch. 3.

¹⁵ But note that for Habermas this account doesn't bear all of the justificatory weight, for related to this quasi-transcendental account of the pragmatics of language use is Habermas's historical account of the normative content of modernity as having emerged out of a cultural and social learning process.

on some view about practical reason, then isn't the problem to which constructivism is supposed to offer such an elegant solution – namely, how to ground the validity of our moral judgments in a way that avoids relativism but without recourse to moral realism – just shifted back a level, to the level of the account of practical reason? What grounds the appeal to the normative content of the account of practical reason itself? If, in an effort to avoid moral realism, one answers this question, as Forst does, by saying, in effect, 'this is just what it means to be a practical reasoner', then the norms that are taken to be constitutive of practical reason threaten to become arbitrary.¹⁶

A nearby worry, not typically raised in discussions of constructivism in metaethics, is the problem of ideology. If the 'ultimate' grounds of the normative values that are modelled in our constructivist procedure are just our own practices and conception of practical reasoning, then what are we to do if, built into those practices and that conception, are certain ideological distortions? Suppose that the conception of practical reason on the basis of which we construct our normative world is itself, in some sense that remains to be fully spelt out, normatively suspect or problematic? What resources, then, would a normative theory such as Forst's give us for criticizing that world? (How) can an account of moral and political justice that grounds its understanding of normativity in this way help us to diagnose such distortions?

Nor should this be seen as an empty worry, since there has been lots of criticism over the last 30 years or more, from feminist, queer, postcolonial and critical race theorists, of just the sort of account of practical reason on which Forst's moral constructivism rests.¹⁷ Such critiques claim that the Kantian Enlightenment conception

¹⁶ On this point, see Bagnoli, 'Constructivism in Metaethics'.

¹⁷ In feminist theory, the locus classicus of such discussion is G. Lloyd, *The Man of Reason: 'Male' and 'Female' in Western Philosophy*, 2nd edition. Chicago: University of Chicago Press, 1993; in critical race and postcolonial theory, the central text is F. Fanon, *Black Skin, White Masks*, trans. by R. Philcox. New York: Grove Press, 2008; for a recent articulation of this critique from the point of view of queer theory, see L. Huffer, *Mad for Foucault: Rethinking the Foundations of Queer Theory*. New York: Columbia University Press, 2010.

of practical reason explicitly or implicitly excludes, represses or dominates all that is associated with the so-called Other of reason, whether that be understood in terms of madness, irrationality, the emotions, the affects, embodiment or the imagination, all of which are symbolically associated with black, queer, female and colonized subjects. These symbolic associations serve both to rationalize and justify existing relations of racial, heterosexist and ethnic oppression and domination – by defining women, blacks, queers and colonized peoples as not rational and therefore as not fully human – at the same time that they reinforce certain stereotypical understandings of black, queer, feminine and subaltern identity as closer to nature, more tied to the body, more emotional, more prone to madness, irrationality or violence and so on.

Indeed, taking seriously the ways in which ‘our’ conception of practical reason is connected not just to empowerment – understood here as the ability to demand justification for the norms by which one is ruled, as what Forst calls ‘justificatory power’ – but also to the domination and exclusion of all those who have been affiliated with reason’s others – the body, affects, unreason or madness, primitive nature, etc. – seems especially important for Forst, who, contra Rawls, understands the construction procedure itself not as a thought experiment but rather as a social practice. But, if the construction procedure is itself a social practice, then shouldn’t we be worried about the extent to which our procedures of justification and the account of practical reason on which they are based may themselves be inflected with existing relations of social subordination, domination and oppression? Shouldn’t we be worried about the ways in which the power of justification is both a weapon of the weak – a means by which subordinated individuals demand justification for their subordination – and tool of the powerful – a means by which powerful individuals rationalize their own dominance? And isn’t raising such questions necessary if we are really to put first things first, to make the first question of justice the question of power?

Practical reason and subjection

But these sorts of questions can only be fully addressed through a more detailed consideration of Forst's account of practical reason, which is defined as the ability and disposition to 'enter into the normative space of intersubjectively supportable reasons' (RJ, p. 17) which means 'the basic capacity to respond to practical questions in appropriate ways with justifying reasons within each of the practical contexts in which they arise and must be situated' (RJ, p. 18). The fundamental principle of practical reason is the already mentioned principle of justification. What precisely this principle demands, for Forst, will vary by context of justification. So, for example, in moral contexts, the bar for justification is higher than it is in ethical or political contexts, and higher in these, in turn, than in pragmatic contexts. In moral contexts (where the bar is highest), the 'defining feature of reasons that can justify moral claims is . . . that they must be *reasons that cannot be reasonably – that is, not reciprocally and generally – rejected*' (RJ, p. 21).

So we get an image here of the space of justification as a space populated with 'reasonable, autonomous, and moral beings who must be able to account for their actions to one another' (RJ, p. 22). But how does one enter this space? What motivates one to take up the moral point of view? In contrast to neo-Humeans such as Bernard Williams, Forst insists that the reasons for taking up the moral point of view cannot be external, in the sense of fear of external sanctions or guilt or considerations of self-interest. And this is so because 'a categorical and unconditionally valid morality cannot stand on an instrumentally or ethically hypothetical foundation. It requires an *unconditioned ground*' (RJ, p. 34). So, the motivation for taking up the moral point of view has to be 'respect for the fundamental right to justification of every autonomous moral person' (RJ, p. 37), which Forst characterizes as a 'second-order practical insight' that is 'fundamental for morality' (RJ, p. 37). Through this insight, 'humans recognize themselves and each other reciprocally as members of the moral community of justification that includes all human beings, as autonomous and responsible beings,

endowed with reason, who are members of a shared (and commonly constructed) space of justifying reasons' (RJ, pp. 37–8).

On Forst's view, one cannot arrive at this insight into what it means to be moral by being convinced that doing so is in your interest, for the phenomenon of being moral 'consists in the fact that anyone who realizes that he is morally obligated toward others also knows that he cannot have reasons for this obligation rooted in primarily self-regarding empirical interests, such as the avoidance of sanctions' (RJ, p. 58). In support of this point, Forst paraphrases Heidegger's attempt to dissolve (rather than solve) the problem of epistemological skepticism about the external world. As Heidegger famously argues in *Being and Time*,¹⁸ the problem of skepticism arises only if one accepts an artificial and problematic view of the relationship between subject and object, whereby the subject is understood as a unique kind of being, set over against a world of objects. Once one sets things up in that way, the subject is separated from objects by a chasm that it can never quite manage to get back across; it is forever after plagued by sceptical worries about whether its experience of the world in fact matches up with the way the world really is. Heidegger's (dis)solution of this problem rests on showing it to be a false problem, based on an abstraction from our primordial way of existing, which is to be immersed in the world, to experience our being-in-the-world as a unified phenomenon. Forst runs an intriguing parallel argument with respect to moral skepticism. As Forst puts it, 'from the perspective of someone who understands himself as a moral being, from the perspective of moral "being-in-the-world", so to speak, this question [i.e., why be moral?] does not even arise; and someone who does not understand himself morally can never be brought to see the point of morality in this way [i.e., by means of external sanctions]' (RJ, p. 58).

But note that there's an important disanalogy between epistemological and moral skepticism that Forst does not acknowledge, and it is a

¹⁸ M. Heidegger, *Being and Time*, trans. J. Stambaugh, ed. and rev. by D. Schmidt. Albany, NY: SUNY Press, 2010.

difference that casts doubt on Forst's strategy here. The difference is this: no one starts out in life a skeptic about the reality of the world. Quite the contrary, we all start out naïve realists, who understand ourselves as immersed in the world in just the way that Heidegger's phenomenology attempts to recover. Typically, one needs a fair amount of philosophical argumentation to motivate sceptical doubts about our knowledge, and they tend to dissipate as soon as, as Hume says, we leave the room, when we quite naturally leave by the door rather than the window. But in the case of moral skepticism, the situation is much less clear. There's some reason for thinking that we *do* all start out life as moral skeptics, or at least as creatures who do not inhabit the moral point of view. Anyone who has spent a significant amount of time with toddlers has some experience with this phenomenon. Children have to be *socialized into* morality and the central mechanism for this socialization is precisely the threat of sanctions (whether positive or negative), which (hopefully, if all goes well) through the mechanism of guilt leads to the internalization of structures of parental authority. This basic insight is found not only in the work of Nietzsche and Freud but also in the work of less pessimistic or ambivalent theorists of moral development such as Lawrence Kohlberg and Habermas.

Forst acknowledges that there's a degree of socialization required here but insists that this socialization is benign: 'To become part of such contexts means to learn to recognize what justifications are, when one owes them, and to whom. Such processes of formation do not "ram" an "absolute must" into us in an inexplicable manner, as Tugendhat puts it. Rather, they constitute the way in which we are as fellow human beings and through which we become individual persons' (RJ, p. 61). But he gives no discussion of how one is socialized into the space of moral reasons, nor does he acknowledge the role that accepting and internalizing the superior power of the parent (or other normative authority) inevitably plays in this process. Nor does he appreciate the fact that *from the point of view of the child*, these formation processes *necessarily* have an element of inexplicability and arbitrariness to them; the child can only appreciate the reasons that

justify such socialization processes *after the fact*, after she has taken up a position within the space of reasons. Until that point is reached, parental reasons, from the point of view of the child, all seem to rest on one ultimate ground: because I said so. In other words, the space of reasons is also a space of power in the sense that it is constituted through a certain kind of power relation that can only be justified to the participants after they have entered it and accepted its demands and constitutive norms.

This line of thought can also be connected to a kind of communitarian critique of Forst's Kantian account. What, after all, are we being socialized into when we are being socialized into the space of reasons? Are we being socialized into a reasoning practice that allows us to arrive at or at least approximate a truly universal, context-transcending perspective, one that affords us a genuinely critical perspective on any form of life whatsoever, including our own? Or are we being socialized into a particular form of life, one that is rooted in and carries with it both the ethical values and, perhaps, the ideological biases of that form of life? Forst considers such worries in his discussion of Charles Taylor's work, since Taylor argues that belief in the power of reason and the autonomous subject are not, in fact universal moral values, but rather part of the uniquely modern spirit or identity (RJ, pp. 73–4).¹⁹ Hence, on Taylor's view, the normative concepts such as practical reason and autonomy that undergird universalistic Kantian moral theories are themselves rooted in thick ethical values or constitutive goods of a particular form of life, namely, the modern (European) form of life.

To this sort of worry, Forst responds that the validity of morality cannot be grounded in this way, since 'morality is about a sphere of categorically binding norms whose observance is not required for the sake of *one's own* good, but is *unconditionally* required for the sake of the good of *others* according to the criteria of reciprocity and generality' (RJ, p. 74). Morality and its central principle, the principle

¹⁹ See C. Taylor, *Sources of the Self*. Cambridge, MA: Harvard University Press, 1989.

of justification, must be grounded instead in 'practical reason itself' (RJ, p. 74). However, to the non-Kantian, this response sounds a bit like emphatically stamping one's foot, inasmuch as it presupposes precisely what is supposed to be at issue here, which is whether or not the validity of the moral can have an unconditioned ground, whether or not it can be defended independently of any and all thick, culturally specific, conceptions of the good. The most that Forst seems entitled to say at this point is that in order to count as a genuine morality, a system of normative principles would have to have an unconditioned ground; but claiming that this is a necessary feature of morality as such is not, by itself, sufficient to show that this unconditioned ground actually exists. It is worth noting that part of Taylor's historical story is about the 'belief in the power of reason of the autonomous subject' as one of the goods particular to modernity (RJ, p. 74). If Taylor's historical genealogy is plausible, then even Forst's account of practical reason comes from somewhere, is rooted a particular point of view, something like the point of view of European Enlightenment modernity.²⁰ And in that case, the communitarian challenge is a serious one – and it isn't just about how to draw the distinction between ethics and morality. Rather, it is about whether all attempts, such as Forst's, to articulate morality in the strong universalist and categorical sense are not, in fact, thick, particular, ethical values and substantive conceptions of the good in disguise.

To be sure, Forst is right that 'excluding a Hegelian recourse to the absolute, [Taylor's] narrative reconstruction of the goods underlying modern identity is confronted with the problem of justifying the validity of this kind of ethics' (RJ, p. 74). But notice that this is only true to the extent that one understands validity in the fairly demanding sense

²⁰ In connection with this it is worth noting that Forst's central concept, that of justification, is also central to the Christian tradition, as can be seen in the theological writings of the apostle Paul, St Augustine and Martin Luther. On the centrality of justification to the Christian tradition, see 'Justification', in L. Jones (ed.), *Encyclopedia of Religion*, 2nd edition. Detroit, MI: Macmillan Reference, 2005, pp. 5039–42. It would be interesting to trace the genealogy of the concept of justification from its theological beginnings to the role it comes to play in Kantian and post-Kantian moral philosophy.

that Forst himself does. If, by contrast, one is comfortable with a less demanding, more contextualist conception of normative validity, then one wouldn't have to have recourse either to a theory of the absolute or to the notion of an unconditioned ground.

Now, I suspect that Forst would say that even granting the concerns I have raised thus far – concerns about possible ideological distortions in our understanding of practical reason and about the relationship between socialization into the space of reasons and power relations – still we have no other resource on which to rely in analysing and critiquing such relationships but reason itself. As he puts it, 'a morality of justification is a morality that can be criticized and revised in its details: a human morality "without a banister" that cannot in principle exclude the possibility of failures and errors. There is, however, only one "authority" for revising any reasons that no longer seem defensible: reason itself' (RJ, p. 39). And this shows why he regards the normative concepts of autonomy and practical reason as genuinely universal, not just the expression of a particular form of life. These concepts form the core of a notion of responsibility for which there is no conceivable alternative, and on the basis of which the legitimacy of all forms of the good life are debated. As Forst sees it, this notion of moral responsibility is 'not the result of shared conceptions of the good life, but rather of a realistic consideration of the results of conflicts and learning processes that have made it clear what people owe one another. This is more than agreement concerning a few "procedural" rules, but less than the sharing of a form of life that constitutes the ethical identity of citizens' (RJ, p. 121).²¹

I can't really settle this point about whether the Kantian conception of practical reason and autonomy that Forst defends is genuinely universal or ethically particular here, though I admit I'm doubtful

²¹ The reference to learning processes is interesting here, since it suggests that Forst's view is tied to some sort of story about historical development; but this, as Thomas McCarthy has argued recently, only heightens the worries I have raised about the entanglement of the normative values of modernity with relations of (neo)colonial, (neo)imperial, racist domination. See T. McCarthy, *Race, Empire, and the Idea of Human Development*. Cambridge: Cambridge University Press, 2009.

about Forst's claim, particularly to the extent that it relies on the reconstruction of certain historical developments as learning processes. The central point I want to make is this: It may be true that reason is all 'we' have, that reason is the best weapon we have as we try to adjudicate the kinds of questions I have raised about ideological distortions and power relations, and that, in that sense, reason is self-correcting. In other words, it may be true that, as Forst says, 'there is . . . only one "authority" for revising any reasons that no longer seem defensible: reason itself' (RJ, p. 39).²²

But, even if we grant Forst this point, this is all the more reason to be attentive to what Albenaz Azmanova calls, following Kant and Hannah Arendt, the scandal of reason. The scandal of reason consists in its capacity *both* to stabilize and legitimate *and* to destabilize and delegitimize relations of domination and subordination.²³ A greater focus on this scandal, and on the relationship between 'our' ideals and practices of reasoning and the power relations with which they are intertwined, would not lead us to abandon the ideal of practical reason, though it might lead us to conceptualize it differently.²⁴

Putting first things first (and the methodology of critical theory)

The two conceptual issues I've been laying out can both be understood as raising questions about how Forst's theory makes sense of the relationship between practical reason and the practice of justification, on the one hand, and relations of power over others – domination and

²² See also his related claim, in the context of his discussion of his justificatory account of deliberative democracy, that 'there may always be better answers than the ones arrived at in democratic procedures; but the meaning of "better" is: more justifiable in a process of deliberation and argumentation' (*Right to Justification*, p. 186).

²³ A. Azmanova, *The Scandal of Reason: Toward a Critical Theory of Political Judgment*. New York: Columbia University Press, 2012.

²⁴ For a compelling attempt to conceptualize reasoning in a way that is attentive to its actual and potential entanglements with relations of domination, see A. S. Laden, this volume; and A. S. Laden, *Reasoning: A Social Picture*. New York: Oxford University Press, 2012.

authority – on the other. The question of the problem of ideology in relation to constructivism as a metaethical position can be construed in more neutral ways – as a question about whether our construction procedure might lead us systematically astray about some moral facts of the matter – but it can also be construed, as I argued above, as a question about whether ‘our’ conceptions of practical reason and practices of justification might be entangled with relationships of exclusion and domination. Hence, the worry is about whether the foundation for our normative construction, which is a reconstruction of ‘our’ point of view as practically reasoning moral agents, is itself inflected with relations of domination and subordination. In order to theorize this possibility, we would have to understand terms such as the ‘power of justification’ and ‘justificatory power’ as having two distinct meanings. These terms can refer, as they do in Forst’s work, to the empowering power of justification, that is, to the ability on the part of subjects of domination and/or arbitrary rule to demand justification for their situation.²⁵ But they can also refer to the subordinating power of justification, that is, to the ways in which certain conceptions of practical reason and practices of justification can and do serve to entrench, rationalize and legitimate relations of domination²⁶. Although Forst offers us a compelling account of the former aspect of the power of justification, he does not provide an account of the latter, which means that he also does not offer an account of how these dimensions of the relationship between power and justification are often entangled with one another. Since power and domination are pervasive features of our social world, it seems especially incumbent upon a theory that understands practical reason as a social and discursive practice of giving and asking for reasons to attempt to theorize both aspects of the power of justification.

²⁵ Hence, Forst claims that justificatory power is ‘the highest good of justice (though one that cannot be distributed like a material good)’ and he defines it as ‘the “discursive” power to provide and to demand justifications, and to challenge false legitimations’ (*Right to Justification*, p. 196).

²⁶ For insightful discussion of this issue, see Kevin Olson, “Complexities of Political Discourse,” this volume.

The question about the conception of moral personhood that underlies the account of practical reason can also be understood as a question of justificatory power, though in a somewhat different way. The process of socialization into the moral point of view inevitably and necessarily involves the internalization of a certain relationship of power, as a result of the child's radical dependence on her parents.²⁷ As I mentioned above, this is a central insight in the work of Nietzsche and Freud, and it is a point that was not lost on the First Generation of the Frankfurt School. As Horkheimer and Adorno put it, 'humanity had to inflict terrible injuries on itself before the self . . . was created, and something of this process is repeated in every childhood'.²⁸ To be sure, this power relation can be construed as an authority relation, but, significantly, whether that authority is dictatorial or legitimate can be determined only after the fact, after the child has taken up the moral point of view. The threat of parental or social sanctions – whether positive or negative – and the mechanisms of guilt and shame play a crucial role in this process. The conclusion we should draw from this is not that all authority is illegitimate, that we shouldn't discipline children, or that freedom means a wild, schizophrenic, anarchic transgression of the boundaries of moral personhood. Rather, the conclusion is a more complicated and ambivalent one: that power relations are constitutive of subjectivity and moral personhood, that power relations provide the condition of possibility for entering the space of reasons in the first place, which means that the space of reasons is also always already a space of power. And this suggests that our confidence in the ability that reason itself gives us to distinguish between legitimate and illegitimate forms of power and dependency shouldn't be overly strong.

²⁷ I discuss this issue in more detail, in relation to Judith Butler's theory of subjection, in chapter four of A. Allen, *The Politics of Our Selves: Power, Autonomy, and Gender in Contemporary Critical Theory*. New York: Columbia University Press, 2008.

²⁸ M. Horkheimer and T. Adorno, *Dialectic of Enlightenment: Philosophical Fragments*, trans. E. Jephcott. Stanford: Stanford University Press, 2002, p. 26.

I suspect that this conclusion would be quite worrisome to Forst, whose division of labour between the constructive and critical tasks of a theory of justice seems designed to avoid precisely the sorts of considerations that I've been raising. The constructive part of the theory of justice 'lies in identifying the premises, principles, and procedures of the project of establishing a (more) just society' (RJ, p. 117); the critical part 'lies in uncovering false or absent justifications for existing social relations and the corresponding relocation of the *power of justification* to the subjects themselves' (RJ, p. 117). The centrepiece of the constructive part of the theory is the justification of a just basic structure, which rests on the constructivist and reconstructivist account of the principle of justification itself. The centrepiece, the critical part of the theory of justice is the 'analysis and critique of legal, political, and social relations that are not reciprocally and generally justifiable. It requires a *critique of relations of justification* in a double sense, namely, both with respect to the real, particularly institutional possibility of discursive justification and (in terms of discourse theory) with regard to allegedly "generally" accepted and acceptable results, that in truth are missing a sufficient grounding' (RJ, p. 121).

The advantage of distinguishing between the constructive and critical tasks of a theory of justice in this way is relatively clear: it allows Forst to confine questions of the relations of domination in existing social relations to the critical part of the theory, allowing him to focus in the constructive part on the normative defence and elaboration of the principle of justification. This allows Forst to develop a strong normative principle on the basis of which power relations can be critically assessed. But the shortcomings of such an approach are, in my view, equally clear. This sort of approach seems to be an instance of what has recently been called political philosophy as applied ethics.²⁹ The strategy seems to be to develop and defend

²⁹ R. Geuss, *Philosophy and Real Politics*. Princeton: Princeton University Press, 2008.

the normative philosophical framework on independent grounds and then, in a second step, to apply this theory to the task of criticizing existing social relations.

The merits of such an approach as a general approach to political philosophy are debatable.³⁰ The more specific question that I would prefer to focus on here has to do with the merits of adopting this sort of approach when what one endeavours to do is to offer a critical theory of justice that puts the question of power at its centre. Can an approach such as this do justice to the depth and complexity of power relations, especially as these pertain to the conditions and practice of justification and practical reasoning? As I've already suggested, it seems to me that an approach that puts first things first would be one that focuses not only on the emancipatory role that the demand for justification can and does play but also on the role that practices of justification and conceptions of practical reasoning also play in legitimating and undergirding existing relations of domination and subordination, particularly along lines of race, ethnicity and gender/sexuality. Moreover, such an approach would also highlight the ways in which these two aspects of the power of justification are often entangled with one another.

This way of understanding the inherent duality of the power of justification would be in line with an alternative conception of the methodology of critical theory: an approach that envisions critical theory not as a kind of applied ethics but, rather, takes the distinctiveness of critical theory to lie in its understanding of practical reason as impure, by which I mean embodied and embedded in history, culture, society, language and so on, which is to say, entangled with power relations. On this view, the methodological distinctiveness of critical theory lies precisely in its attempt to grapple with the essential tension between reason and power relations, an essential tension that needs to be

³⁰ For compelling critical discussions of Rawls that foreground this issue, see Geuss, *Philosophy and Real Politics*, and F. Freyenhagen and J. Schaub, 'Hat hier jemand gesagt, der Kaiser sei nackt? Eine Verteidigung der Geuss'schen Kritik an Rawls' idealtheoretischem Ansatz', *Deutsche Zeitschrift für Philosophie* 58(3), (2010), 457–77.

confronted not just at the empirical level but also at the conceptual level.³¹ In other words, the methodological distinctiveness of critical theory rests in its acknowledgement that, as Foucault once put it, we are 'fortunately committed to practicing a rationality that is unfortunately crisscrossed by intrinsic dangers' and the task of critical theory is both to accept and to think through this spiral.³² Such an approach to critical theory is actually more fully reflexive than the political philosophy as applied ethics approach, insofar as it has built into itself a genealogical reflection on the contingent and possibly ideological grounds of its own theoretical formation.³³

To all of this, I imagine that Forst might reply by complaining that the approach that I advocate makes it difficult, if not impossible, to distinguish between legitimate and illegitimate relations of power. And indeed, it is true that I have not, in the course of this discussion, distinguished clearly between power relations as such and relations of domination and subordination.³⁴ I think that an approach to critical theory that foregrounds a genealogical analysis of power relations still can – indeed: must! – make such distinctions, though it will need to understand the normative validity of such distinctions as based on a more contextualist metaethical position than the one defended by Forst.³⁵ Still, I admit that the methodological approach to critical theory that I have (only rather sketchily, to be sure) proposed here as an alternative to Forst's will have a more difficult time making such distinctions in a

³¹ I argue for this way of understanding the project of critical theory in A. Allen, 'The Unforced Force of the Better Argument: Reason and Power in Habermas's Political Theory', *Constellations* 19(3), (September, 2012), 1–16. Interestingly enough, Habermas himself comes closer to the view I am advocating – though not, in my view, close enough – in his discussion of law in *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. by W. Rehg. Cambridge, MA: MIT Press, 1996a. Forst explicitly distances himself from this aspect of Habermas's thought in ch. 4 of *Right to Justification*; see especially, pp. 113–16.

³² M. Foucault, 'Space, Knowledge, and Power', in J. Faubion (ed.), *Essential Works of Michel Foucault, volume 3: Power*. New York: The New Press, 2000, p. 358.

³³ Freyenhagen and Schaub, 'Hat hier jemand gesagt', p. 464.

³⁴ This is a task that I attempt to carry out in A. Allen, *The Power of Feminist Theory: Domination, Resistance, Solidarity*. Boulder, CO: Westview Press, 1999.

³⁵ I attempt to work out such a position via a critical engagement with Habermas in chapters 5 and 6 of Allen, *The Politics of Our Selves*.

firm and fast way, with a great degree of confidence. But I see this as an *advantage* of the view that I'm proposing, because it seems to me that the great difficulty we have in distinguishing legitimate from illegitimate relations of power is a feature of the cultural, social and political world we inhabit, something that critical theorists should place at the very centre of our theorizing. It does no good to pretend that this is not a deep and pervasive feature of our social world, nor to assume that this practical issue doesn't affect our own theorizing. To do so, it seems to me, would be to engage in a kind of wishful thinking that we would do well to avoid.³⁶

³⁶ On the concept of wishful thinking, see David Owen's insightful critique of Geuss, D. Owen, 'Die verlorene und die wiedergefundene Wirklichkeit. Ethik, Politik und Imagination bei Raymond Geuss', *Deutsche Zeitschrift für Philosophie* 58(3), (2010), 431–43.