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Noumenal Power, Reasons, and Justification

A Critique of Forst

Sameer Bajaj and Enzo Rossi*

I. Introduction

1. Forst on Power and Justification

In recent years, under the banner of a ‘right to justification’ (or *Recht auf Rechtfertigung*, in the pithier German version), Rainer Forst has put forward a novel and distinctive project in normative political theory. One could say that Forst’s overall aim is to reconcile some insights from Frankfurt School critical social theory—notably an awareness of the potential for ideological distortions in power-justifying discourse—with a set of broadly liberal first-order normative commitments. While at first blush that combination may be reminiscent of Habermas’s later work, Forst’s contribution is distinctive in both its influences and its central philosophical underpinnings. In terms of influences, as the present discussion will make clear, Forst is much more directly and constructively engaged with contemporary Anglophone political philosophy. More importantly, his foundational philosophical commitments are in some ways both more diffident of power and more thoroughgoingly Kantian than those of the later Habermas—in a word, they are more *critical*. As in the original Frankfurt School usage, ‘critical’ refers to the Kantian project of investigating knowledge, experience, and morality transcendently, ie in terms of their conditions of possibility. Forst’s project can be understood as an inquiry into the conditions of possibility of normativity—an account of the features of the human condition that make us subject to normative considerations. That, in turn, illuminates what it takes for particular normative considerations to apply to particular agents, and what that entails for the purposes of regulating human interaction through social norms and political institutions.

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The specific aspect of Forst's project that we wish to focus on is his attempt to draw a connection between power and justification. Forst draws this connection primarily conceptually, though we will also consider whether a normative connection may be drawn within his framework. At any rate, Forst's key insight is this. If we understand power as operating by furnishing those subjected to it with reasons, then we create a space for the normative contestation of any exercise of power. He calls this the *noumenal* understanding of power. It is noumenal in the Sellarsian sense of being located in the 'space of reasons':

... in characterizing a situation as an exercise of power, we do not merely give an empirical description of a state of affairs or a social relation; we also, and primarily, have to place it in the space of reasons, or the normative space of freedom and action.¹

That passage neatly encapsulates the critical nature of Forst's approach: notice the rejection of a positivist approach that would seek to reduce power to an observable behaviour. Rather, Forst maintains, power is a relation brought about by a specific class of reasons some agents may give others, and they are reasons in so far as others may recognize them. More precisely, for Forst power is '*the capacity of A to motivate B to think or do something that B would not have thought or done*'.² And that motivation is, conceptually, the product of the recognition of one or more reasons (to think or do) that A implicitly or explicitly provided to B. Reason-recognition, importantly, is more than a mere external stimulus—hence the rejection of behavioural, empirical accounts of power. Furthermore, Forst draws an important distinction between the use of force and the use of power, where the former is not an instance of the latter (as in many empirical accounts), but rather a product of its failure: 'In contrast to the exercise of physical force or violence, power rests on recognition.'³ If a state jails me for violating its laws, it is not exercising power over me; it is acting as a consequence of the realization of a failure in its exercise of power:

... if, as sometimes happens, the threat by the blackmailer or the kidnapper is no longer taken seriously, their power disappears. They can still use brute force and kill the kidnapped person, but that is rather a sign of having lost power ... The exercise and effects of power are based on the recognition of a reason—or better, and more often, of various reasons—to act differently than one would have acted without that reason.⁴

¹ Rainer Forst, 'Noumenal Power' (2015), 23 *Journal of Political Philosophy* 111, 112.

² *ibid* 115 (emphasis in original).

³ *ibid*.

⁴ *ibid* 116.

Setting aside, for now, whether that distinction between power and force can adequately capture the role of coercion in the exercise of power in politics (as opposed to other contexts), we can now lay out what we take to be the bare bones of Forst's argument as follows:

1. To be a subject of power is to be moved by reason(s).
2. Reasons cannot move subjects without recognition.
3. Therefore, power requires recognition.
-
4. Recognition requires justification.
-
5. Therefore, power requires justification.

2. Plan for the Chapter

This chapter's argument is in two main parts. In the next section we will try to show how, while that is clearly a valid argument, it is unsound, and so that (5) is not warranted. Our main contention will be that (4) is false, though we will also cast some doubt on (1). But our objections to (1) will only be exploratory, so we do not think we can undermine the inference to (3), which in itself is a significant achievement, and one with potentially fruitful offshoots other than (5), as we will briefly touch upon later. The gist of our arguments is this. Against (1), we try to show that on most plausible accounts of political freedom, some freedom-restrictions commonly attributed to the successful exercise of power would perplexingly count as failures of power on Forst's view (sub-section 1). Against (4), we argue that on the most plausible account of reason-recognition, namely, an appropriateness of response account, a justification relation is only a sufficient but not necessary condition for recognition (sub-section 2).

In the final section of this essay, we consider whether Forst might defend (5) not by appeal to a conceptual connection between power and justification, but by appeal to the *normative* connection that his theory of the right to justification posits. Roughly, Forst argues that a universal right to justification of power in terms of reciprocal and general reasons can be established by reconstructing the presuppositions of rational discourse in moral contexts. We respond that Forst can establish the existence of such a right only if he reconsiders the transcendental aspirations of his theory. The upshot, then, is in an invitation to Forst to reframe his otherwise illuminating project of transcendently establishing a necessary connection between power and justification.

II. Does Power Require Justification?

1. Subjects of Power and the Recognition of Reasons

Why think that to be a subject of power is to be moved by reasons? One appealing feature of that view of Forst's is that, on most plausible construals of reasons and reason-giving, it necessarily makes power an object of normative enquiry. The space of reasons is a space in which competing sets of considerations must be balanced against one another. In the context of contemporary Anglophone political philosophy that may not even seem something we need to establish—after all, the field is customarily characterized as a normative inquiry into the justifiability of exercises of political power and of our attitudes towards them. But notice how on that construal of normative political theory—the prevalent one in Anglophone philosophy—power is but an accidental object of study. As Bernard Williams put it, much contemporary (Anglophone) political philosophy is a form of applied ethics, concerned either with implementing moral ideals through political instruments ('enactment model'), or with setting moral boundaries to what one may do in politics ('structural model').⁵ Either way, power is just a contingent instrument or even an unfortunate occurrence in need of constraining, rather than a conceptually indispensable focus of politico-philosophical enquiry. Forst's approach, on the other hand, restores power to its central place, thus reconnecting critical theory's longstanding preoccupation with power structures with the normative concerns of contemporary analytic political philosophy (for the former often eschews prescription for diagnosis-critique, and the latter, as we have seen, tends to be oblivious to the importance of power relations—a problem highlighted in much recent realist literature).

Given that context, it is even more striking that Forst should try to develop 'a normatively neutral notion of power'.⁶ It would arguably have been easier to build his view around an explicitly moralized notion such as domination or oppression. Those concepts are indeed usually characterized as subsets of power, specifically problematic kinds of social relations. Forst's project is more ambitious. From a normatively neutral account of power Forst wants to derive which features of power are suitable objects for normative judgment. And, as we have touched upon earlier, that feature is the justificatory, reason-giving nature that Forst ascribes to power. Before examining that move in detail, it may be worth stopping to briefly consider starting with the broader picture of power, as

⁵ Bernard Williams, 'Realism and Moralism in Political Theory' in Bernard Williams, *In the Beginning Was the Deed: Realism and Moralism in Political Argument* (Geoffrey Hawthorn ed, Princeton University Press 2005) 1.

⁶ Forst, 'Noumenal Power' (n 1) 111.

opposed to delving directly into an account of what makes particular instances of the exercise of power obligatory, permissible, or impermissible (to borrow the moralizing terminology of contemporary Anglophone political philosophy). One important affordance of this more ambitious strategy is that it makes it impossible to write off any instance of power exercise as ‘natural’ or ‘par for the course’ in any sense that would place it above (or beneath) the threshold of normative contestation—hence the rejection of positivist, purely behavioural accounts of power.

Given that motivation, the question then becomes: Is it feasible to provide an account of power that is both plausible and normatively neutral enough to not be reducible to the familiar moralized accounts of domination, exploitation, oppression, and the like? The answer, we suggest, has to do with the account of freedom implicit in Forst’s theory of noumenal power. To be sure, it’s not as if the very presence of an implicit account of freedom is the problem. As we have seen, Forst explicitly says that the noumenal space of reasons is ‘the normative space of freedom and action.’⁷ Besides, the freedom literature contains several well-developed normatively neutral accounts of freedom.⁸ Rather, our focus should be on spelling out Forst’s commitments with regard to freedom, and on assessing whether they are plausible in themselves as well as whether they are well suited to his project.

2. Challenging the Justificatory Recognition View

We now move on to our criticism of what we have identified as the fourth step in Forst’s argument, namely, the view that in order to be a subject of power one needs to recognize the power as such. In our reconstruction of Forst’s argument, that view depends on the prior premise that recognition is what enables reasons to move subjects; and that, in turn, is motivated by the view that power moves its subjects through reasons—the first premise, which we cast doubt upon in the previous sub-section. It’s worth noting, however, that the idea that (reason) recognition requires justification⁹ has independent plausibility, and so interesting implications of its own. We shall try to criticize it in ways that do not depend on our earlier argument either, and so without impugning Forst’s

⁷ *ibid* 112.

⁸ eg Ian Carter, *A Measure of Freedom* (Oxford University Press 1999). We shall set aside the question of whether accounts of freedom such as Carter’s, which are intended to be compatible with a broadly behavioural, empirical philosophy of social science (in the tradition inaugurated by Felix Oppenheim and others), can be squared with Forst’s anti-positivism.

⁹ So, strictly speaking, the object of this sub-section is the conjunction of propositions (2) and (4) in the argument with attribute to Forst.

theoretical motivations for this view, which from now on we will call the justificatory recognition view.

Arguably the *prima facie* appeal of the justificatory recognition view rests in the intuitive idea that recognizing that reason applies in a given situation is a matter of applying some normative standard, and in turn applying normative standards is a practice of justification—it involves adducing considerations for why a certain belief, feeling, or action conforms to a certain class of criteria. To use a mundane example, I (correctly) recognize that I have reason to feel offended when someone deliberately shows me the soles of their feet only if the context is such that applying the norms of Arab etiquette is appropriate. That is to say, the norms of Arab etiquette justify my taking offence. The person with whom I become offended is owed a justification, and I can provide one by showing that Arab etiquette is appropriate in our context and that it tells us that deliberately showing the soles of one's feet is offensive, and that, therefore, I have reason to feel offended. It doesn't matter, for the purposes of that example, whether adherence to etiquette is connected to any power structures. The example merely illustrates the connection between reason-recognition and (relevant) normative standards, ie between reason-recognition and justification.

Now, what the example shows is that whenever I can provide a justification it is the case that I produce reasons that can be recognized as such. But our contention is that Forst's justificatory recognition view requires a stronger claim, namely, that only justification can provide recognizable reasons. In other words, Forst claims that justification is necessary and sufficient for reason recognition, whereas we claim that it is merely sufficient. Before arguing for our claim, it is worth pointing out its import for Forst's theory of the right to justification. Simply put, if it is possible to recognize reasons in the absence of a justification, then reason-responsiveness of power does not suffice to ground the right to justification. Just because humans can be (and arguably inevitably are) subjects of power, it doesn't follow that they are 'justificatory beings'.¹⁰

To see why reason recognition does not require justification, we will need a brief detour to distinguish reason giving from reason recognition. Our contention is indeed that Forst lumps them together, whereas they are distinct, and only the former requires justification—even if we assume, as we do for the sake of the argument, that any reason given is *ipso facto* recognizable.¹¹ So the question, for us, is whether one can recognize that an agent is providing them with a reason (to

¹⁰ Rainer Forst, 'Kritik der Rechtfertigenden Vernunft: Die Erklärung Praktischer Normativität' in Rainer Forst, *Normativität und Macht: Zur Analyse sozialer Rechtfertigungsordnungen* (Suhrkamp 2015) 37 (our translation).

¹¹ For a discussion of the difference between the accessibility and the acceptability of justificatory reasons, see Enzo Rossi, 'Legitimacy, Democracy and Public Justification: Rawls' Political Liberalism Versus Gaus' Justificatory Liberalism' (2014), 20 *Res Publica* 9.

act, say) even though that agent fails to provide—and perhaps couldn't provide—a justification for why that course of action is required, or is a good idea, and so on. To be sure, when Forst talks about 'orders of justification'¹² he doesn't imply that those in power must always do the justificatory labour—literally formulate and offer the reasons why those subjected to their power should comply. Rather, he points out how the noumenal view of power can account for power structures.¹³ So what matters is not that someone in power possesses—let alone presents—a justification. What matters is that the justification is somehow available to its addressees, the subjects of power. We are talking here of a shared understanding of what Bernard Williams would call a 'legitimation story':¹⁴ 'Every social order in general . . . is based on a certain understanding of its purpose, aims, and rules—in short, it is a normative order as an order of justification.'¹⁵ The question for us, then, becomes: Can there be a functional, compliance-inducing shared understanding of a normative order whose recognition does not depend on its justification? Or, put differently, can subjects of power recognize that they have reason to comply even in the absence of a justification?

We will now try to answer those questions affirmatively while remaining in agreement with Forst on his normative and cognitive understanding of motivation (for compliance with power). An affective rather than cognitive model of motivation¹⁶ would provide a more direct route to a critique of Forst's position, but it would depend on premises we cannot defend here. Without wading too deeply into the quagmire of the debate on reasons, we can say that a compelling way to understand them as normative and cognitive notions is to think of reason relations¹⁷ as eliciting *responses* in human agents. Those responses are not mere stimuli of a mechanistic sort, but rather behaviours—actions, beliefs,

¹² Forst, 'Noumenal Power' (n 1) 117.

¹³ *ibid* 118.

¹⁴ See Bernard Williams, 'From Freedom to Liberty: The Construction of a Political Value' in Bernard Williams, *In the Beginning Was the Deed: Realism and Moralism in Political Argument* (Geoffrey Hawthorn ed, Princeton University Press 2005) 95. On the role of legitimation stories in Williams's theory of legitimacy, see Jan P Beetz and Enzo Rossi, 'The EU's Democratic Deficit in a Realist Key: Multilateral Governance, Popular Sovereignty and Critical Responsiveness' (2017), 8 *Transnational Legal Theory* 22.

¹⁵ Forst, 'Noumenal Power' (n 1) 119. Notice the consonance, which Forst more or less explicitly acknowledges, with what has come to be known as the practice-dependent approach in normative political theory: Andrea Sangiovanni, 'Justice and the Priority of Politics to Morality' (2008), 16 *Journal of Political Philosophy* 137.

¹⁶ On this distinction, see John Skorupski, *The Domain of Reasons* (Oxford University Press 2010) 239ff. Relatedly, for an intriguing argument that tries to push Forst away from his rationalism, see Andrea Sangiovanni, 'Scottish Constructivism and the Right to Justification' in Rainer Forst, *Justice, Democracy and the Right to Justification: Rainer Forst in Dialogue* (Bloomsbury Academic 2014).

¹⁷ Here we loosely follow Skorupski (n 16) 35ff. The complex position he defends is compatible with Forst's way of writing about reasons for the purposes of our argument, which at any rate does not depend on Skorupski's cognitive irrationalism about reasons (though it is compatible with it).

feelings—with an intentional content we can ascribe to the agent who is answerable to the reason(s) at hand. To say that reason relations are normative in character, then, is to say that we can evaluate the (degree of) appropriateness of a response. And, like Forst, we can be cognitivists about the grounds of that evaluation: that a response is appropriate can be true or false.¹⁸

With that conceptual apparatus in place, we can now rephrase our questions as follows. Can a subject's response to an instance of the exercise of power be appropriate even in the absence of a justification for the power? It seems to us that, in the light of that reformulation, it is easy to answer affirmatively, *pace* Forst. Recognizing that someone has power over you just means seeing that you have reason to do as she says—the burden is on Forst to show that such a response would be inappropriate in the absence of a relevant justification. For instance, the deciding factor *for me* may be that I fear the power-holder's secret police, but that is not a justification in Forst's sense of the term. At the end of the day, if the illuminating notion of noumenal power is to remain as neutral as it needs to be but also as realistic as Forst claims it is,¹⁹ it cannot be made to enshrine a right to justification.

III. Can the Right to Justification Normatively Link Power and Justification?

1. Disagreement and the Right to Justification

If the arguments in the previous section are right, then Forst might attempt to defend a necessary connection between power and justification in a different way. While we have argued that his analysis of the idea of noumenal power cannot be made to enshrine the right to justification, he develops a different argument for this right in other parts of his work. The argument we have in mind defends the right to justification as a constitutive principle of practical reason that can be established by reconstructing the presuppositions of rational discourse in moral contexts. This argument differs from the argument considered in Section I in that it is a *practical* transcendental argument—it aims to ground the right to justification in the presuppositions of a certain kind of practice, namely, the practice of rational moral discourse.

The problem with the argument is that, so far as we can see, it cannot satisfy two of Forst's core aims in developing it, and thus cannot establish connection

¹⁸ We will remain neutral as to whether that truth-value depends on a truthmaker (or not, as in Skorupski's irrealist cognitivism).

¹⁹ Forst, 'Noumenal Power' (n 1) 118.

between power and justification that Forst seeks. First, Forst rejects ‘ideal theory’ approaches to theorizing about justice that aim to articulate a model of a perfectly just society in favour of a ‘practice-immanent’ approach that employs the right to justification to offer emancipatory critiques of actually existing relations of rule and domination.²⁰ Second, Forst aims to develop a critical theory of justice that is ‘reflexive’ in the sense it contains the resources to critique its own limitations and shortcomings. This capacity for self-scrutiny is essential if a theory of justice is to avoid a ‘metaphysical slumber’ that arbitrarily privileges its own normative recommendations over the competing ‘narratives of justification’ undergirding relations of rule and domination.²¹

The challenge for Forst’s theory arises once we consider attempts to make the right to justification socially effective in an existing political community. The right to justification requires that relations of power ‘must be justified in a reciprocal and general manner, where one side may not simply project its reasons onto the other but has to justify itself discursively.’²² According to Forst, the right to justification generates a requirement of ‘fundamental’ justice to secure the political rights, institutions, capabilities, information, and opportunities necessary for ‘all those who are subjected to a normative order [to] be its co-authors as equal participants and normative authorities in adequate justificatory practices that critically reflect on and constitute that order.’²³ Once a just ‘basic structure of justification’ that respects all relevant individuals’ right to justification has been established, citizens can work through its discursive participatory mechanisms to achieve a ‘maximally’ just distribution of goods.²⁴

²⁰ Rainer Forst, ‘Realisms in International Political Theory’ in Rainer Forst, *Normativity and Power: Analyzing Social Orders of Justification* (Ciaran Cronin tr, Oxford University Press 2017) 151. Rawls’s *A Theory of Justice*, of course, is generally taken to exemplify the ideal theory approach in political philosophy: John Rawls, *A Theory of Justice* (Harvard University Press 1971). For more on the distinction between ideal and non-ideal theory, see Zofia Stemplowska and Adam Swift, ‘Ideal and Non-ideal Theory’ in David M Estlund (ed), *The Oxford Handbook of Political Philosophy* (Oxford University Press 2012).

²¹ Rainer Forst, ‘Einleitung: Ordnungen der Rechtfertigung. Zum Verhältnis von Philosophie, Gesellschaftstheorie und Kritik’ in Rainer Forst, *Normativität und Macht: Zur Analyse sozialer Rechtfertigungsordnungen* (Suhrkamp 2015) 11. Forst explicitly adopts this ideal of reflexive self-scrutiny from Kant, who famously says: ‘Reason must subject itself to critique in all its undertakings, and cannot restrict the freedom of critique through any prohibition without damaging itself . . . The very existence of reason depends upon this freedom, which has no dictatorial authority, but whose claim is never anything more than the agreement of free citizens, each of whom must be able to express his reservations, indeed even his veto, without holding back.’ Immanuel Kant, *Critique of Pure Reason* (Paul Guyer and Allen W Wood eds and trs, Cambridge University Press 1998) A:738f, B:766f.

²² Rainer Forst, ‘Two Pictures of Justice’ in Rainer Forst, *Justification and Critique: Towards a Critical Theory of Politics* (Ciaran Cronin tr, Polity Press 2013) 34.

²³ Forst, ‘Noumenal Power’ (n 1) 117.

²⁴ Rainer Forst, ‘Toward a Critical Theory of Transnational Justice’ in Rainer Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice* (Jeffrey Flynn tr, Columbia University Press 2011) 262.

In line with Forst's practice-immanent approach to theorizing about justice, suppose that we consider a political community in which many citizens' right to justification has not been secured by their basic political structure. This is true of most existing political communities, including most liberal democracies. Consider the United States, where the instrumentalizing influence of money, widespread political disenfranchisement of minority voters (bolstered by deep structural racism), relative lack of women representatives in Congress (bolstered by deep structural sexism), and many other phenomena pose significant barriers to realizing the kind of deliberative equality the right to justification requires. Forst's theory implies that individuals ought to reform the basic structure of such a political community so that it respects all individuals' right to justification. Of course, what political reforms the right to justification requires will depend on the nature of the existing relations of domination in a given community; in the case of the United States, for example, plausible candidates for reform include campaign finance reform, criminal justice reform, significant wealth redistribution, policies addressing the gendered division of labor, and so on.

Now, it is a fact about all existing liberal democracies that citizens deeply and pervasively disagree about moral and philosophical matters. Indeed, John Rawls famously argues that such disagreement is the inevitable result of the good-faith use of reason under the very conditions of freedom of thought and expression that all liberal democracies protect.²⁵ Whether or not we accept Rawls's view here, it is obvious that Forst's argument for the right to justification and his view of the political recommendations it generates will be intensely controversial in all existing liberal democracies. As such, individuals who attempt to reform their basic structure so that it respects all subjects' right to justification will be doing so in face of deep and pervasive disagreement. For example, when individuals appeal to the right to justification to advocate for political reforms that limit wealth inequality or keep wealth inequality from influencing democratic politics, they will be pushing for policies that are intensely controversial in the United States on the basis of arguments that are themselves intensely controversial.

The problem is that it is difficult to see how individuals who push for such policies can avoid arbitrarily privileging the right to justification and the arguments for it over competing narratives of justification. Recall that the right to justification requires that 'one side may not simply project its reasons onto the other but has to justify itself discursively.' Yet, individuals who advocate for the political recommendations the right to justification generates in the face of widespread disagreement appear to be projecting their reasons onto those who reject that principle. Specifically, such individuals fail to satisfy the requirement that

²⁵ John Rawls, *Political Liberalism* (expanded edn, Columbia University Press 2005) 144.

relations of power be justifiable *to* all individuals subject to that power based on reasons they can appreciate as reasons. Of course, if all individuals in a given liberal democracy were to accept the right to justification as the correct standard for evaluating how political power ought to be exercised, then perhaps the political recommendations the principle generates would be interpersonally justifiable. However, to theorize about a political community in which all individuals accept the right to justification as the correct standard for evaluating political power would be a paradigmatic instance of the sort of ideal theorizing that Forst rejects. In existing liberal democracies—the very liberal democracies that Forst’s practice-immanent approach seeks to theorize about—many individuals will reject Forst’s argument for the right to justification. The point we want to emphasize here is that advocating for policies based on the right to justification in the face of such disagreement appears to involve arbitrarily privileging that right and the argument for it over competing narratives of justification found in diverse liberal democracies.²⁶

2. Reflexivity and the Normative Status of the Right to Justification

It might seem that this objection ignores the capacity for reflexive self-scrutiny that Forst builds into his theory.²⁷ In so far as his theory contains the resources to critique its own limitations and shortcomings, the response goes, then individuals who advocate for the policies the right to justifications recommends are not *arbitrarily* privileging that principle and the argument for it over competing narratives of justification. Rather, they are *justifiably* doing so, since that principle and the argument for it are licenced by the foundational critical standard the theory advances—namely, the right to justification itself. But we do not think that this response is convincing. The problem is that the response presupposes that the right to justification is the correct standard for evaluating political power. The fact that the right to justification passes self-inspection licences its use as a justificatory grounds for political power only if the right to justification is the correct standard for evaluating justificatory grounds for political power.

To illustrate the point, consider a deliberative exchange between two members of an existing liberal democracy: Maxine—who accepts the right

²⁶ This objection bears similarities to the so-called self-defeat objection to public reason theories of political legitimacy. See Steven Wall, ‘Is Public Justification Self-Defeating?’ (2002), 39 *American Philosophical Quarterly* 385; Steven Wall, ‘Rawlsian Perfectionism’ (2013), 10 *Journal of Moral Philosophy* 573.

²⁷ For an incisive critique on this point, see Lois McNay (in this volume).

to justification as the correct standard for evaluating political power—and Shivani—who endorses a utilitarian standard for evaluating political power. Suppose that Maxine publicly advocates for a particular tax policy because that policy is the best way of respecting individuals' right to justification. Shivani rejects the policy because it fails to satisfy the utilitarian standard she endorses. If Maxine continues to press for the policy in the face of Shivani's utilitarian objections, then it appears Shivani can rightly accuse Maxine of projecting Maxine's reasons onto Shivani and thus arbitrarily privileging Maxine's preferred narrative of justification over Shivani's preferred utilitarian narrative of justification. If Maxine then goes on to defend herself by arguing that she is not arbitrarily privileging the right to justification and her argument for it because the right to justification passes the test of reflexive self-scrutiny, Shivani can complain that she rejects the very standard that Maxine employs to licence her use of the right to justification as a grounds for political power: namely, the right to justification itself.

The most promising response to this objection gets us to the metaethical core of Forst's theory. Forst might argue that the right to justification is *inescapable* in a way that renders it appropriate to privilege itself over competing standards in justifying the use of political power. Recall that Forst defends the right to justification as a constitutive principle of practical reason, one that can be established by reconstructing the presuppositions of rational discourse in moral contexts. Forst might thus argue that the right to justification represents the context-transcending normative bedrock of all interpersonal moral deliberation and, as such, individuals cannot discursively challenge it without presupposing it. So, when Shivani discursively challenges Maxine's appeal to the right to justification as a justificatory ground for the use of political power, Maxine can observe that Shivani herself is presupposing the very critical standard she seeks to challenge and, as such, is caught in a kind of performative contradiction. Shivani is, in this respect, guilty of irrationality.

The problem with this response is that it appears to be inconsistent with how Forst thinks of the normative status right to justification, and Forst's reasons for thinking of the normative status of that principle as he does are compelling. In order to see what we have in mind, notice the similarity between the response articulated in the previous paragraph and Habermas's well-known attempt to ground a universalization constraint on moral norms. Habermas argues that such a constraint can be found in the rational presuppositions of interpersonal deliberation, in particular in the conditions for discursively redeeming a validity claim to how we ought to act in planning contexts. When we make such claims, Habermas argues, we presuppose that they are justified only if they 'meet (or could meet) with the approval of all affected in their capacity as participants in

a practical discourse.²⁸ Forst famously argues that Habermas fails to demonstrate the objective normativity of the universalization constraint he seeks to ground. While Habermas arguably shows how individuals are to justify moral claims if they are to be engaged in genuine interpersonal planning, Forst argues, Habermas does not show *that* individuals ought to justify such claims in accordance with a universalization constraint.

How does Forst's own view escape this problem? According to Forst, while the right to justification is a constitutive principle of rational discourse in moral contexts, individuals must have a higher-order practical 'insight' that there is a moral duty to comply with that principle.²⁹ Having such an insight is what it means to regard others as ends in themselves rather than as means. We find the nature of insight somewhat obscure. But putting this worry aside, the deeper problem is that one does not have to have this insight in order to engage in rational moral discourse—one can fully engage in rational moral discourse without having the moral insight that Forst believes is essential to establishing the normativity of the right to justification. And if one does not have this insight—if one believes, instead, that a competing standard for evaluating political power is correct—then individuals who employ the right to justification as a justificatory ground for political power appear to be projecting their reasons onto others. So, individuals cannot vindicate privileging that principle over competing standards in justifying political power by appeal to the idea that the principle is an escapable presupposition of rational moral discourse. Even if this is true, it does not show that appreciating the reasons to comply with that principle is an escapable presupposition of rational moral discourse. So, we believe that Forst must do more to show that his theory can satisfy his own conditions for a successful critical theory of justice. Ultimately, it appears that individuals who accept the right to justification cannot escape privileging that right in justifying political power—at least if they want to bring about a political order that secures that right.

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²⁸ Jürgen Habermas, 'Discourse Ethics: Notes on a Program of Philosophical Justification' in Jürgen Habermas, *Moral Consciousness and Communicative Action* (Christian Lenhardt and Shierry Weber Nicholsen trs, Polity Press 1990) 66.

²⁹ Rainer Forst, 'Practical Reason and Justifying Reasons: On the Foundation of Morality' in Rainer Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice* (Jeffrey Flynn tr, Columbia University Press 2011) 35.

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