

A Frankfurter in Königsberg: Prolegomenon to any Future non-metaphysical Kant

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Abstract

In this article I press four different objections on Forst's theory of the 'Right to Justification'. These are (i) that the principle of justification is not well-formulated; (ii) that 'reasonableness and reciprocity', as these notions are used by Rawls, are not apt to support a Kantian conception of morality; (iii) that the principle of justification, as Forst understands it, gives an inadequate account of what makes actions wrong; and (iv) that, in spite of his protestations to the contrary, Forst's account veers towards a version of moral realism that is *prima facie* incompatible with Kantian constructivism. I then evaluate Forst's theory in the light of a distinction made by Sharon Street between restricted and unrestricted constructivism. I show that Forst has reason to deny that it is either the one or the other, but he is not able to show that it is both or neither. I conclude that the arguments Forst advances in support of his constructivist theory of the right to justification entail that it is a metaphysical and comprehensive conception in the relevant, Rawlsian sense. Forst's theory of the right to justification therefore fails to fulfil one of the main stated aims.

Keywords: right to justification, principle of justification, constructivism, Forst, Rawls, Scanlon, Habermas, non-comprehensive, non-metaphysical

1

Rainer Forst is one of the most outstanding and influential moral and political theorists working in Germany today. Over the last two decades he has written numerous books and articles. Much of his mature moral and political philosophy centres on an idea he calls the 'principle of justification'. In his book, *Justice, Democracy and the Right to Justification*, Forst claims that his conception of the principle of justification amounts

to an argument for ‘a critical theory of justice as a critique of relations of justification’ (Forst 2014: 22). And in an earlier book, *The Right to Justification*, he criticized Habermas for not being Kantian enough in his attempt to ‘ground’ morality (Forst 2012: 103). So, there is an obvious sense in which his work can be interpreted as an attempt to marry Kantian political and moral philosophy with critical theory, which makes his work relevant to our topic – Kant and the Frankfurt School.

In a recent article in *Ethics*, Forst defends a ‘Kantian’ reading of Rawls’ *Political Liberalism* that is meant to challenge a widely established interpretation of it, which sees it as a move away from Kant (Forst 2017: 125).¹ Forst’s ‘Kantian view’ of *Political Liberalism* centres on the claim that the political conception of justice not only comprises what Rawls calls the ‘political’ ideas and values, namely the conception of persons as free and equal citizens, the idea of society as a fair cooperative venture over time and the idea of the reasonable, but that it allegedly has a further, deeper moral ground in practical reason. Forst calls his reading the ‘priority view’: ‘The priority view is essentially a Kantian view, following Kant in emphasizing that both the categorical imperative and the Principle of Right are grounded completely independently of any doctrine of value leading to the good life in order to take priority over them’ (Forst 2017: 128).

Contra Forst, I believe the widespread and by now standard interpretation of *Political Liberalism* he rejects is not nearly as off-beam as he suggests (Finlayson 2019: 8–10). To my mind, the standard reading makes sense of the development of Rawls’ work, a development that sees the political constructivism of *Political Liberalism* as a break with the Kantianism of *A Theory of Justice*, and of his middle-period lectures on ‘Kantian Constructivism in Moral Theory’, because they are morally and philosophically comprehensive (Rawls 1999: 303–59). Forst’s interpretation, by contrast, sits uneasily with this view.

Forst offers as evidence for his ‘Kantian view’ the fact that Rawls claims that the political conception of justice ‘follows from’ the principle of practical reason together with the political ideals and values (Rawls 2005: 90); that it is ‘reached by using’ them (Rawls 2005: 98); and that it is ‘based on principle of practical reason’ in conjunction with the political values and ideas. No one denies that Rawls assigns an important role to practical reason in *Political Liberalism*. But what role? Does practical reason provide, as Forst claims, an ‘independent, moral ground’ for the political conception of justice and its component ideas (Forst 2012: 21)? I believe

it does not, at least not in the sense Forst has in mind. The two crucial terms that Rawls deploys in relation to the role of practical reason are to ‘construct’ and to ‘lay out’, or ‘merely lay out’. On Rawls’ view, constructing is a kind of argument where the construct (the conclusion) is thicker or normatively richer than each of the components (the premises) taken severally. The principles of justice, and the political conception of justice, justice as fairness, are constructed, although they rest on elements that are not. Thus, he says of the original position that:

not everything, then, is constructed; we must have some material as it were from which to begin. In a more literal sense, only the substantive principles . . . are constructed. The procedure itself is simply laid out using as starting points, the basic conceptions of society and person, the principle of practical reason, and the public role of a political conception of justice. (Rawls 2005: 104)

Practical reason, on Rawls’ undemanding view of it expressed here, has the role of laying out the procedure together with the political ideas and values, which are substantive and basic. Practical reason is neither prior to, nor the ground of, the basic ideas and conceptions. By contrast, on Forst’s priority view, a particular conception of practical reason plays ‘a foundational role’ (Forst 2012: 103), insofar as it ‘founds’ the political ideas and values, and thus also the two principles and the political conception of justice.

Forst’s Kantian interpretation of *Political Liberalism* presupposes, and is guided by, a certain view of Kantianism that colours his own work on the principle of justification (Forst 2012; 2014). The two go hand in hand. Indeed, it seems that part of the motivation for Forst’s rejecting the widespread interpretation of *Political Liberalism*, and proposing the ‘Kantian view’ in its stead, is to claim Rawls as an intellectual ally, and to lend credence to his own defence of the principle of justification as a non-metaphysical and non-comprehensive, constructivist moral theory.

2

I have two aims in this article. The first is to contest Forst’s ‘Kantian view’ of *Political Liberalism* and in particular the status he accords it as a ‘non-comprehensive, autonomous, morally grounded theory of political and social justice for a pluralist society’ (Forst 2017: 143). I will argue that Forst’s Kantian interpretation is comprehensive, on Rawls’ understanding of the term ‘comprehensive’, and thus the kind of view that Rawls in

Political Liberalism deliberately sought to avoid. My second aim concerns Forst's 'principle of justification'. I take a hard look at the idea and cast several doubts on his claim that the principle of justification provides the foundation of an 'autonomous morality'. However, my main aim here is to show that Forst's own view, in spite of his intentions, is metaphysical and comprehensive in Rawls' sense, and thus to drive a wedge between Forst's project and the later Rawls.

3

I shall begin by reconstructing Forst's conception of practical reason, and its moral articulation in the form of principle of justification. I'll do so by examining two theses on which Forst's theory depends.

The first is that practical reason takes the form of the principle of justification, in both moral and moral-political contexts. With this claim, Forst presents what he says is a variant on 'the classical concept of practical reason' (Forst 2012: 5). The classical concept, I take it, is something like the view that practical reason is the human capacity to determine what one ought to do and why. The variation is that that the latter – the why – takes precedence over the former – the what. Where Aristotle says that human beings are the most political animals because they have the capacity for reason/speech, Forst adds that human beings are 'justificatory beings' or 'justifying and reason-giving beings' (Forst 2012: 1, 13).² The basic idea is that as inhabitants of a social 'space of reasons' all human beings have to meet the general expectation that their words and deeds are justifiable to others.³ Practical reason in its most general form just is the way human beings satisfy this demand for justification (Forst 2012: 13–43). And morality is a specification of this general principle. In other words, to vary Gerry Cohen's phrase, 'justice, just is, justification'. (Forst's assumption here is that what Rawls calls the idea of public reason, which is a specifically political relation of citizens towards one another, and of the state towards citizens, which applies only in the political domain narrowly construed, is anchored in our very way of life as 'justifying beings'.)

Forst distinguishes between what he calls 'rational justification' (*rationale Begründung*) and 'reasonable justification' (*vernünftige Rechtfertigung*). The distinction echoes Rawls' use of the rational and the reasonable in *Political Liberalism* (Forst 2012: 140), though, as we will see, appearances can mislead.⁴ In addition, Forst introduces a taxonomy borrowed from Habermas, which divides practical reason into the pragmatic, the ethical and the moral. On Habermas' taxonomy – itself not uncontroversial – the

ethical is a domain of values that as an ensemble comprise a conception of the good, which is distinct from and ancillary, if also complementary, to the moral. Like Habermas, Forst claims that ethics lacks the universal scope of morality, and its characteristic stringency and paramourcy. *Prima facie*, it is hard to see exactly how Forst's Rawlsian distinction between rational and reasonable justification fits with the Habermasian taxonomy of the pragmatic, ethical and the moral. The difficulty is not with the first term – 'rational' and pragmatic cover roughly the same kind of reasons – but the second. For what Rawls means by 'reasonable' is quite different from either the 'ethical' or the 'moral' in Habermas. More importantly, it is also quite different from Forst's conception of the 'reasonable'.

The difference between Rawls and Forst becomes clear when we consider that Forst's principle of justification is, both in moral and in political contexts, structured by the idea of *general* and *reciprocal* validity. It is 'a principle of reciprocal and general justification which states that moral norms must rest on reasons that can withstand the test of reciprocity and generality holds in all moral contexts' (Forst 2012: 49). Although there is a lot to say about what the criterion of 'generality' amounts to, Forst's remarks on 'generality' are sparse. He says that it is equivalent to 'universality' and means that 'no affected person's objections may be excluded to achieve general agreeability' (Forst 2012: 49). He is more forthcoming about the criterion of 'reciprocity' which, he claims, means that 'nobody claims special privileges and everyone grants all others the claims one raises for oneself' (Forst 2012: 66). This gloss is a little misleading. 'Reciprocity' usually denotes a kind of mutuality, i.e., giving 'in return' or 'in exchange,' and, by extension, an agreement binding on both parties. Ideas of reciprocity play a very important role in Rawls, and in Habermas' moral theory. Consider, for example, the discussion about the nature and role of 'reciprocity' in Lawrence Kohlberg's moral psychology. At the basic level, Kohlberg notes, reciprocal interactions are concrete exchanges. Tit for tat, revenge, favours, and gift-giving are all in their own way acts of reciprocity (Kohlberg 1981: 148–9; 1984: 316). Such acts can be, and often are, subjectively conditional: *if* you scratch my back, *then* I'll scratch yours. (They can also be universal: everyone should tell the truth, provided that everyone else does likewise.) As moral learning develops, according to Kohlberg, reciprocal interactions become more ideal, and are embodied in such principles as the Golden Rule (at stages 3 and 4) and function with a view to establishing an equilibrium, a greater moral good, such as peaceful coexistence. Eventually, such reciprocity is refined and replaced by superordinate norms of fairness, which are first institutionalized (at stage 4) and then,

increasingly formalized, so that by the time subjects reach stage 6, norms of fairness and equality are ensured by just procedures such as Kohlberg's 'moral musical chairs', Rawls' procedure of choosing principles from behind a veil of ignorance and Habermas' discourse oriented toward reaching understanding (Kohlberg 1981: 165–7; 1985: 494–7).

Now compare Forst's understanding of 'reciprocity'. Two points stand out. First, Forst ignores the basic meaning of reciprocity entirely. Forstian 'reciprocity' looks like a version of equal respect for persons – the moral principle into which, according to Kohlberg's theory, it develops at stage 6. This raises the suspicion that it is only because his idea of reciprocity is already so heavily moralized that Forst can plausibly argue that the criteria of 'reciprocity and generality . . . are the decisive criteria of justification in the moral context' and consequently that his 'principle of general and reciprocal justification' is apt to justify the claim of moral norms (Forst 2012: 20).

The second important point is to see how far removed Forst's idea of reciprocal justification is from the ideal of reciprocity espoused by Rawls in *Political Liberalism*, and his associated notion of the 'reasonable'. Here for example is Rawls on reciprocity: reciprocity of social cooperation is ensured by the idea of 'fair terms of cooperation' which are 'terms that each participant may reasonably accept, *provided that everyone else likewise accepts them*' (Rawls 2005: 17, my emphasis). In other words, Rawls, unlike Forst, allows that reciprocal requirements can be subjectively conditional. And this fact percolates into Rawls' whole conception of the reasonable. Persons are reasonable, Rawls claims, a little further on, when 'among equals, say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, *given the assurance that others will likewise do so*' (Rawls 2005: 49 my emphasis). Being reasonable is a default setting that depends on circumstances, not an absolute requirement whatever the circumstances. Reasonable citizens are disposed to be fair, to pay their taxes, etc., *provided other people do likewise*.⁵ In this respect, Rawls argues, reasonableness 'lies between the more demanding moral ideas of impartiality and altruism, and the idea of mutual advantage' (Rawls 2005: 16–17). The difference, for example, with the moral person, at least on Kant's view, is that their moral commitments do not depend on other people's behaviour or default settings. The moral person keeps her promise because she has given her word. Kantian moral requirements are unconditional and thus quite different from requirements of the reasonable in Rawls.

To sum up, Forst claims that the principle of justification states that moral norms must be ‘reciprocally and generally’ justified, and that by virtue of this, moral norms possess their characteristic unconditionally binding validity. He makes the same claim about moral reasons. ‘The defining feature of reasons that can justify moral claims is thus that they must be reasons that cannot be reasonably – that is, not reciprocally and generally – rejected. As such they justify norms . . . that possess a morally unconditional normative character and are in a strict sense categorically binding’ (Forst 2012: 21). So, according to Forst, generally and reciprocally justified norms assume the form of basic unconditional moral rights and duties (Forst 2012: 21). Like Rawls, Forst associates reasonableness closely with ‘reciprocity’, but unlike Rawls he construes requirements that are merely reasonable (on Rawls’ view of ‘reasonable’) as unconditional (and in that sense Kantian) moral requirements. In fine, Forst’s gloss on ‘reciprocity’ is not innocuous. It is a moral fortification of a weaker normative idea. This was always a danger, once Forst had superimposed Habermas’ taxonomy of pragmatic, ethical and moral justification onto his initial distinction between rational and reasonable justification, for a Rawlsian conception of reasonableness finds no place in the Habermasian taxonomy.

4

Let’s now turn to the question of the formula of the principle of justification. After all, a principle should have a formula, and it is striking that Forst, while frequently mentioning the principle of justification does not appear to have settled on one.⁶ At crucial junctures Forst borrows formulations from Thomas Scanlon, and implicitly presents his principle of justification as a version of Scanlon’s contractual principle (Forst 2012: 21, 49, 66; 2017: 141). Now, we know how Scanlon formulates his principle: ‘an act is wrong if its performance . . . would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed uncoerced general agreement’ (Scanlon 1998: 153). Forst adds that on his reconstruction of Scanlon’s principle the phrase ‘cannot be reasonably rejected’ means something more, namely that ‘cannot be generally and reciprocally rejected’ (Forst 2012: 49). If that is so, the formula of Forst’s principle of justification should read: ‘an act is wrong if its performance . . . would be disallowed by any set of principles that cannot be reasonably, i.e., generally and reciprocally rejected as a basis for informed uncoerced general agreement’. Such a formula would fit neatly with Forst’s definition of moral reasons, just cited, as reasons that ‘cannot be reasonably – that is, not reciprocally and generally – rejected’ and with other similar formulations

(Forst 2012: 8, 21, 24, 27, 28, 66, 75, 194, 249, 265). Forst maintains that his reformulation has ‘two advantages’ over Scanlon’s (Forst 2012: 49). I don’t fully understand these. Anyway, it is not the supposed advantages that concern me, but a much more obvious and serious disadvantage, namely, that with this formulation Forst threatens to empty Scanlon’s principle of its substantive content. If we take people as they are, and norms as they should be, there are almost no moral norms that ‘can be generally and reciprocally rejected’, hence it cannot be a necessary condition of a moral norm that it ‘cannot be reciprocally and generally rejected’. That sets the bar of justification far too low. I’m fairly sure that Forst does not mean to claim that a norm is not justified, if it is the case that everyone can reject it; and that it is justified, if it is not the case that everyone can reject it, though this appears to be the worrying implication of the formula he so frequently deploys. I’m sure that what he really means is that a norm is not justified if anyone has reason to reject it, and that it is justified if no one has reason to reject it. The idea he needs, then, is pretty much the one Scanlon advances, with the minor addition that reasons for rejection should be reciprocal.

5

We have established that Forst is committed to (if not settled on) a broadly Scanlonian formulation of the principle of justification, and that Forst presents the theory, of which that principle is the centre-piece, as a theory both of the ground of morality and of the ground of social and political justice. Further, as the subtitle of his 2012 book – ‘elements of constructivist theory of justice’ – indicates, his theory is a kind of constructivism (Forst 2012). Now there are many varieties of constructivism, and there are different versions of Kantian constructivism. So, much depends upon what kind of constructivism Forst is proposing. Andrea Sangiovanni throws a spotlight on this question in his broadly sympathetic critical reception of Forst’s work (Sangiovanni 2014). Sangiovanni frames his critique by making a distinction, borrowed from Sharon Street, between two types of constructivism, unrestricted constructivism and restricted constructivism (Street 2010). I adopt the same framework for somewhat different purposes: first, it is a useful device for clarifying Forst’s position; and second, because Forst’s responses to Sangiovanni reveal some difficulties with his view (Sangiovanni 2014: 29–65).

5.1

According to Street, unrestricted constructivism is a metaethical theory that claims that there is no normative truth (or validity, or moral right

and wrong) other than what is entailed from within a practical point of view. Unrestricted constructivisms have metaphysical and semantic ambition. Their aim is to justify and explain the meaning and nature of morality. In order to do this, unrestricted constructivists, like Kant, give a formal (i.e., non-substantive and non-moral) characterization of the practical point of view. In Kant the practical is spelled out in terms of pure reason. Kant's view is, roughly, that since human beings cannot but reason, and since moral requirements just are constitutive requirements of pure reason, then, from the practical point of view, all human beings qua rational stand under moral obligations. Other unrestricted constructivists, such as Korsgaard and Gewirth for example, characterize the practical point of view in terms of agency, and argue that since human beings cannot but act, and since moral requirements are constitutive conditions of human agency, then human beings stand under moral requirements. Unrestricted constructivist theories are 'unrestricted' in that they aim to explain and justify the entire moral domain, and all the moral duties (and rights) that it comprises.

A restricted constructivism by contrast is a normative ethical theory with substantive moral premises. Restricted constructivisms do not attempt to explain or justify the entire moral domain, but rather a limited subdomain of morality. Furthermore, restricted constructivisms do so not by appealing to a formal, non-moral characterization of the moral point of view, but by appealing to other, substantive moral values. Restricted constructivisms therefore lack the metaphysical and semantic ambitions of unrestricted constructivisms. They are not metaethical theories.

Rawls's *A Theory of Justice* is an example of restricted constructivism. The two principles of justice are justified by virtue of their being entailed from the original position, which itself contains embedded in it substantive normative judgements about fairness, freedom and impartiality (Street 2010: 368). Rawls' *Political Liberalism* is another paradigmatic example. The political conception of justice, a subdomain of morality, is justified *pro tanto* by the political ideas and values in the overlapping consensus of reasonable doctrines. It is also justified by the fact that it forms a 'module' that is embedded in each reasonable comprehensive doctrine. Rawls calls this 'full justification' (Rawls 2005: 145, 386). The central points are as follows. First, the political conception of justice is a subdomain of general morality. Second, that it is justified on the basis of substantive moral values that serve as inputs into the constructivist procedure, and which are themselves not justified by that procedure. Finally, third, in *Political Liberalism* Rawls explicitly claims that the

constructivist procedure does not take the form of a general metaethical theory, but rather prescind from all metaethical debates.

Scanlon's contractualism is another example of a restricted constructivism: a subdomain of the moral, a core domain of obligations that 'we owe to each other', is explained and justified by the fact that these obligations are entailed by the contractual situation (Street 2010: 368). The contractual situation presupposes a certain thick social good, the good of mutual recognition, namely that human beings have reason to live with others on terms that no one can reasonably reject as the basis of informed and uncoerced agreement. Scanlon relies on this ideal of mutual recognition as a social good because it is close enough to the content of morality to be able to explain its distinctive normative features, while far enough away from it to have independent appeal, and hence *bona fide* explanatory value (Scanlon 1998: 155).

That Scanlon is a restricted constructivist emerges very clearly from his reply to Judith Jarvis Thomson's classic criticism of his view: 'I cannot bring myself to believe that what makes it wrong to torture babies to death for fun ... is that doing this would be disallowed by any system of rules for the general regulation of behavior which no one could reasonably reject as a basis for informed, unforced general agreement' (Thomson, 1990: 30, n. 19). Scanlon's response to Thomson's objection is to deny that his contractualism provides a first-order account of what makes an action wrong. Scanlon agrees with Thomson that it is the patent wrongness of killing an innocent that explains the fact that we cannot justify doing it to them, not the other way around.⁷ But, he claims, whatever it is that makes an action wrong (the patent wrongness of torturing for fun) also provides a higher order reason to reject any principle that allows it, which in turn helps explain and justify our obligation not to do it. The wrongness of the patent wrongs is thus not supposed to be explained or justified by the fact that it would be prohibited by principles that no one could reasonably reject. So we can see that Scanlon's restrictive constructivism rests on two substantive moral premises: the good of mutual recognition, on the one hand, and our firm convictions about the patent moral wrongness of certain actions on the other. And it relies on these substantive moral elements in order to explain and justify the core domain of moral obligations that he claims we owe to each other.⁸

5.2

Sangiovanni's critique of Forst has two parts. First, borrowing Street's distinction, he presents Forst with a choice between unrestricted and

restricted constructivism (which I shall call ‘Street’s dilemma’) presuming – because of Forst’s eagerness to claim the Kantian credentials of his position, and because he undertakes to explain and justify the entire moral domain as a system of unconditional moral norms – that he should embrace the former and reject the latter. Then Sangiovanni brings to bear a standard objection to Kantian rationalist (unrestricted) constructivism, namely that its premises are too thin to evince the thick moral conclusions they are supposed to support. The objection is that the normative requirements of pure practical reason in Kant’s case (and of ‘reciprocal and general justification’ in Forst’s) lack the special weight and stringency of moral requirements, and hence cannot explain or justify them (Sangiovanni 2014: 5).⁹ To remedy this, Sangiovanni suggests, Forst needs to bolster his constructivism by including an account of the moral sentiments, particularly empathy. That would move him further away from Kant’s rationalism and nearer to David Hume and Adam Smith’s sentimentalism. Although attractive, the invitation to Scotland is not one Forst is minded to accept.¹⁰ I cannot go into the details detail here. I want instead to focus on Forst’s puzzling reply to Sangiovanni, which can be broken into three points.

- a. Forst claims that the distinction between restricted and unrestricted constructivism is ‘overdrawn’. He does so apparently on the grounds that ‘foundations cannot be constructed in the same way as the norms generated in the constructivist procedure’ (Forst 2014: 174). I think that is true, and accepted by all concerned, but that it does not bear on the issue. Street’s distinction, as Sangiovanni sees, is directly relevant to Forst’s project. The relevant question here is not whether everything in the construction is constructed. The relevant questions are these. Are the grounds or inputs into the constructivist procedure (i) formal and non-moral, or (ii) substantial and moral? Are they intended to explain or justify the entire domain, or only a subdomain of the moral? Forst’s resistance to Sangiovanni appears to rest on the assumption that the distinction between unrestricted and restricted constructivism is not binary, and that he (Forst) can articulate a position that is either a combination of both, or neither the one nor the other.
- b. Forst appears to dispute the claim that Rawls and Scanlon are restricted constructivists. That is not quite how he puts it but is an implication of what he says. Forst denies that in Rawls the political values form an ‘arbitrary set of independent values or conventions’ (Forst 2014: 175).¹¹ Rather, along with the ideal of ‘justifiability to others’ in Scanlon, he claims they are ‘ideals of reason’ and not ‘dependent on a conception of the good, as Sangiovanni thinks’ (Forst 2014:

- 175). (At this point I'd want to distinguish between Rawls and Scanlon. Forst is right that Rawls in *Political Liberalism* does not take the political ideas and values to constitute, or essentially depend on, a conception of the good. That would defeat his purpose of presenting the conception of justice as 'political, not metaphysical'. By contrast Scanlon does think of the ideal of mutual recognition, if not as a conception of the good, then at least as a fundamental, and normatively rich, social good, one that is close enough to the content of morality to explain its distinctive normative features (Scanlon 1998: 155).) Anyway, Forst insists that their respective notions of justifiability to others are 'ideas of reason'. In making such a claim Forst appears to interpret both Rawls and Scanlon as belonging in the Kantian fold with Forst himself. The implication is that they all advance a formal characterization of the practical point of view and eschew substantive moral premises. Thus, Forst appears to interpret both Scanlon and Rawls, with whom remember he is keen to have allegiance, as advancing versions of *unrestricted* constructivism (Forst 2014: 174).
- c. The trouble is that Forst is keen to deny Sangiovanni's claim that his (Forst's) 'justificatory constitutive' is an unrestricted constructivism. He claims instead that his is a 'limited constructivism' and more 'modest' than, say a Kantian constructivist, who claims that 'in order to be a rational agent at all, one needs to follow the precepts of morality' (Forst 2014: 174). That seems to imply that Forst's constructivism is, after all, a restricted constructivism.¹²

Although Forst's responses under (a) show that he is reluctant to endorse either unrestricted or restricted constructivism, as we have seen, Street has carefully constructed the distinction such that it is not possible to combine both. Either the grounds of the constructivist procedure are formal, or they are substantive. Either the constructivist procedure explains and justifies only a subdomain of the moral, or it explains the whole domain. Either the constructivism is itself a metaethical theory, or it prescind from metaethics. These two types of constructivism are mutually exclusive. True, it leaves open the possibility that Forst's constructivism is neither restricted nor unrestricted, but what such a constructivism would look like is unclear.

Forst's responses under (b) point fairly clearly in the direction of unrestricted constructivism. That would be consistent with Forst's close allegiance to Kant, and is the direction in which Sangiovanni also wants to lead him.¹³ However, Forst's response under (c) is more or less to deny that he endorses unrestricted constructivism, or at least

it is if Street's distinction between restricted and unrestricted constructivism is indeed binary.

Forst's responses to Sangiovanni leave open, it seems, only three options, if he is to avoid endorsing incompatible positions.

1. Endorse restricted constructivism, but thereby allow for some role for substantive moral values, possibly even a conception of the good or a fundamental social good.
2. Accept that he endorses unrestricted constructivism (albeit perhaps one more limited than Kant's in some respect).
3. Demonstrate that there is available to him a version of constructivism that is neither unrestricted nor restricted constructivism, on Street's understanding of these, that he can endorse.

In what follows I show that none of these options is available to him.

6

Before turning to these three options, we should recall what Rawls means by a 'reasonable comprehensive doctrine' and what he means by 'comprehensive'. First, comprehensive doctrines are pervasive and broad in reach (Rawls 2005: 59, p. xxxvii). Second, they can be religious, ethical or philosophical doctrines. In each case, though for different reasons, reasonable people can reasonably reject such doctrines. Importantly, they may do so for reasons solely to do with their religious or philosophical nature, rather than to do with the conceptions of good invoked in them.¹⁴ Let's turn to the options.

What reason is there for construing Forst's theory as restricted constructivism (option 1)? It makes sense of Forst's claims that his constructivism is a 'limited constructivism' and of the alleged affinities between his theory and Scanlon's and Rawls'. And the chief reason would be that it would thereby evade the charge that it is philosophically comprehensive. However, it can be easily shown that Forst is not best read as a restricted constructivist. For one thing, restricted constructivisms are, as Street points out, views 'within substantive normative ethics' (Street 2010: 368). If that is right, then, a restricted constructivism will have to give a plausible account of why the substantive moral content on which it depends does not threaten its status as non-metaphysical and non-comprehensive. Rawls attempts to do this with the idea of an overlapping consensus, and by appeal to the political values implicit in the political culture.¹⁵ There is no equivalent in Forst's theory. For

another thing, Forst's constructivism is not at all restricted, in the way Rawls' tries to be. Forst explicitly sets out to provide the ground not only of social and political justice, but also of 'autonomous morality' which is exactly what the restricted constructivists do not do. Neither is it philosophically quietist, like Rawls'. On the contrary, it takes numerous hostages to theoretical fortune.

Given that (1) is not an option, what considerations might drive Forst to opt for (2) instead? Well, as we just noted, his constructivist principle of justification aims to explain the entire sphere of interpersonal morality as a 'system of categorically binding norms' not just a subdomain of it (Forst 2014: 44). His argument seems to be that moral requirements fall out of the constitutive requirements of the principle of general and reciprocal justification, which is specified as a principle of practical reason below the threshold of morality. This is the classic strategy of the unrestricted constructivist and presumably what leads Sangiovanni (plausibly in my view) to interpret Forst's theory as a Kantian version of unrestricted constructivism. Further, consider Forst's bold interpretative claim that both Scanlon's idea of mutual recognition, and the political values and ideas in Rawls' *Political Liberalism*, have deeper grounds in practical reason, and are themselves 'ideas of reason' (Forst 2017: 126–7; 2014: 174). Provided one construes 'idea of reason' in a broadly Kantian way this claim, as we saw above, seems to shove both Rawls and Scanlon firmly in the direction of unrestricted constructivism. Indeed, this is what we might expect, since a central driver of Forst's enterprise is to refute the familiar story that Rawls' political constructivism breaks with Kant, and to defend instead a 'Kantian' reading of *Political Liberalism*. In other words, Forst not only wants to defend a Kantian view of his own theory, *but also to count Scanlon and the later Rawls among his Kantian allies*. For all these reasons, then, Forst's theory is, on balance, best thought of as an unrestricted constructivism (option 2 above). That is ok. But, if so, it also *has to be* a comprehensive doctrine – though in virtue of its *philosophical* content rather than any substantive *moral* content. It is comprehensive for the simple reason that unrestricted constructivism is an anti-realist metaethical theory.¹⁶ It does not prescind from metaphysical controversy like Rawls' political constructivism, but actively takes sides in one. It is also plainly comprehensive in its reach and ambition, which is to explain the entire domain of interpersonal morality. Thus, interpreted as unrestricted, it is, in spite of Forst's many denials, a comprehensive and metaphysical theory that can be reasonably rejected.

This leaves Forst with only one way out, which is that his theory is neither restricted nor unrestricted constructivism (option 3 above).¹⁷ There are two different ways in which Forst might present his theory as being neither unrestricted nor restricted constructivism. There is a germ of an attempt at the first of these, where he discusses the ground of morality (as a system of unconditionally valid moral norms) which, he claims, rightly, must be no less moral than what it justifies. The moral point of view, he claims, must have a moral ground, otherwise there will always be a gap between the norms that prime the constructivist procedure and the moral norms it generates (Forst 2012: 58). What is this ground? Forst says that it is moral respect for persons. But he construes moral respect for persons as a spontaneous and autonomous ‘insight into an original responsibility toward others in accordance with the principle of justification’ (Forst 2012: 61). The trouble with this line of thought is that Forst seems to have argued himself out of the very idea of constructivism.¹⁸ As he notes, ‘[w]e now seem to have finally arrived at a form of moral realism’ (Forst 2012: 60). Quite. Forst, though, denies that the label ‘moral realism’ is apt to capture his view, on the ground that he is merely proposing that there is ‘an insight of finite practical reason’ and that it is not an insight into ‘a metaphysical world of reasons’ (Forst 2012: 60). But the denial is ineffective, for realism does not have to be based on divine or infinite wisdom. It does not have to take the form of intuitionism, namely the reliable detection of a ‘given order’ (Forst 2012: 60). It can just as well take the form of a finite insight into our ‘practical world’. What marks it out as moral realism is just the claim that our knowledge of that world and its demands is not established through the justification procedure. On such a view, the practical real world is ‘transcendent’ in that it outstrips ‘our’ attitudes towards it and beliefs about it. So Forst’s claim, that his view is not Platonic, although correct, does not mean he has eschewed realism.¹⁹ In my view, therefore, Forst’s proposed solution to the standard objection to Kantian constructivism looks for all the world like a kind of direct moral realism that is *prima facie* incompatible with his claims that his view is Kantian and constructivist. However, the real trouble is that this part of the theory crosses his main stated aim: it contradicts his claim that his theory ‘is noncomprehensive in that it neither rests on some metaphysical notion of human nature, nor seeks to give guidance on questions of the good life’ (Forst 2012: 50; 2017: 129 n. 12, 142). Forst gives the game away again when he defends his view with the claims that ‘the normativity of morality can be explained naturalistically in terms of our “second nature” as reasonable social beings; and that the recognition of an “original ought” is part of our nature as *animalia rationale*’ (Forst 2012: 61).²⁰ Again, this looks just like a metaphysical conception of

human nature, namely the rationalist conception of human nature, stemming from Kant.²¹ And it looks like one, because it is.

7

At this point I'm tempted to conclude that Forst's underlying difficulty is that there is no genuinely Kantian theory of the ground of morality, and of the ground of social and political justice, that is at the same time non-metaphysical and non-comprehensive. But that would be premature, because there is another route that Forst could take that would enable him to finesse the dilemma that the choice between restricted or unrestricted constructivism imposes, and to deliver the promised non-metaphysical, non-comprehensive Kantian theory.²² The other route would be to present his view as a transcendental argument, which as such would deserve the epithet 'Kantian'. Forst could present the principle of justification as a weakly transcendental principle, that every reasonable person must invoke, and on that basis fairly claim that it is non-metaphysical.

The strategy would be relevantly similar to the transcendental defence of Habermas' principle of democracy proposed by Joseph Heath. Heath contends that Habermas should have argued against Rawls that principle (D) is not only true, but more or less platitudinous, and presupposed by any reasonable comprehensive doctrine (Heath 2011: 125). Habermas could then argue, according to Heath, that the derivation of the democratic principle from the conjoint premises of principle (D) and the legal form, does not depend on any 'private comprehensive doctrine' and hence that his (Habermas') democratic theory is 'political, not-metaphysical' in Rawls' sense (Heath 2011: 117–35).²³ Forst might adopt a similar strategy and argue that the principle of justification is a transcendental principle that every reasonable person must invoke, because it is presupposed by every reasonable comprehensive doctrine.

Though this is a promising strategy, it is not one I believe that Forst can easily embrace. Let me explain why. Forst notes at several points that human beings are situated in a social space of reasons, who 'must' account for their actions to one another (Forst 2012: 22). This could be the premise of the sought-after transcendental argument: one cannot reasonably disagree with the idea that human beings (in modern societies) are expected to justify their actions, without engaging in some kind of argumentative (justificatory) practice. The next step, though, the crucial one on which the transcendental defence would depend, would be to show that the justificatory practice thus presupposed can explain and justify the normativity of moral requirements, and of social and political

justice. Note that it is far more difficult for Forst to take that step than for Habermas, because Forst argues for much richer normative conclusions than does Habermas. Recall that principle (U) is – at least as Habermas initially describes it – merely a rule of argumentation for practical discourse. It is nothing so substantial as a fundamental moral right and duty to justification.

Furthermore, if this approach is to work the transcendental necessity of the principle of justification has to have a non-moral explanation, like principle (D) in Habermas, or like the rules of discourse which are claimed to be functional requirements of social and cultural reproduction, and as such necessary insofar as there is no alternative to communication and cooperation.²⁴ But Forst doesn't pitch his principle of justification at the level that the transcendental version of his theory requires (Forst 2012: 140). Rather he works instead, unlike Habermas, from rich moral premises. For example, Forst claims that the principle of justification presupposes a moral idea of the reasonable, and a moral conception of reciprocity. And he construes the social space of reasons as a 'realm of reasons' that is equivalent with Kant's kingdom of ends, 'a community of moral persons who make respect of the fundamental right to justification the basis of their action' (Forst 2012: 22). These are in different ways Kantian but are also evidently moral (and philosophical) doctrines in Rawls' sense. True, if Forst did not rely on rich moral premises, he might fall foul of Hume's law. To do so, he would have first to explain the necessity (and universality) of the principle of justification in non-moral terms. Then he would have to show that this entails a basic moral right and duty to justification. And he would have to do all that without making an invalid inference from premises that contain no moral 'oughts' to conclusions that do. But in avoiding that trap, by presupposing moral premises, he spurns the possibility of mounting a weakly transcendental argument for his principle of justification along the lines that Heath sketches for Habermas.

The upshot is that Forst does not, and cannot, take the weakly transcendental route to the promised land of non-comprehensive and non-metaphysical Kantianism. In the end, Forst's claim that his constructivism is non-metaphysical, in the sense that it does not take a stance on the question of whether moral norms are 'made', projected or detected, and thus is light on metaphysical baggage, is to no avail (Forst 2012: 50). Similarly, his claim that his theory is not metaphysical because it does not rest on a conception of the good, or on what Habermas might call an 'ethical' worldview is also to no avail. These claims may both be true. It is just

that they do not suffice to secure the non-comprehensive and non-metaphysical credentials for his view that he is after.

8

In this article I have made several objections to the key idea of Forst's constructivism, the principle of justification. I have shown:

1. That the principle of justification is not well-formulated.
2. That 'reasonableness and reciprocity' as these notions are taken up and used by Rawls, and understood by him, are not apt to support a conception of unconditionally valid moral norms as Forst's 'Kantian' constructivism claims to do.
3. That the principle of justification, as Forst understands it, gives an inadequate account of what makes actions wrong.
4. That Forst's account strays, in spite of his protestations to the contrary, into a version of moral realism that is *prima facie* incompatible with Kantian constructivism.

Each of these objections is, if correct, a reason to reject Forst's conception of practical reason, and his argument that the principle of 'general and reciprocal' justification 'conceptualizes a non-comprehensive, autonomous, morally grounded theory of political and social justice for a pluralist society' (Forst 2017: 143). For what is the point of advancing a non-metaphysical and non-comprehensive Kantianism in the first place, if it is not to immunize the view from reasonable rejection? It is not as if, for either Rawls or Forst, the desire to avoid metaphysics is a merely theoretical desideratum or a matter of philosophical taste.

That said, my main argument does not depend on the soundness of these individual objections. My argument shows that, insofar as Forst's view is constructivist, then it must be either a restricted or an unrestricted constructivism, or neither. I have shown that it is not, and cannot be, an unrestricted constructivism. However, I have also established that it is not a restricted constructivism: its aim is too general, and it is, unlike Rawls's *Political Liberalism*, not philosophically quietist. That leaves the possibility that Forst's constructivism is neither unrestricted, nor restricted, and as such non-comprehensive and non-metaphysical in the relevant sense. We asked whether a 'transcendental, not metaphysical' argument for the principle of justification might offer the way out of Street's dilemma. Forst does not take that route and for reasons given it is not clear that he can. Instead, he gives an account of morality that is moral all the way down to its 'ground' in practical reason. There are attractions to such

a view – it avoids the threat of violating Hume’s law – but its being non-metaphysical and non-comprehensive is not among them. For one thing, the argument trades on the underlying view that human beings have a basic right to justification in virtue of their nature as rational animals. Thus the only valid arguments that Forst may adduce that actually support his principle of justification fail by his own lights to be non-metaphysical and non-comprehensive in Rawls’ sense of these terms.

The moral of the story is, I think, that it is much harder to avoid ‘metaphysical’ positions and comprehensive doctrines (in Rawls’ sense) by turning toward Kant, as Forst purports to do, both in his own theory, and in his interpretation of Rawls, than by turning away from Kant, as both Habermas and later Rawls did, according to the familiar story that Forst rejects. In this sense, the arguments I have made here might usefully serve as a prolegomenon to any future ‘non-metaphysical’ Kant.²⁵

Notes

- 1 The teller of this particular story mentioned by Forst is Burton Dreben (Dreben 2003: 340).
- 2 Aristotle (1992: 3). Later we must ask whether this is a conception of human nature, as Simon Caney for example claims, and if so, whether Forst is right to counter that it does not count as a ‘metaphysical notion of human nature’ (Caney 2014: 150; Forst 2017: 143).
- 3 Forst assumes that all justification is social justification, or justification to others. In this way he makes what Rawls calls public reason, which is proper to the domain of the political, into the model for practical reason.
- 4 The distinction itself, as Skorupski (2017) notes, dates back to Walter Sibley (1953). Sibley, like Rawls, argues that the two concepts are irreducible to one another, and that requirements of the reasonable are related to moral requirements, but not themselves moral (Sibley 1953: 558–60).
- 5 An insightful reader for this journal drew my attention to two important qualifications. Rawls’ criterion of reciprocity is formulated without the explicit conditionality, where he says: ‘our exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions’ (Rawls 2005: p. xlv). He also makes clear that the principle of reciprocity is distinct from the idea of mutual advantage, insofar as it is a ‘relation between citizens that is expressed by principles of justice that regulate a social world in which everyone benefits judged with respect to an appropriate benchmark of equality’ (Rawls 2005: 17). These are important qualifications which push the principle of reciprocity in a moral direction. That said, my argument, which still stands, is that the idea of reciprocity falls short of the idea of impartiality, and quite a bit further short of the idea of the morally right, and so cannot be taken as the hallmark of unconditionally valid moral norms, as Forst argues.
- 6 Formulas are all important, as Kant pointed out against Gottlob August Tittel who famously criticized Kant for presenting ‘merely a new formula’ rather than a new principle (*CPrR*, 5: 8).

- 7 Given his propinquity to Scanlon, one might turn a version of this objection against Forst. What is wrong with torturing an innocent is not that such an action impugns their basic right to ‘reciprocal and general’ justification. That would give a totally implausible account of the wrong-making features of such actions. Though I think this line of objection might be telling, I cannot pursue it here.
- 8 Given that Forst maintains his propinquity to both Rawls and Scanlon, and that these, according to Street, are paradigmatically restricted constructivists, one might expect Forst’s constructivism also to be restricted. In fact, as we shall see below it is not.
- 9 If this argument sounds familiar, it is. Scanlon makes this very objection to Kant (Scanlon 1998: 151). And Forst makes the same objection to Habermas and Apel. Forst 2012: 56–58 & 77–78.
- 10 For example, it looks like a robust account of empathy would either present it as a substantive moral value, in which case the proposed unrestricted constructivism would shade into restricted constructivism; or it would have to key into a (fairly thick) account of human nature, which from Forst’s perspective would threaten the non-comprehensive status of his account. Either way, Forst has to decline Sangiovanni’s invitation, as he does.
- 11 No one, aside from perhaps Habermas (1995), is actually claiming that these ideals and values are arbitrary. But let’s pass over that here.
- 12 I say this because restricted constructivism is more limited in scope than unrestricted constructivism, and because I believe that Street’s distinction between the two is mutually exclusive, and as I argue below, exhaustive.
- 13 Sangiovanni’s plan is for Forst to embrace Scottish constructivism, as a way of combating the standard objection to Kantian constructivism.
- 14 Freyenhagen (2002) is alive to the distinction between philosophical and moral comprehensiveness.
- 15 Scanlon need not do that because he is not concerned to offer a non-metaphysical non-comprehensive theory.
- 16 As Street claims ‘metaethical [i.e., unrestricted – GF] constructivism stands squarely on the anti-realist side of this divide’. She refers to the realist/anti-realist debate about whether values and reasons are attitude dependent or not (Street 2010: 371).
- 17 We have already seen that it cannot be a combination of both, because the two constructivisms are mutually exclusive. An attempt to come up with a hybrid will only lead to a combustible mix of incompatible claims.
- 18 More cautiously put, these realist-sounding claims, to the extent that they are compatible with constructivism at all, are only compatible with restricted constructivism, which is, as Street notes, compatible with any metaethical theory. I take it that this claim only pertains to the first-order substantive moral claims or wrong-making properties of actions, the normative status of which remains unexplained by restricted constructivism.
- 19 Although I cannot explore this line of objection here, this aspect of Forst’s theory poses serious questions. If we have reliable practical (second-order) insights into our fundamental moral duties and responsibilities towards other concrete human beings, why do we need the moral norms putatively constructed by the procedure of general and reciprocal justification? Why don’t we have direct insights into our even more basic duties not to kill, harm and deceive other people? How come such direct access is granted only to our duties and rights to justification?
- 20 The reference is to McDowell’s *Mind and World*. McDowell presents a kind of direct moral realism that is rival theory to Kantian constructivism. It’s, to say the least, contrarian to include it as an element of a ‘constructivist theory of ethics’.
- 21 Simon Caney, in his critical response to Forst, makes this point (Caney 2014: 150).

- 22 In general, Forst is reluctant to give a transcendental grounding to morality. He rejects various different transcendental arguments offered by Korsgaard, Habermas and Apel (Forst 2012: 48, 55–6). He neglects to consider the kind of transcendental argument put forward by Heath (2011) which would, I think, be more congenial to his enterprise.
- 23 Instead Habermas mounts a different defence. He claims that no political theory can avoid presupposing some controversial philosophical or theoretical doctrines. He denies that a political theory can or should “move entirely within the domain of the political” and “leave philosophy as it is” (Habermas 2011: 92)
- 24 In his discourse ethics Habermas argues from there to principle (U); while in his political theory he argues to the principle of democracy, with the help of the additional premise of the modern form of law.
- 25 I'd like to thank all the participants and organizers of the symposium on Kant and the Frankfurt School, at Cardiff University, for their comments. In particular, I must thank Fabian Freyenhagen for very detailed and helpful written comments on an early draft, an anonymous reviewer for this journal, Garmon Iago and Howard Williams.

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