

# The Emancipation Paradox

A Critical Study of the Kantian Tradition in Political  
Philosophy

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## Abstract

This thesis argues that within Kantian and post-Kantian political philosophy, specifically in the work of Immanuel Kant, John Rawls, Jürgen Habermas and Rainer Forst, there is a problematic that I designate as the emancipation paradox. The *Emancipation Paradox* is understood as the failed attempts in the work of these philosophers to bridge the gap between universal moral claims about the equality of persons and the practical inequality of the political institutions that they develop.

I begin by examining the work of Jacques Rancière who I argue has best explicated the issues of the *emancipation paradox*. Throughout Rancière's published work there is a continuing theme of locating with ancient and contemporary philosophy a problematic that arises over the equivocation between universal claims of the Human Being and particularistic practical conclusions.

The main body of this thesis is the critical analysis of the work of Immanuel Kant, John Rawls, Jürgen Habermas and Rainer Forst. The critical analysis locates within each philosopher a focal point from which the paradox arises. In Kant it is the concept of 'Humanity', in Rawls it is the concept of the 'basic structure of society', in Habermas it is the method of 'Communicative Action' and in Forst it is the idea of 'Justification'. Each of these focal points is examined by seeing what "work" they do in the theory presented, and the assumptions that are made by its usage. I conclude the thesis by suggesting that our methods of inquiry need to pay more attention to the possible implicit conclusions that may appear in political philosophy's use of universalistic language.

## Statement of Originality

I hereby declare that this submission entitled “The Emancipation Paradox: A Critical Study of the Kantian Tradition in Political Philosophy” is my own work and to the best of my knowledge it contains no materials previously published or written by another person, or substantial proportions of material which have been accepted for the award of any other degree or diploma at Macquarie University or any other educational institution, except where due acknowledgement is made in the thesis.

I also certify that the thesis is an original piece of research and any contribution made to the research by others, with whom I have worked at Macquarie University or elsewhere, is explicitly acknowledged in the thesis. I also declare that the intellectual content of this thesis is the product of my own work, except to the extent that assistance from others in the project's design and conception or in style, presentation and linguistic expression is acknowledged.

In addition, I certify that all information sources and literature used are indicated in the thesis.

William Henning James Hebblewhite – 43553133

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## Acknowledgments

Any work of philosophy, no matter what its length, is never the product of a singular thinking individual, but is always developed out of the conversations, dialogues and discourses and of course disagreements, that one has in their everyday routines, both academic and non-academic. This thesis is no different. It has benefited from such exchanges over the course of its life, from the embryonic stage of an idea, to the fully fleshed out work that appears before you. Foremost amongst those who have helped define this project has been Jean-Philippe Deranty whose interest and support for the project sometimes outweighed that of the author. Undoubtedly, without his guiding hand throughout this enterprise could never have been completed, and so I give my utmost gratitude to him.

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## **Abbreviations**

### **Works by Kant**

WE – *“An Answer to the Question: What is Enlightenment “*

CPrP – *Critique of Practical Reason*

CPR – *Critique of Pure Reason*

CJ – *Critique of the Power of Judgement*

MM – *Metaphysics of Morals*

GMS – *Groundwork of the Metaphysics of Morals*

LP – *Lectures in Pedagogy*

TP – *On the Common Saying: That it may be correct in Theory but it does not apply in Practice*

PP – *Perpetual Peace*

IaG – *Idea for a Universal History from a Cosmopolitan Perspective*

### **Works by Rawls**

TJ – *A Theory of Justice*

PL – *Political Liberalism*

PL – *Justice as Fairness: A Restatement*

CP – *Collected Papers*

LoP – *The Law of the Peoples*

LHMP – *Lectures on the History of Moral Philosophy*

LHPP – *Lectures on the History of Political Philosophy*

### **Works by Habermas**

TCA1 – *The Theory of Communicative Action: Volume 1*

TCA2 – *The Theory of Communicative Action: Volume 2*

MCCA – *Moral Consciousness and Communicative Action*

STPS – *The Structural Transformation of the Public Sphere*



CES – *Communication and the Evolution of Society*

IO- *Inclusion of the Other: Studies in Political Theory*

OPC – *On the Pragmatics of Communication*

PMT – *Postmetaphysical Thinking*

BFN – *Between Facts and Norms*

TaJ – *Truth and Justification*

DM – *The Philosophical Discourse of Modernity*

## **Works by Forst**

CJ – *Contexts of Justice*

RJ – *The Right to Justification*

JC- *Justification and Critique*

NP – *Noumenal Power*



# Introduction

## Autonomy and Equality: The problem of contemporary political theory

The Kantian notion of autonomy, expressed through the capability of human beings to give themselves, as "co-legislators", universally applicable moral laws, has been one of the most influential theoretical positions in the history of philosophy. Not only does it ground the comprehensive moral theory of Immanuel Kant, including his anthropological and political writings, but it has also inspired a litany of interpretations. In this thesis I explore some of the interpretative measures that have been provided in the attempts to produce a realisable and practicable political philosophy based on the Kantian conception of autonomy. While sympathetic to the Kantian position, this thesis takes up a critical perspective inspired by the work of Jacques Rancière. Explicitly drawing on Rancière's radical pedagogical work, as well as his conception of parapolitics, I seek to expose the paradoxes of equality that problematise the implementation of the, as I see it, radical conception of autonomy at the heart of Kant's political theory, within constructions of the social and political theories of John Rawls, Jürgen Habermas and Rainer Forst. These paradoxes I call the *emancipation paradox*.

The work of Immanuel Kant, as well as Rawls, Habermas, and Forst, can be broadly understood as egalitarian. By egalitarian I understand their work as proposing a universalistic belief that all people deserve equal rights and equal access to opportunities. In terms of the Kantian notion of autonomy, this can be expressed as the conditions by which a person can gain the moral and political freedoms to act on one's own behalf. The "emancipation" in the phrase *emancipation paradox* implies that if the universal beliefs of egalitarians are true, and in this thesis I am assuming that they are, that a successful implementation of such principles concludes in the ability of persons not only to act on their

own behalf without the interference of others, but also to recognise the same powers within others. To expand on this, in the co-legislation of moral and political "rules" no person can be excluded from those procedures of justification which bring those rules into effect. The key conceptual move in this regard is a dynamic one. Emancipation is the movement from less freedom to more freedom, or more specifically from unfreedom to freedom. Within contemporary political philosophy, the paradox emerges in the attempt to realise the emancipatory potential of the principles and procedures. The end result is often one in which the true "emancipatory" freedom that motivates these principles and procedures is undermined by the very attempt to realise them.

The second half of the phrase, "paradox", is not to be understood in its colloquial or technical understanding. In contemporary philosophy a "paradox" refers to the contradictory nature of two reasonably held points of view. For instance, Zeno's paradox of motion – also called "the dichotomy". For Zeno, motion was an illusion, given that in order for someone to travel between two places they would have to travel an infinite amount of finite distances. This is illustrated through a thought experiment:

Suppose Achilles and a tortoise are in a race. Give the tortoise a slight "running" head start, even a fraction of a second before Achilles begins. Now, if the tortoise takes the lead, then by the time Achilles starts out, there will be a certain distance between them as Achilles first leaves the starting line. It doesn't matter how long or short the distance is. The point is that if the tortoise has even the slightest edge on Achilles, then, according to Zeno, Achilles can never catch up with or pass the tortoise, no matter how fast or how hard he runs, or how slow the tortoise advances, as long as the tortoise continues moving at any speed at all (Jacquette 1993: 274).

The attempt to answer logical puzzles such as Zeno's "dichotomy" or Russell's paradox is a continuing exercise within areas of philosophy such as logic and epistemology, and one that I am not concerned with in this thesis. My usage of the term "paradox" differs from the usage that designates these logical puzzles. I use the term "paradox" polemically, rather than technically. By a polemical usage I seek to twist the assumptions of egalitarianism identified in a

particular lineage within political philosophy. I aim to show how these avowedly egalitarian philosophers - who purport to hold universalistic moral beliefs about equal rights, equal opportunities and equal access – rely on inegalitarian procedures in their attempts to implement these beliefs in concrete institutional practices.

Further, these inegalitarian procedures are often constructed in the face of, and against the socio-historical verification of, equality. As Martin Breugh (2013) has persuasively shown there are a plethora of historical events which have demonstrated the equality of everyone the demands of those excluded, who participate in such events<sup>1</sup>. The inegalitarian procedures, developed in an attempt to bridge the gap between the principles and procedures and their realisation, turn against these historical verifications of an already existing equality amongst persons. I call this problem a “paradox” because, while the positions that these political theorists put forward may be logically commensurate, their premises are undermined by their conclusions. It is also the case that the *emancipation paradox* does not specifically refer to a single phenomenon, but should be understood as an umbrella term which links a number of problems that occur within the egalitarian political theories of Immanuel Kant, John Rawls, Jürgen Habermas and Rainer Forst together: performative contradictions, inegalitarian procedures, and inconsistencies between transcendental and empirical conceptions of persons. These issues, as I will show throughout the thesis, have been explored in great detail by other theorists, but such analyses have yet to show how such problems can be understood as variants of the *emancipation paradox*. I will briefly comment on this matter in the introductory chapter, but will confine my more substantial remarks to my analysis of each theorist’s work in subsequent chapters. Tying this all together, we can designate the concern of this thesis as an intervention in egalitarian political philosophy intended to show that the belief that persons

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<sup>1</sup> Machiavelli for instance, in his *Florentine Histories* (1988) details the extraordinary uprising of underrepresented laborers in Florence. See also Yves Winter, *Plebeian Politics: Machiavelli and the Ciompi Uprising* (2012), Martine Leibovici, *From Fight to Debate: Machiavelli and the Revolt of the Ciompi* (2002), Samuel Cohn (2006) *Lust for Liberty: The Politics of Social Revolt in Medieval Europe, 1200-1425*.

ought to be able to act on their own behalf is undermined specifically by the forms of political and social theorizing that Kant, Rawls, Habermas, and Forst attempt to implement.

This thesis draws substantially on issues such as identity, social configuration, power, and exclusion. In this vein, in relation to the problem expressed above, it has much in common with the contemporary field of critical feminism. For instance, Wendy Brown's claim in the *Preface* to her 1995 book *States of Injury: Power and Freedom in Late Modernity* that "certain well-intentioned contemporary political projects and theoretical postures inadvertently redraw the very configurations and effects of power that they seek to vanquish" (Brown 1995: ix) resonates closely with at least some of the problems that appear under the umbrella of complications that I have called the *emancipation paradox*. It would be possible to consider the work produced in this thesis as an extension or supplement to Brown's own work; though not in any systematic way. Further, I think Brown is correct when she states later in the book that it is important to contest "...ostensibly emancipatory or democratic political projects for the ways they problematically mirror the mechanisms and configurations of power of which they are an effect and which they purport to oppose" (Brown 1995: 3). Despite these *prima facie* agreements, which I believe are widely held within radical democratic circles today, my analysis departs from Brown's in important ways. Less interesting, but nonetheless significant, is the matter of the respective authors on whose work we choose to build our case. While Brown draws on Michel Foucault, Friedrich Nietzsche and Karl Marx, I draw on Rancière, Frankfurt critical theory and contemporary feminist literature to support my claims.

Perhaps more interesting and more important is the way we differ in conceptualising power, and placing it within our critical frameworks. For Brown, following Foucault, it is the inability of emancipatory politics to overturn the configurations of power wherever they occur

that is the crux of the dilemma facing contemporary political modernity<sup>2</sup>. While sympathetic to this argument, I am also cautious of the reduction of all social inter-relations to relations of power. Following Rancière, I see this as continuing in the vein of the ordinary discourses and practices that shape philosophy; a subject of the *emancipation paradox*. Rather than the conditions of regimes of power, Rancière conceives of the problematic of contemporary social antagonisms as erupting over conflicting logics and rationalities<sup>3</sup>. Furthermore, for Rancière, Foucault problematically re-conceptualizes a privileged way of thinking about power – also found in the ideological project of Althusser – that the prisoner, the madman, the proletariat, the excluded could not possibly identify the forms of their own repression (see Rancière 2016: pp 36-40). Rancière takes a different tack. Firstly, in elaborating the *equality of intelligence*, Rancière posits that everyone can understand the modes of their own oppression, and articulate their grievances of these oppressions in a way that is perfectly understandable. This can be understood as taking to its radical conclusion the Kantian notion of autonomy, though presumably Rancière himself would be hesitant to agree to such a proposition. So understood, the notion of autonomy is the universal and reciprocal recognition of the capability of persons to develop and respond to proclamation of moral laws, which includes within it an implicit capability to respond to wrongs. I am not proposing that Rancière holds this view. However, in the future development of a Rancièrian political philosophy that is not self-contradictory, this interpretation would provide a solid foundation. The "radicalness" of this account is that it departs from those philosophical accounts that insist that the downtrodden do not recognise

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<sup>2</sup> The failure of "true" emancipatory politics to overcome oppression, repression and exploitation has been a continuing dilemma for Radical democratic, and Leftist academics. See for instance, Walter Benjamin, *Left Wing Melancholy* (1994), Wendy Brown, *Resisting Left Melancholia* (1999), Jodi Dean, *The Communist Horizon* (2012), Enzo Traverso, *Left-Wing Melancholia: History, Marxism, and Memory* (2016) have in recent times provided some of the most fruitful discussions of this failure.

<sup>3</sup> This has similar connotations with the work of Chantal Mouffe, Ernesto Laclau and other thinkers grouped under the moniker of "post-political theorists". While there are many differences which occur between these thinkers, I do not have time to go into the rich and varied discourses that occur between them. See Oliver Marchart, *Post-Foundational Political Thought* (2007), Lois McNay, *The Misguided Search for the Political* (2016), Razmig Keucheyan, *The Left Hemisphere: Mapping Critical Theory Today* (2013) for some very good general overviews of "post-political" theory.

their own oppression and therefore must be “led out of the cave”. We see this particularly nudge-like philosophical method inherent in Plato's political philosophy all the way through to Marx’s writings and now in contemporary liberal radical democratic theories of justice (Rancière 1999). The central condition of this position is that there are only certain groups of individuals who have access to the “facts of the matter” and all others must rely on them for their emancipation.

The second way in which Rancière and I diverge from Plato, Marx and liberal radical democrats is in the articulation of a subversive account of politics which grants the authority of philosophy over politics itself. This is what Rancière calls *parapolitics*. I will describe this in more detail in chapter one, where I examine in depth Rancière's contribution to this problem. Briefly, parapolitics refers to the elimination of politics (i.e. assertions of equality) by replacing it with a system that accounts for all past and future assertions of equality, thus “transforming the actors and forms of action of the political conflict into the parts and forms of distribution of the policing apparatus” (Rancière 1999: 72). By “policing apparatus”, I mean, broadly, the basic structures of society which aim to distribute the rights and duties to citizens who partake in those societies. In essence, the political work of Kant, Rawls, Habermas, and Forst can all be – and should be, as I will show - considered representations of parapolitics.

## **Thesis structure**

The central contention of this thesis – that Kantian egalitarian theorists undermine the basic presumption of equality inherent in their theories in the implementation of their moral position to the basic structures of society – will be developed over five chapters.

In chapter one, I introduce the work of French philosopher Jacques Rancière. The spirit and method of Rancière's work underpins this thesis. This is, primarily, that in our everyday communicative interactions we expose the universal equality of everybody with everyone else,



thereby calling into question the arbitrary hierarchical relations dictated by the distributions that come about through the basic structures of society. This chapter will seek to do two things. Firstly, it will articulate Rancière's often counterintuitive terminology. Given that I will often draw on this terminology in the development of the critical aspect of this thesis, it is important to present a detailed elaboration of Rancière's vernacular. Secondly, it will provide an exegetical account of Rancière's important critical contributions: his radical pedagogical account of the equality of intelligences; and his understanding of how contemporary political philosophy evacuates real politics from its limits. In doing so I will also develop an account of the relation between Rancière's work and the Kantian notion of autonomy introduced above. I will not develop this position in detail in this thesis – as the thesis itself will not contain a positive argument. However, in drawing Rancièrian political philosophy into a closer relation with Kantian moral theory, I argue that we can begin to produce a conception of politics that avoids the pitfalls burdening other contemporary political philosophies.

In chapter two, I will turn to the philosophy of Immanuel Kant. Kant's work is a major critical reference point within this thesis. This is because of Kant's importance, not only for moral and political philosophy generally, but also because he is also a central reference for the work of John Rawls, Jürgen Habermas and Rainer Forst, whose projects will also be examined in this thesis. In chapter two, I focus on three particular concepts in Kant's philosophy - "humanity", "culture" and "right to freedom" – which I believe are important for understanding his attempt to implement his universal-egalitarian moral claims within practical political procedures. My contention in this chapter is that Kant equivocates between two meanings of the concept of "humanity" which informs his understanding of "culture" and the "right to freedom" leads him to implement inegalitarian mechanisms within his egalitarian framework. This is to say, that because Kant moves between a conception of humanity which is inclusive, and a conception which is exclusive, his political and anthropological writings despite having the

intention of being egalitarian and inclusive are often exclusive. These problems, I argue, allow us to unveil three forms of the emancipation paradox in Kant's philosophy: the *historical*, the *pedagogical* and the *institutional*.

In chapter three, I analyse the work of John Rawls, focusing on the foundations of his "justice as fairness". My claim in this chapter is that despite following Kant in elaborating a quasi-transcendental claim of universal equality, the foundations of Rawls's theory of justice - his conception of persons, the original position and the principles of justice - lead to the conclusion that Rawls ascribes to the basic structure of society an agency which ought to belong to the political subject. Rawls, in developing a parapolitics confines political disagreement to certain parameters of the social structure. He thereby pacifies the role of the political subject replacing it the basic structure. This pacification, I suggest, has the consequence of excluding certain claims to equality by excluded minorities from being able to take place within the "well-ordered society" ; this leads to an *agent-institutional form* of the emancipation paradox.

Chapter four sees the introduction of the work of Jürgen Habermas. Like Rawls's theory, Habermas's theory is based on a particular constructivist understanding of Kant's moral theory. Also like Rawls, Habermas founds his political theory on a conception of the universal moral equality between political subjects. However, also like Rawls, Habermas's attempt to implement his theory of discourse ethics into the practical procedures of the political sphere lead him to fall into various forms of the emancipation paradox which I name the *linguistic-institutional* and the *developmental-pedagogical forms* of the emancipation paradox.

In the final chapter, chapter five, I examine the work of Rainer Forst. I choose Forst's work not only because of his strong Kantianism, but also because his work may be read as a dialectical synthesis between Habermas and Rawls. As in the previous chapters, I reconstruct Forst's political and moral philosophy with the goal of unveiling specific tensions that arise in his

work. While Forst avoids many of the traps that his predecessors fall into, I show that he is susceptible to what I call the *justificatory-power* form of the emancipation paradox. This aspect of the "justificatory power" paradox calls attention to the uneasy tension between Rainer Forst's account of the right to justification, and his account of noumenal power. I suggest that on Forst's account, despite everyone having a *right to justification*, his account of power seems to elaborate a more exclusive conception of justification which is not available to everyone. However, I also introduce the idea that a synthesis between the work of Forst and Rancière may hold the possibility of escaping these paradoxical predicaments to which egalitarians find themselves susceptible.

The aim of this thesis, in identifying these paradoxes, is to specify that egalitarian theorists ought to pay more attention to the possible implicit conclusions that may arise from political philosophy's use of universalistic language. By utilising the work of Jacques Rancière, I believe that the method of analysis developed in this thesis offers a unique contribution to political philosophy and, further, that it will allow us to inquire more carefully into philosophy's attempt to bridge the gaps that appear between universal moral claims and political reality.

# **Rancière, Equality and Political Philosophy.**

## **Introduction**

The “emancipation paradox” challenges contemporary egalitarian theorist’s considerations of equality and how best to implement such considerations. It disputes certain presumptions common in contemporary egalitarian literature that some inequalities are justifiable when we take seriously the freedom and equality of moral persons. This thesis thus holds to a higher standard the meaning of the terms equality and egalitarianism, and what such terms entail. In this chapter I will outline the method of analysis I will use throughout this thesis. However, before I layout the foundations of the “emancipation paradox” and its relation to the critical position taken up by French philosopher, Jacques Rancière, it will prove worthwhile to present an understanding of the terminology of Jacques Rancière's philosophy, as well as his significant contributions to political philosophy. In doing so I hope to show that we can use the radical pedagogical account of Rancière's position to critique normative political philosophy from the standpoint of the notion of autonomy. Firstly, let us restate the problem that we are dealing with.

## **Autonomy, rationality and equality**

At the heart of political theories of Immanuel Kant, John Rawls, Jürgen Habermas, and Rainer Forst is a conception of persons as morally autonomous. This is expressed by Kant in his idea that the will of every rational being has the capacity to bring into existence moral laws that are accepted by, and applicable to every other rational being (G 4:432). For Kant, rational persons ought to act in a way that is amenable to the actions of all other rational persons. It thus proposes that any individual with the capacities of rationality is

both a legislator of the moral law and recognises this capacity of legislation in all other individuals. We can begin to see, *prima facie*, the introduction of a principle of equality. The categorical imperatives, which ground the normative orders that Kant believes are foundational for a just society, appeals to a conception of equal worth amongst persons. In contemporary political philosophy, like those developed by Rawls, Habermas, and Forst, the goal has been to find a practicable and realisable way to implement this conception of equal worth within a political framework. Rawls attempts to do this through his “political construction” of a conception of “justice as fairness”; Habermas contends that implementation takes place in a discourse-theoretic conception of democracy and law, and Forst places this autonomy at the centre of a “critical theory of justice”. These approaches consider the Kantian notion of autonomy and place it within an empirical framework producing a structure in which the equal respect of persons – guaranteed by their recognition as rational persons – is distributed not only in the moral sphere, but also in the political and social spheres. This suggests that within political discourses every rational person has equal capacity to enter into discourses revolving around justice and injustice.

However, a problem arises, not just in Kant, but also in Rawls, Habermas, and Forst, in relation to the attempt to implement the notion of autonomy into a political structure. The Kantian notion of autonomy explicitly expresses an egalitarian position about the capability of persons to give their opinions in political discourses. Everyone considered to be rational has the ability to make claims, and respond to claims, within the sphere of political discourse. However, in the attempt to implement this ideal into our social and political reality what these figures end up doing is assigning the recognition of this 'autonomy' not to a reciprocal relation between individuals, but rather to the basic structure of society itself. It is this basic structure which sets up the parameters of whom is to be identified as autonomous as such, while relying on a egalitarian position in which all persons are recognised as autonomous.

Before I introduce the critical perspective that I will use throughout this thesis to interrogate this problem, I first want to introduce some of the terminology that Rancière develops. While using concepts that are familiar to political theory, Rancière uses his deep knowledge of etymology and the history of philosophy to pull out subversive understandings of these colloquial terms. As such, in drawing on Rancière's contributions to political philosophy – his radical pedagogy and his critique of contemporary political philosophy – it is essential to become clear on the conception of terminology that he imposes. The task of this chapter can thus be considered exegetical in its content.

## **Rancière's politics**

Rancière, not uncommonly for philosophers, designs his own terminology in conjunction with a critical perspective that makes the introduction of this terminology necessary. Rancière's terminology presents to us an all too familiar question about what politics is, while undermining our common conception of these terms, and the answer to this question (Chambers 2013). This section will be given over to making sense of this terminology and placing it within the confines of the wider argument presented in this thesis.

Given that this thesis, and the writings of Rancière, can be considered to be political, in a broad sense, it makes sense to begin with the rather counterintuitive notion of 'politics' that Rancière presents to his audience. Colloquially, politics is usually understood to refer to those issues relating to governmental structures, institutions and the issues of public affairs. “Political Philosophy” in this sense refers to those questions and analyses which deal fundamentally with the state, with government, and with issues of governance. In the context of Kantian political philosophy, one of the fundamental questions that drives its consideration is how morally autonomous individuals relate to the state, and how we construct a state that properly adheres

to the equal worth of morally autonomous individuals. For Rancière this is not politics. Politics for Rancière does not refer to questions of governance or how to best implement the capacities of individuals within a state structure. Rather,

politics is the practice whereby the logic of the characteristic of equality takes the form of the processing of a wrong, in which politics becomes the argument of a basic wrong that ties in with some established dispute in the distribution of jobs, roles, and place (Rancière 1999: 35).

Against our colloquial understanding of politics – which Rancière calls *police* – Rancière conceives of politics, not as the question of the distribution of rights and duties within society – but rather the irruption of an identity that is not considered in the initial situation. Put more formally, Rancière conceives politics as an antagonistic struggle in which a formerly unrecognized party within the distribution of society makes themselves seen by questioning the distribution of the established order. The *police* focuses on how best to count every individual within the distributive order of society, and how best to accommodate their needs; the distribution of bodies “without remainder and without exclusion; there is nothing it does not account for, nothing left over or external to its process of counting” (Chambers 2013: 43). Politics, as understood by Rancière, exposes the uncaptured within this distribution; it exposes the in-determinability of justice's content.

The conception of politics that Rancière introduces is extremely important to understanding the overall thrust of his critical perspective. In this context, it makes sense that political theorists have offered a number of differing perspectives over how to understand this concept, and its relation to the orthodox meaning of politics (i.e. *police*). A number of major contributions have been made recently in relation on this question. For instance Todd May (2008), in developing the critical normative insights that are contained within Rancière's project presents *politics* as an anarchistic principle. The demands of equality that are implicit in Rancière's approach provide the grounds for developing a democratic politics that promotes

active equality; that is promotes the agency of political agents over and above the distributive forces of the basic structure of society. However, in contemplating politics as such, May seems to describe *politics* as the opposite of *police*. This, as we shall see is not precisely the case. *Politics* for Rancière – understood, in one sense, as a disruption of the status quo – is a rare event. This is because of the important fact that *politics* as well as a disruption is also at the same time a constitution of an identity that was not previously identifiable before. Not because of an explicit ignorance of difference, but because the parameters of distribution set up by the basic structure are such that they were unable to perceive this identity. But for all this *politics* does not constitute a pure division away from *police*. The association of Rancière with a *pure politics*, in which politics takes place in a separate sphere; opposed to the basic structures of society is an ongoing debate within Rancièrian scholarship (Chambers 2011; 2013). As will become apparent, *politics* does not exist outside the realm of the *police*. Rather it takes place within the distributive parameters that the *police* set up. How this irruption within the distribution of society takes place is also open to interpretation. Jean-Philippe Deranty has argued persuasively, that Rancière's contribution to political philosophy is best thought of as sitting alongside recognition theory (Deranty 2003a). In doing so Deranty suggests that the irruption of politics that occurs is actually a demand for recognition coming from those who could not have been recognised within the current status quo (cf Honneth 1995a).

Samuel Chambers' work on Rancière, developed in *The Lessons of Rancière* (2013) is the currently definitive work on Rancière's contribution to political philosophy. Against those who would reduce Rancière's position to a pure politics, or attempt to fold it into the confines of more developed theoretical outputs (such as those of Arendt or recognition theory), Chambers' attempts to stand Rancière's contribution on its own two feet. Building off the work already produced by Deranty, Chambers considers the perspective that Rancière's argument does not consist of three terms (*le politique*, *la politique* and *police*) but rather there is a doubling of



*politics*. For Chambers: "*Politics is doubled, always and already*. It is "doubled" in that it is never singular and never pure – "always and already" because the doubling is not a secondary process that happens *to* a pre-given politics, but an essential feature of *la politique* in the first place" (Chambers 2013: 58). For Chambers, *politics* isn't something that comes into existence in the irruption of a new constitutive identity which expresses itself against the unawareness of itself in the distribution of the basic structures of society. *Politics*, or the potential for it, already has to exist within the police order. Politics, the recognition of an identity that has been misrecognised or ignored can only occur within the space of the social which the parameters of the distributive content has created. As Rancière himself writes "...there is no place outside of the police" (Rancière 2011a: 6). Combining this statement with Rancière's position that there are better and worse forms of police orders (Rancière 1999), we can begin to envisage not only a critical perspective on contemporary normative positions, but also a way to move beyond those positions.

Above I have briefly provided an outline of the contemporary understandings of Rancière's conception of *politics*. While it is widely understood that Rancière presents politics as a disruption of the contemporary order of things, a number of theorists have questioned how this disruption comes about. Because there has yet to be a clear answer as to how the new constitutive identity is to be expressed within the police orders, a number of theorists have considered Rancière's contribution to be ineffectual in providing an answer as to the overcoming of systematic and institutional forms of oppression and exclusion that mark the contemporary order. Jodi Dean, while sympathetic, has argued against the results of Rancière's conception. Despite expressing admiration for Rancière's arguments, she contends that "[t]hey result, however, in an analysis that hinders our ability to think clearly about the current conjuncture" (Dean 2009: 22). Similarly, Lois McNay (2016) has argued that Rancière presents an "all-or-nothing" approach to politics. Much like Dean, McNay criticises Rancière's position by

arguing that it has little to offer in developing a useful account of political agency. She writes that “the presumption of agency”, by which she refers to Rancière's insight of the recognition of equal intelligence required as the basis for *any* communicative action

turns out to be not so much an act of verification but rather a naive statement of faith that romanticizes the perpetual marginality of the poor and ultimately comes close to replicating the depoliticised analysis that he denounces in other thinkers (McNay 2016: 134).

Several problems arise, however, in McNay's consideration of Rancière's project. The critique of Rancière takes place within the context of her book *The Misguided Search for the Political* (2016). The main thrust of the book is that certain radical democratic theories conceive the “political” in a way that is divorced from the empirical forms of inequality and domination that distort everyday life. She writes that “the political realm does not take its essential shape from underlying social dynamics and interests which it relatively passively reflects and transmits into the democratic area” (McNay 2016: 5-6). McNay contends that these theorists problematically assign primacy to the political over other realms, ignoring hierarchical relations of power and domination. Given our consideration of Rancière's conception of *politics* above, this seems like an unjustified accusation to make regarding Rancière's project. In essence, McNay seems to be repeating the criticism that Rancière develops a pure politics, separate and autonomous to the institutional structures that govern our place in the order of things. McNay's position reflects a common criticism of Rancière (cf. Badiou 2005; Hallward 2009; Žižek 1999). While these theorists, including McNay, correctly point out the intrinsic emptiness of Rancière's conception of equality, she wrongly concludes that it thus has nothing to offer against empirical manifestations of regressive power relations and oppression. This she believes rests on Rancière's supposed “disregard for complex dynamics of disempowerment” (McNay 2016: 135). This position relies on viewing Rancière as presenting a pure sphere of politics, fully independent from the *police*. For Rancière, as I have shown above, this is not the case. *Politics* can only ever take place within the *police*. There is no getting outside of the police. What this

means is that the assertion of the autonomy by individuals and groups must take place, and have knowledge of those complex dynamics of disempowerment. As Clare Woodford has recently stated “equality is formally empty but in every instance in which it is employed it is filled in with content that is context-specific but always invokes equality with the rest” (Woodford 2017: 30). The “party intellectuals”, the “philosophers” are not needed to educate the masses into their own oppression, because they already understand the confines of their place and what causes it. McNay, in her criticism of Rancière, seems to recast the dichotomy between the “emancipator” and the “emancipated” that Rancière is attempting to overcome.

This idea, that the oppressed have access to the knowledge of their oppression is to be found in Rancière's radical pedagogy. We may be able to respond to McNay by stipulating a better understanding of Rancière's pedagogy and the expression of the equality of intelligences that is contained within it. In doing so, we can also extend a new interpretation of Rancière, which expands upon Rancière's own variation of the Kantian notion of autonomy.

## **Rancière's radical pedagogy and the critique of explication**

We may be able to alleviate some of the concerns of McNay by stipulating a proper understanding of Rancière's conception of equality. Equality is central to the Rancièrian idea of politics. The disruption of the status quo evident in Rancière's contention of politics is to be understood as a claim to equality based on the presupposition of the equality of intelligences. The equality of intelligences is at the heart of all manifestations of the basic structures of society, and the relations that they engender within different social beings.

The idea of equal intellectual capacity emerges in Rancière's critical inquiry into the pedagogical work of Joseph Jacotot (1770-1840) in *The Ignorant Schoolmaster* (1991). Rancière uses Jacotot's method of universal teaching to elaborate a radical conception of equality based

on communication. Rancière's position in this text allows the opportunity to develop a critical perspective against the normative political philosophies that we shall be examining in the latter chapters. It helps us to unveil the contradictions in regards to equality – what I call the *emancipation paradox* – that take place when one attempts to implement a notion of egalitarian autonomy in political structures which implicitly undermine such autonomous behavior. In this section, I will introduce Rancière's radical pedagogy and the analysis of *explication* that becomes an important part of Rancière's understanding of the status quo. After this, I will show how Rancière's analysis of the explicative order helps us understand his revolutionary view of equality.

To begin with, let us start with how Rancière understands equality, and what is its use in his theoretical standpoint. Equality is an axiomatic presupposition. It is not a value, or goal, or an essence that is embodied in our social character. “Equality is not a given that politics presses into service, an essence embodied in the law or a goal politics sets discerned with the practices implementing it” (Rancière 1999: 18). The presupposition itself is expressed as *the fundamental equality of speaking beings*. This presupposition is practiced, or verified, in communicative discourses, regardless of the asymmetry of such discourses. This idea of equality is that which Rancière locates in the pedagogical lessons of Joseph Jacotot.

In 1818 Jacotot had, as Rancière puts it, an “intellectual adventure” (Rancière 1991: 1). This adventure was the experience of teaching without knowing anything. To put it in Rancière's terms, the act of learning without explication. The story goes that Joseph Jacotot was put in charge of teaching the French language to a group of Flemish students. While Jacotot was perfectly fine as a French teacher, the problem that arose was that he was unable to speak Flemish and therefore was unable to communicate his lessons effectively with the students; “there was thus no language in which he could teach them what they sought from him” (Rancière 1991:1). Instead of teaching them directly, Jacotot solicited the use of a bilingual

textbook. Jacotot then ordered the students to learn the French part of the text by referencing the Flemish part. The method involved was one of repetition. The student would read the French text with the help of the Flemish, and when they had reached the end, they would repeat the process again. Having given the students time, Jacotot recorded their progress by having them write, in French, a lengthy treatise on the text, *Telemaque*. Surprisingly, the students, so it is said, were able to succeed at the task. The students had successfully navigated the French language without the help of a French master. Jacotot's experiment had put the foundational notion of explication, well used even today in pedagogical practices, in to question. Explication, or the critique of explication which is implicit in Jacotot's experiment is where we can begin to discern the notion of equality which is fundamental to Rancière's politics. If a student is capable of learning by themselves, perhaps it is the case that those ideological dynasties who have proclaimed that the oppressed do not know what they do, and therefore must rely on an emancipated master to lead them out of their oppression, have also been wrong. Perhaps the oppressed masses are just as capable of understanding the language and syntax of oppression as Jacotot's students were at understanding French. The explication of knowledge has been taken for granted, but is explication really that problematic? Explication has provided us with the tool by which to disseminate knowledge to a wider audience. It has been the cornerstone of educational programs since before the enlightenment. Yet, there is something rather paradoxical about explication, and as I shall argue, about theories of justice based on the Kantian notion of autonomy. A student is given a book that contains a logical argument. The book fully contains this logical argument. However, the teacher uses their own logic to explain the logic that is instilled in the book's argument. Why should we assume that the students will understand the teacher's logic if they have not yet understood the book's logic? Or, more importantly, If the students can understand the teacher's logic, why have we assumed that they have not understood the book's logic? The Kantians acknowledge the autonomy and

rationality of persons in the world, and yet the design of their political theories seems to implicitly undercut the ability of persons to act autonomously.

The explicative order that Rancière describes via the story of Jacotot, while being acknowledged in the literature on Rancière, has not been viewed as an overly important aspect of his work; often being sidelined for his conceptions of *politics* and *police*. However, the explicative order helps us acknowledge the arbitrary hierarchy that society has built into the transfer of knowledge. It acknowledges that the only point at which the regression of the explicative order (i.e. an explanation to explain the explanation to explain the explanation ad infinitum) is a decision made by the master whose position requires that he always maintain some distance between himself and the student. As I introduced above, this explicative order also underpins the logic at the centre of the basic structure of society within those *parapolitical* positions that Rawls, Habermas, and Forst develop. Implicit within these political philosophies is the idea that by structuring the major institutions in society in a way that adheres to the notion of autonomy developed by Kant, we can provide an emancipatory road for the oppressed. What this strategy assumes is that the oppressed are unable to realise and practice their own autonomy, which is already asserted in the ethos of the basic structure. Therefore, the oppressed need to have their situation explained to them by those who better understand their predicament.

In both the explicative order, and the basic structure of society, Rancière discloses a fact. “Explication is not necessary to remedy an incapacity to understand. On the contrary, that very incapacity provides the structuring fiction of the explicative conception of the world” (Rancière 1999: 6). The pedagogical practice, and its analogous partner in the assumption of the basic structure of society, attempts to treat a presumed incapacity to understand. It is envisaged that explication will allow the student to rise to the level of the master; in the basic

structure of society, it envisages that the oppressed will be able to realise an autonomy that is promised to them.

Against this position, in which the explicator and the construction of the basic structure of society constitutes the incapable, Rancière advocates the presumption of equal intelligence, or to follow with an analogy with the basic structure, the presumption of an equal rationality based on a universal moral autonomy. This equality is not a value or goal with a proscribed content.

### **Rancière's presumption of equality**

As I have mentioned previously Rancière sees equality as a presumption. Unlike liberal accounts of the presumption of equality, Rancière does not view this presumption as a burden to be proved. Rather, it is a necessary presupposition of the structural elements of life (Deranty 2003b; cf. Gosepath 2014). Rancière offers a counter-intuitive notion of the presumption of equality, against the common view associated with egalitarian political philosophy. Rather than treating equality as a goal that ought to be obtained, as a value that ought to be enforced, as a good that ought to be due everyone; rather than treating equality as an essence instilled in our normative frameworks, Rancière instead proposes equality as the possibility of anyone *to demand to be recognised as an autonomous individual*. Rancière thus places himself, at the same time, both with and against Kantian political philosophers. He places himself with them in utilizing a Kantian notion of autonomy as a very precondition of political discourse. Importantly however, he places himself against them as for him equality does not derive from a particular conception of persons as autonomous persons, but rather autonomy and equality are both empty signifiers that are filled only in context-specific conditions of *politics*. The realisation of the others' equality and autonomy comes about in the constitution of an identity which breaks

open the arbitrary distinctions put in place by the parameters of the basic structure of society. In this sense, Rancière does not view the presumption as the proposal that unequal treatment must be justified. Nor is it a means by which the proper distribution of social goods is defined. Equality is rather a method or practice (Rancière 2016).

For Rancière, the presumption of equality of intelligences is not an empirically verifiable hypothesis. It cannot be measured by experiments. It does not mean that everyone will receive the highest test scores, nor fill the most intellectually demanding roles in society. While Rancière acknowledges to a degree that certain people will fulfill those roles better than others this fulfillment is not premised on the capacity of the intelligence of the person, he is not specifically interested in these questions. For Rancière, what is fundamental about the presumption of equality is that it expresses an alternative way of viewing current social and political mechanisms. Furthermore, we do not need to prove exactly the equality of intelligences; it is enough for us to presuppose it; as Rancière puts it “our problem isn’t proving that intelligence is equal, it’s seeing what can be done under that supposition” (Rancière 1991: 46). This is not a dogmatic claim that we take to be an undeniable truth. It is rather the beginning assumption of an analysis of the political and social relations in society. As we shall, see it is an assumption that can be reconstructed in historical and contemporary political struggles.

Against the explicative order – which is perceived as necessary in both pedagogical and political practices – the presumption of equality undermines this perception. This is because, in the communicative discourse that takes place in the explicative exercise, the explicator has to assume not only that the student understands what they are saying, but also that they are able to comply with the orders that are ingrained in the explication. That is, in any communicative discourse; even in those asymmetrical discursive practices in which one orders another to



perform an action, a fundamental equality is perceived between the two agents. The equality of speaking beings.

Equality is that which allows for persons to interact with one another at the fundamental level of dialogue, including when dialogue is utterly asymmetrical. Without the presupposition of understanding that is at the heart of Rancière's claims about equality, no social order is possible, even one that, in its everyday running, shows the highest forms of asymmetry and inequality. This presumption is encapsulated for Rancière in the notion of an "equality of intelligences", the notion drawn from Jacotot's method of universal teaching. For Rancière, the capacity of understanding is one that must be presupposed in all interactions; it is "the common bond of humanity ... the necessary and sufficient condition for a society of men to exist" (Rancière 1991: 73; see also Rancière 1991: 5, 2006: 55). At the same time, though, this common bond also allows, in most instances, inequality to flourish. It is not that equality always or necessarily deteriorates and leads to domination or inequality itself, but rather a whole host of egalitarian relationships must already pre-exist in order for inequality to function: "In the final analysis, inequality is possible only through equality" (Rancière 1991: 17; 2006: 7). The equality of intelligences functions at the basic level of interaction that takes place between the dominated individual and the one who is dominant. The superior must already recognise, in the inferior's capability to follow orders, a number of other capabilities that position him as an equal of the superior. This is not an equality of intelligences in the sense of academic success; rather, this thesis bears similarities to Kant's conception of enlightened persons. As Todd May put it, "[e]ach of us is capable of meeting the challenges life puts before us, without appeal to an authority that must guide us through our own ignorance" (May 2009: 111).

The conceptions of politics and equality described above help frame the issue in this thesis. The emancipation paradox considers why egalitarian political theorists – who assert their equality on the basis of a Kantian notion of autonomy – have been unable to properly articulate

their egalitarian ethos within the empirical frameworks with which they construct their political and social institutions. Politics, in the Rancièrian sense, is the vehicle by which the equality of intelligences is verified within a context-specific struggle that is universalised by the demand to be included, as equals, within the order of things. Politics itself can never be universalistic, it always take place in opposition to a given police order (Chambers 2010). But the claim that the disruption makes is always a consistent demand for equality. The emancipation paradox, as I will show throughout the latter chapters, is articulated when the universal equality of speaking beings (implicit Kantian notion of autonomy) is undermined by the very structures of society which are to guarantee that autonomy.

## **Disagreement and dissensus**

I now want to turn to perhaps one of the most difficult aspects of Rancière's contribution to political philosophy, the ideas of *disagreement* and *dissensus*. As I have tried to make clear so far, equality for Rancière is not treated like an object as it is in the distributive frameworks of liberal and radical democratic theories of justice. It is not something that can be granted through rights, nor is equality measured by the amount of good or income someone may receive in relation to all others. Equality, for Rancière, is rather an assumption, a beginning point. Politics is the verification of this assumption. It is the point where the equality of anybody in relation to everybody is realised. The actions of black men during the 1960s Woolworth sit-ins presents a good example of what Rancière means by politics (May 2008). While these men were a recognised part of society, they were a part that had no say in the constitution of society. By placing themselves in an area which they were not allowed to sit in, they forced the state to recognise them in a new way. While the disruption of the order of things may not necessarily be an explicit demand for an equality. It is this demand for

recognition, in part, that drives *politics* as a demand for equal inclusion, by explicitly practicing such inclusion: By sitting in the same seat designated for white men, the black men during the sit-ins verified themselves as the equal of a white man. In doing so they called attention to the arbitrary hierarchy which was instilled in that specific police order.

What takes place in the Woolworth sit-ins, just like many other political struggles such as the plebeian revolt on the Aventine hill (494BCE), is *disagreement*. Disagreement is not a lack of consensus over the interests and standards that should govern the order of things. It is “a determined kind of speech situation: one in which one of the interlocutors at once understands and does not understand what the other is saying” (Rancière 1999: x). It is not a conflict between two opposing views. It is, rather, a conflict over the same view, but in which the view being disagreed upon is that in which there is an explicit gap between the two understandings of this view. As Rancière puts it:

it is the conflict between one who says white and another who also says white but does not understand the same thing by it or does not understand that the other is saying the same thing in the name of whiteness” (Rancière 1999: x).

It is not a misconstruction, a misunderstanding, or an irrationality. It should not be confused with Lyotard's *Differend* which denotes dissensus as a consequence of the lack of universalisable judgment for heterogeneous language games (Lyotard 1988). Rancière states explicitly that he is not interested in the rules for assessing types of heterogeneous discourse. Disagreement, rather, is a dissensus that occurs because the facts of discourse are not understandable by those who utter the same facts.

The structures proper to disagreement are those in which discussion of an argument comes down to a dispute over the object of the discussion and over the capacity of those who are making an object of it” (Rancière 1999: xiii).

In his paper “Consensus Interruptus” (2001), Robert Goodin goes some way to explaining what these problems are. According to Goodin, there is a wide-ranging belief that what underpins most of politics is the coming to agreement over certain actions and beliefs. Consensus occurs when reasonable people of good will eventually are able to come to agreement given iterative updates to their beliefs. This position, in Goodin’s analysis, involves the implicit assumption that failure to reach consensus stems from the fact that those involved in the discursive practice are irrational, lacking good will, or are subject to intolerant beliefs. Consensus suggests that on the one hand all that needs to be done to solve serious disagreements in the world is that everyone gets together and reasons out their problems. The reverse of this is that any disagreement that then remains in the world is the result of unreasonableness on the part of those who fail to agree with everyone else. There is a critique of consensus, however, which is able to encompass what is valuable about Goodin’s argument without falling into some of the problems that he does.

What I think Goodin misses, as well as those who do advocate consensus, is the social fact that in the act of disagreement, the parties in disagreement are often not of the same social standing. Historically, this is seen in the myriad of disagreements that have evolved into struggles, resistances and revolts against the ruling order. What usually occurs is that in the practice of consensus the ruling order sets the tone of the debate, and so even before agreement or disagreement can take place, the “rules of engagement” have already been accepted, rules which tend to often favour the status quo. This is why when Goodin writes that “social actors ought rationally to update their own beliefs in light of such reports of observations made elsewhere by others” (Goodin 2001: 124), he ignores the fact that the “rational” update of beliefs can only be confirmed by the already accepted rules of engagement. By ignoring these rules, he ignores the dynamics of power and social hierarchy that exist in the world. For Goodin, the social actor ought to act in the same way as the scientist who “updates

their own beliefs in light of observations emanating from other labs” (Goodin 2001: 124). There are a number of reasons, however, why such a comparison is problematic. In a laboratory, there are tightly controlled conditions under which new evidence can be produced and added to the discussion. There are specific conditions that such evidence must meet if it is to be introduced into the discussion in the first place. This is before agreement or disagreement can take place over the evidence that has been introduced. In the social and political fields, however, such conditions do not exist. To discuss such a premise in the form of real political struggles would require answering the question of who gets to set the boundaries for the conditions that social and political evidence must achieve in order to be accepted into the discussion. Unlike the laboratory – in which the conditions by which discourse takes place are fully accepted by the scientific community (at least within an existing scientific paradigm) – the social and political conditions of discourse are often the very point of disagreement itself. Good examples of this are the Occupy movements that took place in London and New York City after the fallout of the Global Financial Crisis. The “occupiers” refused to present a list of demands to those in Government as to do so would be to submit to the legitimacy of the status quo. They did not provide evidence or suggest arguments within the acceptable framework of those in Governance. Rather, much of the protest can be described as a disagreement with such a framework (Bassett 2014).

In order to illustrate his reflections on consensus, Goodin points to an analysis by Thomas Piketty on class politics:

People who live among the well-off assume that work effort pays off, because they see everyone around them being richly rewarded for it. People living among the poor assume that work effort generally does not pay off, because it does not seem to be doing so for most of the people around them. Acting on those expectations, the better off put in more work effort, are suitably rewarded and thus reinforced in their views. The poor, meanwhile, put in less work effort and find their own expectations confirmed by the relatively low rewards they garner. And thus class politics are born” (Goodin 2001: 131)

Putting aside the theory of the birth of class politics, Goodin's point is that people within the same society can have radically different experiences based on their place within that society. For Goodin, it would thus be rational for such different groups to disagree on the common experience of work because of their perspectival differences. From the perspective I have sought to articulate so far with the help of Rancière's work, Goodin's analysis doesn't seem to go far enough, and is not able to overcome the problem of consensus. In Goodin's argument the assumption is that those who are in disagreement have already been accepted into the discussion as reasonable persons within the community. As he states, it is possible that "perfectly reasonable people...possessed of perfectly good will might still disagree with one another, even after extended discussion" (Goodin 2001: 123). But by failing to see that the inclusion of all those people in the discussion is a problem in the first place, Goodin falls into the trap, well highlighted by Stephen D'Arcy in his *Languages of the Unheard* (2014), that certain forms of discourse are seen by the status quo to be already, implicitly, be irrational in their motivation. The implication this position is that both those who want to reach consensus, and those who disagree, are already accepting of what it means "to speak". Goodin's focus is on disagreement within an already agreed to framework, but this ignores modes of disagreement that are perceived to be irrational by the status quo, such as occurred in the Occupy protests, and in the Black Lives Matter movement (hereafter, BLM). Interestingly, the point where Rancière differs decisively from Goodin is that disagreement occurs in the space in which there is a perceived "non-communicable" void between participants. That is, where the governing body not only doesn't understand the claims of injustice made by the lower strata but dismisses such claims as "noise" and irrational discourse. Whereas Goodin implies that the stage of discussion is always already set, Rancière suggests that dissensus is the very creation of the stage itself (Rancière 2004). Dissensus as explored by Goodin, then, is thus *consensus* by any other name, in which the language of struggle has already been approved. It is when the

struggle against injustice is not recognised as such that dissensus actually appears; “[f]or parties to opt for discussion rather than a fight, they must first exist as parties who then have to choose between two ways of obtaining their share” (Rancière 1992: 102). What Rancière is able to show is that political disagreement, of the type seen in movements such as Occupy or BLM, and many others, is not disagreement over the distributive paradigm, or law enforcement. It is rather the push to be accepted as a party who can take part in discourse over social life and their own place and participation in it.

## **Black Lives Matter, politics and equality**

We can express these theoretical propositions of politics, equality, and dissensus in terms of a reconstruction of contemporary political disputes. Let us recall that the notions of autonomy and equality, for Rancière, are formally empty until they are expressed through an act of “disagreement” in a context-specific event. To understand these formalistic propositions it will serve will to apply them to an actual case of political disagreement.

Developing from a social media outcry following the acquittal of George Zimmerman after the murder of a young black man, Trayvon Martin, “Black Lives Matter” gives perfect credence to Rancière’s conception of politics. While importantly concerned with anti-black racism and the mechanisms that allow it to continue to function, the fundamental claim of BLM is a demand for inclusion; it is, in the words of Rancière, an articulation of the “part that has no part”<sup>4</sup>. This claim for inclusion is itself premised on a disagreement that inscribes a universal dimension. Against “identity theorists” we may claim that the BLM movement is not a claim

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<sup>4</sup> The relation between the theoretical intervention of Jacques Rancière and the political intervention between Black Lives Matter has been noted by others as well. See Glenn Mackin (2016) Black Lives Matter and the Concept of the Counterworld, *Philosophy and Rhetoric*, 49(4), 459-481; Johnathan Havercroft and David Owen (2016) Soul-blindness, Police Orders and Black Lives Matter: Wittgenstein, Cavell and Rancière, *Political Theory*, 44(6), 739-763

about the recognition of a particular identity within a plethora of different identities, rather it is the claim to be included in the universal consideration of what it means to be a “human being”.

According to Rancière’s description of “wrong” in *Dis-agreement*, politics is:

the practice whereby the logic of the characteristics of equality take the form of processing of a wrong, in which politics becomes the argument of a basic wrong that ties in with some established dispute in the distribution of jobs, roles and places (Rancière 1999: 35).

The processing of a wrong is articulated in the very name of the movement. BLM is concerned with the structures and institutions of the current distribution of the social order. By articulating the demand that black lives do, in fact, matter, the protest movement implicitly draws attention to the *Universal Declaration of Human Rights*, article three, which states that, “everyone has a right to life, liberty, and security of person” (UN General Assembly, 1948). The demand of BLM is thus expressed in the articulation of a wrong expressed between two senses ways of perceiving the term, ‘everyone’. On the one side, there is that “everyone” who is expressed by the current distribution of social orders and the name “human rights”. On the other side, there is the “everyone” who is expressed by those who do not feel themselves as part of the former expression, and who do not feel protected under the universal signifier of “human rights” (cf. Arendt 1994). As Rancière suggests, the issue at the heart of politics is the expression of an injustice, which cannot be properly understood in the current distribution of social bodies. The disagreement that unfolds between two understandings of “everyone” expressed by the current distribution, and the demand of BLM can be confirmed by reference to one of the major counter-responses to BLM; “All Lives Matter” (hereafter ALM). This counter-protest movement attempts to nullify the initial protest by creating an encompassing assertion around the signification of “all” with a special focus given to the deaths of law enforcement officials by predominately, they suggest, black persons. By stipulating the universal “all”, the ALM response attempts to silence BLM by suggesting that their struggle is directly known and established within the distribution which the current social order has established.



The counter-protestors view BLM as articulating a claim of injustice that is *not* actually a claim of injustice. Furthermore, by putting the “all” in opposition to “black”, the “all” becomes an attempt to represent a totalising social order that, in its encompassing of the whole, immediately excludes the potential of the Black community to establish a grievance of injustice. The one part that has no part in justice and is challenged in the very establishment of such an “un-thought” grievance. As Daniel Ross states:

The *struggle* of politics is thus always an *aesthetic* struggle for a *new* partition of the perceptible, for a political aesthetics countering the presentations and representations of ... the police order, for a transgressive expression recasting a conservative symbolic order. (Ross 2009: §1)

The question therefore becomes, given how “politics” is understood here: what is the place of “equality” within this practice, since we know that politics for Rancière is about the assertion of equality in a situation of de facto inequality?

The protestors involved in BLM position themselves over and within the police order as a community that isn’t represented by the “community” of the police order. BLM announce themselves as a community that is “based on the conflict over the very existence of something in common between those who have a part and those who have none” (Rancière 1999: 35). Equality, as such, is found in that very demand, which challenges the understanding of the representative logic of what is taken to be justified of the current distribution of the social order. Equality is the presupposition on the basis of which such a demand can be made. This gives equality a very peculiar status. As Rancière specifically indicates:

[P]olitics...is that activity which turns on equality (Rancière 1999: ix).

And,

Equality is not a given that politics then presses into service, an essence embodied in the law or a goal politics sets itself the task of attaining. It is a mere assumption that needs to be discerned within the practices implementing it (Rancière 1999: 33)

Equality therefore is an empty concept for Rancière, which is renegotiated in each political act where the expression of a wrong arises within a distribution of social bodies. It is also the presupposition by which this renegotiation can take place. It is in this axiomatic attitude (the presumption of equality) therefore, that one must acknowledge the equality of everyone. The presupposition of equality makes it possible for the disturbance of the social order to take place, and to question, within that social order, the “established” meaning of equality –which is in fact only a form of legitimated inequality.

## **The emancipation paradox**

I have so far provided an overview of Rancière's contribution to political philosophy, and briefly noted how these contributions allow us to develop a critique of normative political philosophy. The question that I want to turn to now is how does this contribution help expand our understanding of what I call the *emancipation paradox*. As I noted above, the *emancipation paradox* refers to the contradictions, ellipses and anomalies that come about in the attempt, in liberal and radical democratic theories of justice, to implement the notion of autonomy within the major institutions of society which are, in essence, supposed to adhere to respecting persons as morally autonomous beings. The universal condition of autonomy that such structures are premised on are undermined by the structures themselves. The basic structures of society undermine the autonomy that their construction is based on because, in the parameters that provide the limits of society, they curtail the stage upon which discourse can take place. This is despite recognizing the equal autonomy of all human beings – in Rancièrian terminology, the recognition of each and every person to participate equally as speaking beings – the basic structure of society limits the terms of discourse. That is, they request that everyone who is capable to conform to a certain set of limitations over the forms of discourse that can

take place. What occurs in this limitation is that particular claims of justice (and against injustice) are ignored because the parameters developed by the major institutions of society are unable to recognise the discursive practice that is taking place, and therefore unable to recognise the injustices that occur. This is where the paradox can be located. Despite a formal recognition that everyone has not only the ability to enter into political discourses regarding concerns over the question of justice, the very institutions that liberal and radical democratic theorists of justice attempt to institute close off the ability of everyone to enter into such discourses. *Politics*, in the Rancièrian sense, occurs when, in the disruption of this discourse, there is a recognition of an identity which was not previously able to be identified because of the parameters that have been put in place. This disruption is a claim to an equality which is already substantiated in the presumption which the basic structures of society are constructed upon. A presumption of the equal ability of autonomous beings to speak. Rancière's contributions to political philosophy helps us to be able to articulate these contradictions.

In *Dis-agreement: Politics and Philosophy* (1999) Rancière considers the opponent of his polemical critique. "That what is called "political philosophy" tries to rid itself of politics, to suppress a scandal in thinking proper to the exercise of politics" (Rancière 1999: xii). "Political Philosophy" has attempted to evacuate politics of difference and disagreement. For Rancière, this evacuation occurs in three particular ways: *Archipolitics*, *parapolitics* and *metapolitics*. While this thesis will focus directly on *parapolitics*, it is important to have an understanding of *archipolitics* to understand why the *emancipation paradox* comes about. I will leave *metapolitics* aside as it has no bearing on my argument. These neologisms, *archipolitics* and *parapolitics*, are ascertained by Rancière to be the "politics of the philosophers". They are an attempt, as Bruno Bosteels succinctly puts it,

to appropriate, displace, cover up and/or unmask [politics'] essential scandal, which is none other than the scandal of democracy when properly understood, that is, the staging of equality

in the form of an empty liberty, over and against the purported naturalness of the existing order of domination (Bosteels 2010: 80).

*Archipolitics* is what Rancière labels the model of politics put forward by Plato. It is in essence the complete realisation of a society in which everyone is given a place, and there is no remainder. The order of things should not be disrupted. This is Plato's fundamental principle of justice that founds *The Republic* (ed. Reeve 2012: 398a) and will influence his student, Aristotle. As Socrates states to his interlocutor Glaucon: "each person must practice one of the pursuits in the city, the one for which he is naturally best suited" (433a); and, "there is no twofold or manifold man among us, since each does only one job" (397e). Plato's polis is thus one of essential division and partition. Persons within the society are defined by their natural abilities; it is inconceivable that the shoemaker, whose specialised skill is cobbling, could take the reins of the philosopher-king whose natural ability is to rule, or vice-versa. For Plato, everyone has their part in society, and this part is strictly defined. As such, it excludes individuals from taking part in other segments of society. Metalworkers and craftsmen are strictly forbidden to engage, actively, in aesthetic activities (396b); the juror does not farm, nor does the soldier moonlight as a moneymaker (387e). Plato informs us that these divisions are not based on natural divisions. In fact, the idea that people within the polis are imbued with natural capacities is a "noble lie" (414c) told by the philosopher-kings, which seeks to persuade others, including the rulers:

A tale of men who could be persuaded that the education they had received was merely a dream, that in reality they sprang forth from the earth fully armed and prepared for their respective functions (Rancière 2004a: 18).

Plato presents a story of hierarchy without domination. The philosopher-king has no authority over the object of farming, as the farmer has none over the city. This is because nature has imbued them with specific skills, which match on to the function of the polis. These specific skills, and the jobs upon which they match leave them "having no other space-time than what is

required by their trade” (Rancière 1999: 66). Plato thus at once initiates the problem of political philosophy – what is justice? – and solves the problem – justice *is* the polis in which everyone is properly accounted for, and there is no remainder.

The solution to political philosophy is however thrown into disarray by Aristotle's assertion that nature does not ascribe certain skills and places to people that conform to the function of the polis. Rather, nature ascribes equality to everyone. Plato's “just city” comes under scrutiny when the equality of everyone to do anything is proposed. Plato's account of a just society presents the “complete realisation of the *arkhê* of community, total awareness, replacing the democratic configuration of politics with nothing left over” (Rancière 1999: 65). For Plato, the structure of the polis is maintained by a natural inequality implied in the distribution of places, and the elimination of politics. Aristotle, the most famous of Plato's students attempts to “save” politics from Plato's philosophy. It is in Aristotle where the emancipation paradox begins to unfold.

Aristotle initiates a new form of “political philosophy” which Rancière calls *parapolitics*. Parapolitics, as we shall see, is also the designation of the type of “political philosophy” that is practiced by Immanuel Kant, John Rawls, Jürgen Habermas, and Rainer Forst. This conception of “political philosophy” also develops a notion of philosophy which evacuates politics.

Just as Plato instantly pulls off the telos of an archipolitics that will function as the normal regime, so Aristotle instantly accomplishes the telos of a parapolitics that will function as the normal, honest regime of “political philosophy”: transforming the actors and forms of action of the political conflict into the parts and forms of distribution of the policing apparatus (Rancière 1999: 72).

The evacuation of politics is thus inherently different in Aristotle, then appears in Plato. Politics cannot exist in the *polis*, on Plato's account, because no one has anytime besides that which is already filled up by their natural occupation. Aristotle on the other hand, reintroduces politics back into the order of things. However rather than politics being a disruption of the order of

things, it becomes a necessary part of the distribution that is initiated by the major institutions (economic, legal and social)<sup>5</sup>. Surprisingly, Rainer Forst, seems to admit that “political philosophy” evacuates society of politics, when he writes in a recent paper on Rawls's *Political Liberalism*. Forst Argues that

[t]he philosophical exercise is aware that our societies are in deep conflict about justice and that philosophy, insofar as it reconstructs progressive ideas that are implicit in a democratic culture, needs to explain what it would mean to regard society "as a fair system of cooperation over time" (Forst 2017: 133).

On a Rancièrian reading, as expressed above through the analysis of parapolitics, this seems to suggest that philosophy attempts to end these deep conflicts by relying on the immanent progressive ideas that are reconstructed in our democratic cultures. These progressive ideas, of reasonable toleration, structure how we ought to consider a fair system of cooperation over time.

We can begin to see, the essential problem of the emancipation paradox, as it pertains to the work of Kant, Rawls, Habermas, and Forst. A problem that I will expand on in the latter chapters. In each of their works, these authors begin with a presumption about the equal capacity of persons. This presumption is differentiated for each of them. For Kant, it is a transcendental assumption necessary for developing an account of politics premised on the equality of all to participate. For Rawls, it is a mutual recognition between parties. For Habermas, it is a natural presumption for discursive practice to be initiated, and for Forst it is a presumption of the right to justification. However, this presumption to equality – analogous with the notion of autonomy – is displaced within the establishment of the basic structures of society that ground systems of social cooperation. Unlike Plato, where politics is fully evacuated from the system of social cooperation, the parapolitical theorists reintroduce politics within the

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<sup>5</sup> For an alternative reading of Aristotle see Adriel Trott (2012), Ranciè and Aristotle: Parapolitics, Part-y politics, and the Institutions of Perpetual Politics, *The Journal of Speculative Philosophy*, 26(4), 627-646

basic structure. As Rancière puts it “the philosopher ... rearranges the components of the democratic apparatus into the forms of rationality of the good government that achieves the telos of the community in the distribution of powers and their modes of visibility” (Rancière 1999: 74). In connecting this to the explicative order discussed above, it is possible to say that the form of rationality that is attributed to the democratic apparatus has the goal of *explaining* to its congregants about the injustices they suffer. It tries to teach them how they ought – within the parameters of the basic structure of society – to overcome those injustices (i.e. with reference to the legal framework). As exposed by Rancière though, through his introduction of *dissensus*, politics occurs in some state when the legal framework is unable to account for the claim of injustice that is being articulated by a previously unrecognised section of society. The paradoxes that will be demonstrated in the following chapters of this thesis all revolve around the issue of the equal capacity of all to participate in political discourse that is undermined by the very structures of society which are constructed to protect that equal capacity.

## **Conclusion**

In this chapter, I have illustrated, via Jacques Rancière's contribution to political philosophy, a set of problems that occur in the attempt of Kantian political theorists to implement a social and political structure. These problems adhere to the universal consideration of autonomy that is at the heart of Kant's moral theory, and at the heart of the foundations of theories of justice proposed by Rawls, Habermas, and Forst. My contention is that in their projects – motivated by an egalitarian *ethos* which expresses the equality of all human beings – that this egalitarian ethos is implicitly betrayed by the weakening of the notion of autonomy, and thus the moral equality of all human beings, in their social and political structures. In the following chapters, I will provide an in-depth analysis, drawing on the critical

perspective introduced by Jacques Rancière, of how these contradictions and anomalies arise in the work of Kant, Rawls, Habermas, and Forst.

Importantly, and somewhat polemically, I have attempted to read Rancière's own contribution to political philosophy as providing a new interpretation of Kant's moral autonomy. Against consensus-orientated theorists, Rancière, does not implement the "act" of autonomy into the basic structure of society, as I will argue occurs in the work of Kant himself as well as Rawls, Habermas and Forst. The notion of equality can be read, rather, as a radical re-interpretation of Kant's notion of autonomy in that, for Rancière, this universalistic position is a presumption of all forms of social order. As Jean-Philippe Deranty has recently stated, equality, for Rancière, "almost sounds like the moral equality articulated by Kant, the equality due to every rational being *qua* rational..." (ed. Deranty and Genel 2016: 66). While acknowledging that the link between Kant's notion of autonomy and Rancière's conception of equality ought not to be considered a one-to-one relation, given the inbuilt conception of being that Kant relies on, this interpretation allows us to understand Rancière's point when he writes in *The Ignorant Schoolmaster*, "that every common person might conceive his human dignity, take the measure of his intellectual capacity, and decide how to use it" (Rancière 1991: 17). Or again, in *Dis-agreement* when he states that politics is driven by "the assumption of equality between any and every speaking being and by the concern to test this equality" (Rancière 1999: 30). It is certainly the case that Rancière himself does not draw the connection between Kant's notion of autonomy and his own conception of equality. He does not want to suggest any normative criteria to be harnessed to equality as he describes it. I want to contend, despite this, that in reading the notions of autonomy and equality together we can introduce a critical perspective against currently existing normative political philosophies that rests on their own desire to implement the notion of autonomy, introduced by Kant, into the social and political sphere.



It is here where we can begin to see the links between the trains of thought that have been discussed in this chapter. The social distribution of people and things, as seen in the political philosophy of Plato and Aristotle, is premised on the assumption that everyone has their rightful place in society and, attempting to move from that rightful place is problematic for a good life. In Plato this is seen in the distribution of peoples into categories based on their “metallic” essence. In Aristotle it is a combination of a functionalist metaphysics and a distinction between *logos* and *phône*, which provides the basis for these distinctions. Unlike in contemporary political philosophy, for Plato and Aristotle these divisions are seen to be entirely a product of nature. The problem arises in contemporary political philosophy as the “naturalness” of the divisions of society is denied on the one hand; and on the other hand such social divisions are given an arbitrary status and continue to subsist. It is this subsistence of hierarchy and domination within institutions and social divisions that ought to be questioned, particularly when those who are advocating egalitarian theories of just societies are implicitly propagating such divisions. By turning to Rancière’s work on equality and dissensus, we give ourselves a tool by which to investigate and locate the source within the works of Kant, Rawls, Habermas, and Forst, wherein these paradoxes of equality arise.

# Who is the subject of humanity: The Paradox of Emancipation in the Philosophy of Immanuel Kant

## Introduction

In *The Ignorant Schoolmaster* Jacques Rancière succinctly summarises the moral foundations of political philosophy:

There is in every man, they say an immaterial soul. This soul permits even the most humble to know the great truths of good and evil, of conscience and duty, of God and judgment. In this we are all equal, and we will even concede that the humble often teach us in those matters (Rancière 1991: 48-49)

Putting aside the archaic language of the immaterial soul, what I believe Rancière to be discussing here is something akin to the Kantian notion of rationality which imbues everyman with the ability to be a moral agent – yet which refuses to, at least implicitly, recognise the radical equality that comes with such a transcendental conception. Rationality, in its Kantian and post-Kantian guises has taken a number of differing forms. In Kant, the rationality of the moral agent is what allows them to act on some notion of the good that they may hold. This is also taken up by John Rawls in his theory of justice, in which the rational corresponds to the ability of a moral agent to have a conception of the good and be able to choose the most efficient means by which to pursue it. Though Rawls's ideas shift slightly between *A Theory of Justice* and his later work such as *Political Liberalism*<sup>6</sup>. Jürgen Habermas, who has also been

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<sup>6</sup> Briefly, in his earlier work, *A Theory of Justice*, Rawls proposes a game theoretic understanding of rationality limited to instrumental reason. A moral agent under this proposal will choose the most suitable action for achieving their own ends. Later, in *Political Liberalism*, Rawls will introduce the idea of 'reasonable and rational'. This slight change in structure introduces the position that 'reasonable' moral agents will curtail their own rational possibilities in order such that they present those that can be plausibly accepted by those who may also be affected by such choice. I will explore the shift between these ideas, and the problems that ensue – in terms of the emancipation paradox – in chapter three. For works examining the difference between Rawls's works see Freeman (2007), *Rawls*, London: Routledge;

influenced by Kant's original moral theory, differs from Rawls's in the sense that his 'rational' agent is not premised on the ability to hold and pursue a conception of the good, but rather, to be able to engage in reciprocally constructive communication with others on moral discourses. In all cases, deliberation becomes an important central point to be examined. Deliberation, in the Kantian framework, is structured on general moral principles that are accepted by free and equal persons. Free and equal persons have the ability to be the author of the moral laws that bind them, and to recognise that each other person has this power of legislation. The crucial question that guides this chapter is who is the explicit free and equal subject that is at the centre of Kant's moral and political philosophy? Who is it that is explicitly allowed to comment, or engage in the moral and political discourses?

My aim in this chapter is to establish the conceptual source of several “paradoxes of emancipation” that arise in Kant’s practical philosophy. This chapter will show that Kant’s attempt to ground his transcendental moral philosophy excludes various individuals and groups from taking part in the moral discourse which is supposedly open to all. This exclusion is based on Kant’s consideration of the concept of 'humanity' and the "anthro-political facts" which restrict its universalisation. Kant’s formula of humanity provides prescriptions for how we ought to treat "others" and this is meant to be regarded as a universal formula based on the idea of humanity. As I will show in this chapter there is an equivocation between two meanings of humanity in Kant's writing; I call these the 'exclusive' and the 'extensive'. While the 'extensive' concept of humanity marks the idea of 'humanity' as the whole class of persons, the term 'exclusive' marks the specific characteristics of 'humanity'. These considerations will be elaborated on below. Kant's political, anthropological and historical work bears evidence that the *formula of humanity*, as it is elaborated in Kant's moral theory, is not perceived as a

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Roberto Alejandro (1996), What is Political about Rawls's Political Liberalism, *The Journal of Politics*, 58(1), pp1-24; Russell Hittinger (1994), John Rawls, Political Liberalism, *The Review of Metaphysics*, 47(3), pp585-602

universal, in an extensive sense, but rather presents an account of the subject of 'humanity' in an essentialist sense, or from what we might call an eminent point of view, in terms of who embodies the notion most eminently. This is precisely what allows Kant to denigrate women, people of color and labourers in a way which, to us, might seem inconsistent with his universal moral egalitarianism. The consequence of this is that – given the essential characteristics of humanity, according to Kant, are rationality and autonomy – those considered to lie outside of this formulation are not entitled to enter the public sphere of discourse – the presumption being that they lack those basic characteristics that allow for them to participate in moral discourses. Kant's failure to bridge the fundamental gap between the universal declaration of moral equality and the practical inequality of political and social reality is one of the sources of the emancipation paradoxes to be found in Kant's practical philosophy – and the one I will be focusing on. This critical study of Kant, informed by a reading of Jacques Rancière, serves as a foundation for the critical study of an important strand of contemporary political philosophy which developed from Kant's practical philosophy, and which will be explored in later chapters examining the work of John Rawls, Jürgen Habermas and Rainer Forst.

I will outline firstly the problem I see within Kant's philosophy, namely the problem of attempting to bring together a universalistic conception of morality with an empirically situated political anthropology. I will then provide a critical overview of the aspects of Kant's political philosophy that matter most for the perspective I am seeking to develop. These are: the concepts of 'culture' and the 'innate right to freedom'. Throughout this chapter I suggest that the concepts of 'humanity' and the 'right to freedom' give us good reason to believe that Kant was attempting to develop an egalitarian theory of politics based on the radical inclination of his moral theory. This "egalitarianism" however is undercut in ways that draw similarities to Plato and Aristotle, and which come to light by reference to the empirical factors that are implied in Kant's usage of "culture", "cultivation" and his conception of 'sovereignty'.

The second part of this chapter attempts to draw out three different versions of the emancipation paradox that I believe arise in Kant's attempt to fill the gap between the "transcendental" moral fact of equality, and the political instantiation of inequality by means of "culture". I will establish these paradoxes through a close reading of Kant's most famous political text "An Answer to the Question: What is Enlightenment?" (2008[1784]). This essay, as I will try to demonstrate, is an exemplary document to highlight the paradoxes inherent in Kant's overall political philosophy from the point of view of emancipation as realisation of equality.

## **Between the Transcendental and the Empirical**

The Kantian moral project is famed for its sophisticated and systematic attempt to establish a universal moral law which all members of humanity can take part in. Presumably, all members of humanity – whatever this means – are thus able to make claims against injustices that they may encounter. I show in this chapter that Kant's moral theory –which provides the foundation for his political and anthropological work –is at odds with substantive claims made about political agents within Kant's practical writings. Kant comes up against "factual circumstances", in his attempt to develop a universal moral theory, which lead him to propose "fixes" that undermine the initial intentions behind his own moral theory, and subsequently create exclusive "spheres of reason" which deny access to a number of individuals and social groups in their claims against injustice.

I contend that there is a fundamental gap between the universalistic moral claims, on the one hand, and the "anthro-political facts" on the other. Oddly enough, this gap seems to be acknowledged by Kant when he writes: "morality cannot exist without anthropology, for one must know of the agent whether he is also in a position to accomplish what is required from him that he should do" (LE 27: 244). This suggests, I believe, that our "anthro-political facts"

dictate the capability of humanity to engage in moral deliberation. It implies that there are anthropological circumstances, which would bring into question the ability of some to take part in discourses regarding right and wrong. Now, at one level this is certainly true. There are persons who may have trouble in accessing the discourse on what is right and wrong. But, to put a Rancièrian twist on this problem, is the trouble of access based on some internal inability of the agent, or is this inability external?. To briefly expand on this point, is the problem that we face a problem of an incapacity to engage in moral discourses due to one's inferiority or is it rather one of perceived incapacity based in one's "distribution" in the order of things. This has the appearance of a contradiction given Kant's transcendently situated morality which, given its presumed universality, everyone *ought* to have access to, regardless of the space they occupy in society. My claim is that Kant's account of certain "anthropological facts" presents an internal inconsistency within Kant's project by understanding persons as distinguished between those who have the capacity for moral action, and those who do not. The locus of Kant's inconsistency resides in the undermining of his transcendently based egalitarianism with pseudo-empirical claims about the inability of some to be a legislator of moral claims. Kant, I will argue, utilises these empirical dimensions to justify the inegalitarian aspects of his political philosophy, which are at odds with his radical egalitarian, "universal" moral theory.

This paradox between a transcendental morality – which all are included in by virtue of their humanity – and the "fact-of-the-matter" that some will be excluded because of empirical circumstance is a principal problem for Kant. This problem presents itself in the dualistic approach to the moral and political agent that appears within his work. This can be seen in the *Metaphysics of Morals* in the relation between *homo noumenon* and *homo phaenomenon*:

In the doctrine of duties a human being can and should be represented in terms of his capacity for freedom, which is wholly supersensible, and so too merely in terms of his humanity, her personality independent of physical attributes, as distinguished from the same subject represented as affected by physical attributes, a human being (*MM* 6:240)

What appears here is a classic Rancièrian problematic in which the "human being" and "humanity", which colloquially are often understood to be the same are both juxtaposed against one another and also consolidated into a single being. The human being is categorized not only by his capacity for freedom and moral autonomy, understood as 'humanity' but also by their physical attributes, understood as 'human being'. This dualistic conception of human nature, in which one side, 'humanity' ("the pathologically affected will" [CPrP 5:19]) is governed by the capacity of freedom and moral action and the other side, 'human being' ("rational but finite" [CPrP 5:25]) is governed by the determination of physical attributes, has a profound effect on the way in which Kant is able to develop his political philosophy and for specific egalitarian conceptions that are embedded in Kant. There is a tension between these two concepts of human nature that abide equally within the agent, which attempt to draw together the realm of the laws of nature and the sphere of moral freedom. What seems to be expressed in the passage from the *Metaphysics of Morals* quoted above is that there are those 'human beings' that do not have access to the rational capability and are therefore simply determined by their physical attributes and sensibilities (much like animals).

For Kant, it is by the virtue of our membership of humanity that human beings are understood to have the capacity of rationality and moral autonomy. These capacities of autonomy and rationality allow Kant to reveal a number of innate qualities such as the right to freedom and the ability to propose maxims as universal laws dictated by the categorical imperative. What I want to show in this chapter is the difficulty Kant is confronted with when he moves from the transcendental level, where freedom is universal, to the practical realisation of freedom through politics, and thereby reveals the paradox of emancipation at the heart of his political philosophy.

What needs to be developed is a reading of Kant's universal claims which emphasises their radicalism in the first place, before we can turn to the difficulties he runs into when considering the political realisation of this radical equality. I will therefore briefly turn to Kant's moral philosophy as it is outlined in *Critique of Practical Reason* and the *Groundwork of the Metaphysics of Morals*, to show the radicalism of his universal claims. Kant develops a conception of human beings in which their capacities of freedom and equality are considered to be absolute. Over and against this universal claim, however, in the detail of his legal and political philosophy, and indeed in the teleological dimension of his philosophy of history, Kant in fact undermines this universalism.

## **Kant's Moral and Political Philosophy**

It is possible to define Kant's moral theory as representing a radical egalitarian conception of moral actors. By "egalitarian" I do not mean that moral capabilities are distributed equally amongst persons, but rather that Kant's transcendental claims about such capabilities are inherent to all human beings qua human being.

According to Kant, it is the innate capacities of rationality and autonomy that allow persons to be considered members of 'humanity'. This is a transcendental claim. If a person is rational and morally autonomous then it follows that they are a member of humanity. There is a complementary transcendental assumption within this claim; that, as belonging to humanity, any human can be autonomous and rational, is also critical. This reversal of Kant's original transcendental assumption provides the grounds for a radical egalitarian approach to his thinking. Yet it is actually unclear whether Kant fully embraced this complementary transcendental position. This, as I will seek to show, is what created problems in his political philosophy. Inherent in Kant's political philosophy is the problem that he often ignores or



disregards the rationality and autonomy of particular individuals and groups, and as such denies their humanity.

In the *Groundwork of the Metaphysics of Morals* (2008[1785]) Kant famously states his formula of humanity: “So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means” (*GMS* 4: 429). This formula, which Kant takes to be a concrete explication logically derived from the categorical imperative, provides us with a prescription of how we ought to treat others. But who is this ‘other’ that such a prescription refers to? If we approached someone in the street and asked them whether a person was part of humanity we might assume that they would answer in the affirmative. Even you, the reader, in viewing yourself as a person might want to consider yourself a member of humanity. By identifying ourselves as members of humanity, we explicitly determine ourselves as ends. We have all heard of, or been involved in, instances in which the complaint “you used me” has been uttered, perhaps without realising the full force of the complaint. Similarly we may have regarded the waiter at a restaurant or the bus driver simply as an automaton who is there to help fulfill our current wants without realising that they, like us, are not only mere workers?, but persons with hopes, dreams, desires and beliefs. There are also more serious examples in which human beings are treated “merely as means”, such as in cases of slavery (both historic and contemporary), rape, and the use of children as soldiers. These cases, both the everyday and the morally severe seem to be *prima facie* the examples against which Kant positions his prescription. The ‘other’ is not simply a tool to be used as a means to fulfill the desires of another, because as members of humanity they too have the capacity to develop “ends” which ought to be respected. However, in the passage quoted above Kant refers to ‘humanity’ as being in ourselves and in the person of any other. As such there seems to be an equivocation between two meanings of the term. On the one hand ‘humanity’ refers to a set of characteristics that are to be found in a person. On the other hand ‘humanity’

refers to a class of persons. If 'humanity' is viewed as a characteristic of personhood, then questions arise over what this characteristic represents, and whether all human beings have such a characteristic. The conjunction of these terms explicitly brings to the fore the tension of the emancipation paradox in Kant's work, which is revealed by the reverse transcendental assumption. It is possible to elucidate this tension by looking at explicit uses of 'humanity' in Kant's work.

Kant states that human beings are persons in two related quotes. Firstly he writes: "...the human being and in general every rational being exists as an end in itself, not merely as a means to be used by this or that will at its discretion" (*GMS* 4:428). Kant specifies that as a being capable of developing their own rational goals, the human being ought not to be used merely as an object that allows for another to achieve their own goals. Furthermore, Kant seems to suggest that all human beings, as members of the class of 'humanity' are to be treated in a way that respects this capacity. In the same paragraph Kant states that "...rational beings are called persons because their nature already marks them out as an end in itself" (*GMS* 4:428). This thus also implies that all persons have the characteristic of humanity, since human beings are rational beings and rational beings "are called persons". The problem that I seek to outline here is this: Who is it that Kant is referring to in the formula of humanity? If it is the case that Kant is referring only to a specific kind of individual (those who are imbued with a set of characteristics), then further questions need to be asked regarding the egalitarian nature of Kant's moral and political philosophy. We can already begin to see the paradox that arises in the attempt to bridge the gap between the universal moral claim and the specific political reality. If Kant's conception of 'humanity' and 'persons' is in fact narrow and not universal, then we have to ask where the rest of those 'human beings', defined as humanity in the reverse transcendental assumption (i.e. that as belonging to humanity, any human can be autonomous and rational), fit into Kant's schema.

In Kant's second formulation of the categorical imperative he refers to humanity as an end in itself (*GMS* 4: 429). He also refers to "the human being...as an end in itself" (*GMS* 4:428). This shift in language from 'humanity' to 'human being' underlines the dilemma of who is Kant actually referring to in his usage of the term 'humanity'. There seems to be an equivocation between what I call the "extensive" conception of humanity as a class of persons and an "exclusive" conception that only refers to individuals who have a set of specific characteristics; an equivocation between considering persons who are rational and autonomous as 'humanity' and considering 'humanity' as rational and autonomous. The former seems to undermine the universal claims that Kant wants to advocate, claims that are foundational in the latter conception.

Thomas Hill's paper "Humanity as an End in Itself" (1980) suggests that depending on which aspect of Kant's work is emphasised, both meanings of 'humanity' can be correct – though such a comment seems strange given the systematicity that Kant is celebrated for. Focusing on *The Groundwork of the Metaphysics of Morals*, one is able to read 'humanity' as referring to the class of human beings (*GMS* 4:30; 4:436; 4:437). However, reflecting on the usage of the concept of 'humanity' outside Kant's most well-known moral text, "strongly suggests that...Kant thought of humanity as a characteristic, or set of characteristics, of persons" (Hill 1980: 85; see also *MM* 6:392; 6:441). Furthermore, as Hill argues, "though Kant probably intended "persons as ends" and "humanity in persons as an end" to be equivalent for all practical purposes ... the former is best construed as an abbreviation for the latter rather than the reverse..." (Hill 1980: 80). In other words the "exclusive" conception of humanity – as a set of characteristics – ought to be considered a shortened form of the "extensive" conception of humanity – as the class of human beings. This doesn't solve the problem outlined above of the equivocation between meanings. It simply hides the problem by assuming that one part is reducible to the other.

This disregard for the problematic ambiguity of Kant's concept can also be found in the work of John Rawls and Christine Korsgaard. According to Rawls (2000) humanity is to be treated, or understood, as the culmination of those "powers and capacities that characterise us as reasonable and rational persons who belong to the natural world" (*LHMP*: 188). These 'powers' refer to those which allow for the possibility of human beings to be of good will and good moral character. This position already stems from Kant (*MM* 6: 392). The defining aspect of our 'humanity' is that we have the powers and capacities to set ourselves an end and thereby to set ourselves as ends (*MM* 6: 387). This ability, to set ourselves an end, through reason, is what sets us apart from the 'animality' of the natural world, defined by the fact that actions are determined only in terms of instinct (Korsgaard 1996; Wood 1999)<sup>7</sup>. On this account, as is suggested by the works of Korsgaard and Rawls, the formula of humanity is to be understood as being about the characteristic, or sets of characteristics (whatever they may be), of human persons and not merely as the class of human beings (Kerstein 2006). This conception of humanity as a characteristic of human beings seems to be, at present, the one most dominant in the literature (Denis 2007). Rather than address the ambiguity in a meaningful sense which allows us to understand what ramifications may arise from the equivocation of the exclusive and extensive concepts of humanity, these theorists simply "hedge their bets" on which concept they believe fits the framework better.

I have thus far spoken of the exclusive concept of 'humanity' as referring to a specific set of characteristics without detailing what these characteristics might be. Christine Korsgaard, one of the foremost Kantian theorists in the contemporary field of moral philosophy, has suggested that the characteristic or characteristics of 'humanity' are its rational nature (Korsgaard 1996; cf

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<sup>7</sup> While I speak in this thesis of the relation between *humanity* and human being, it can be the case, as Kant suggests, that 'humanity' may present a broader category, so that species that lie outside the categorization of 'human being' may be considered as possessing 'humanity', for instance see Kant's *Universal Natural History and Theory of the Heavens or Essay on the Constitution and Mechanical Origin of the Whole Universe According to Newtonian Principles* (ed. Watkins 2012; see also Korsgaard 2005, 2008)

MM 6:392; GMS 4: 397). Korsgaard (1996a) focuses on Kant's emphatic statement that: "rational nature is distinguished from the rest of nature by this, that it sets itself an end" (GMS 4:437). Furthermore Kant also states that "the rational being itself, must be made the basis of all maxims of actions, never merely as a means but as the supreme limiting condition in the use of all means, that is, always at the same time as an end" (GMS 4:438). These passages seem to give good evidence that 'humanity' and 'rational nature' are one and the same. This is also suggested in the way that, in his anthropological, historical and pedagogical work, Kant speaks of the cultivation of 'humanity' and 'reason'. Kant also speaks at times of 'predispositions', 'gifts' and 'powers' in describing 'humanity' as if to convey the idea that there is more than one characteristic that pertains to defining what 'humanity' is. Hill suggests that "it is most reasonable to construe 'humanity' as including only those powers necessarily associated with rationality and 'the power to set ends'" (Hill 1980: 86), and this idea is also expressed by Roger Sullivan when he states that "what [Kant] means by the term 'humanity' is that functional complex of abilities and characteristics that enables us to set ends and make rational choices" (Sullivan 1989: 193)<sup>8</sup>.

Such distinctions between the extensive and exclusive conceptions of humanity, described above, may appear to be only superficial and could be easily dismissed as such, but they contribute to a very real problem regarding the idea of reason in Western political philosophy. As shown in chapter one, Western political philosophy has a history of categorising those who are capable of 'reason' apart from those who are perceived to be incapable of it. This dichotomy between the rational and irrational has consequences for how we present our theories of politics. If we take both Korsgaard's and Hill's suggestion that the concept of 'humanity' refers to some rational nature of human beings, then we must be wary, given the

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<sup>8</sup> This interpretation has been given more weight in recent times by Joshua Glasgow (2007). Against interpreters who take 'humanity' to mean the 'good will' (Dean 1996) Glasgow argues that the passages which seem to support such an interpretation are ambiguous at best.

distinctions that Kant makes, as we recalled them a moment ago. This problem is further accentuated by the binary opposition of 'rational nature' to 'animality'. As Korsgaard writes "human beings are distinguished from animals by the fact that practical reason rather than instinct is the determinant of our actions" (Korsgaard 1996a: 111). While I do not think that Korsgaard explicitly makes the distinction between 'human' and 'human being', the fact that Kant makes it is reason for concern. It opens the possibility that the human being is determined by instincts, whereas those who are truly, or eminently, 'human', who possess 'humanity' in the full sense of the term, are defined by their capacity to rise above such physical determinations<sup>9</sup>. We thus arrive back at the problem with which we began: Who is it that Kant is referring to in the usage of his concept of 'humanity'? Or to put it another way "Who is the subject of 'humanity'?"

This problem is perplexing given the large body of literature which takes Kant to be suggesting an egalitarian moral theory that is supposed to include everyone by virtue of their being human beings. Every human being has the capacity for rationality and autonomy as characteristics of 'humanity'. However the distinctions that Kant seems to make in much of his work also seem to deny this position. It may be possible to assess the situation in this way: In attempting to bridge the gap between the realm of moral law (which may be taken to be grounded in egalitarian premises) and the realm of nature and anthropology (which has inegalitarian premises), Kant introduces concepts, methods of pedagogy and institutional models, whose intentions are to transfer the egalitarian moral law into practical political constructions, but which in the same movement undermine the egalitarian nature of these intentions. This, I want to suggest, is precisely what occurs in Kant's anthropological and historical writings.

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<sup>9</sup> A question which arises from this is whether humanity if equivalent with rational nature is distinguished from the divine? This is outside the purview of this thesis, but importantly it brings into question the relationship between Kant's conception of divinity, human nature and rationality.

## On Culture and Cultivation in Kant's Anthropological and Political

### Philosophy

I have suggested above that Kant's conception of humanity – and the discussion of this concept in the surrounding literature turns on an equivocation, which is not properly attended to, between an exclusive and extensive sense. On the one hand, Kant seems to refer to 'humanity' as a class of persons which embodies the rationality and autonomy that we are transcendently embed with. On the other, there are a number of important passages in which Kant refers to 'humanity' as a particular set of characteristics which are to be found in select Individuals. This I believe helps establish a form of what I have previously called the 'emancipation paradox'. The sense is that the equivocation in the concept of 'humanity' allows, implicitly, for Kant, to justify certain inegalitarian positions within the socio-political sphere despite his radical egalitarian moral stance. We can see the consequences of this equivocation in Kant's practical writings. We begin to see the emergence of two particular forms of the 'emancipation paradox' which I call the *historical* and the *pedagogical*.

The *historical* dimension of the emancipation paradox can be succinctly summarised by the phrase: “in the meantime”. The problem can be articulated as follows: Despite the founding of political structures on universal notions of equality and liberty, it must be acknowledged, “empirically”, that some agents are not capable, just yet, of participating in society as free, equal and independent agents. While it may be contended that such agents will eventually gain the capacity to act as free, equal and independent agents within society, in the meantime, those “already emancipated” agents will be guides for the “soon to be emancipated”. The paradox that occurs is that, despite the establishment of absolute transcendental principles, which elaborate freedom as an innate right by virtue of an agent’s humanity, this freedom is undermined by the establishment of guardians to care for those whose “free” status is in doubt.

Related to this, the *pedagogical* dimension of the emancipation paradox brings into question the idea of moral development within Kant's theory. The development of a theory of moral development returns us to the problematic, outlined above, of the distinction between 'humanity' as a class of persons and 'humanity' as a set of characteristics embed by certain individuals. If only certain individuals can reach the heights of moral development that Kant sets for 'humanity', this leads to a problem: that despite being recognised - universally - as having the capacity of autonomous rationality, some members of 'humanity' are unable to realise and practice this autonomy in advancing their practical freedoms. The social and political forms of domination that thus pertain to Kant's political philosophy therefore present an inconsistency, an emancipatory paradox, in relation to Kant's overall universalistic moral framework. I will explore these problems through Kant's anthropological and political writings.

Kant's work in anthropology, education and history has taken on renewed interest in part due to the work of Robert Loudon (2000). As Loudon explains, these aspects of Kant's work "deal with the empirical study of human nature rather than with pure principles" (Loudon 2000: vii). The formalism of Kant's moral theory is applied to empirical studies of human nature. In order to bridge the gap between his universalistic moral theory and his more particularistic anthro-political work, Kant introduces the concept of "culture". Problematically, as I seek to show in this section, the relation between the conception of 'humanity' and 'culture' gives credence to the idea that Kant has in mind a specific notion of who the subject of humanity is, by elaborating on who the subject of humanity cannot be.

'Culture', given its central place in Kant's writings on education, pedagogy and history, has become one of the central concepts in discussions on this aspect of Kant's work. While some commentators have looked at the notion of culture in terms of Kant's moral philosophy (Sweet 2010), most of the discussion has revolved around its relation to Kant's teleological account of history (Makkreel 1990; Rotenstreich 1989; Velkey 2002; Yovel 1980), with some



attention being paid to its relation to political philosophy (Marwah 2012; Muthu 2003). My concern with the concept fits in with this latter concern.

Whilst there are different definitions of the term, in ordinary discourse culture refers to those customs and beliefs that inform the behaviour of particular social groups. When we speak of the culture of a group of people we often think of their art, cuisine, ritual and mythology. This is not what Kant means by culture. Indeed rather than attributing culture to social mechanisms, Kant seems to hold a view of 'culture' which draws similarities, formally at least, with the definitional use that appears in the biological sciences. In biology, a 'culture' refers to the growth and maintenance of cells under controlled conditions. For Kant, 'culture' refers to the growth and continued maintenance of humanity under controlled conditions, whether this 'humanity' is that of the collective or the individual<sup>10</sup>. Growth in this sense does not refer to the physical growth of human beings, but rather to the cultivation of our moral nature. This I think is what is suggested when Kant writes that '[t]he production of the aptitude of a rational being for any ends in general (thus those of his freedom) is culture' (*CJ* 5:431). "Culture" is not a 'what' of humanity, it does not refer to an object which defines the developmental progress of a population, in the way architecture or music may define "civilised society". Instead, "culture" refers to the mechanism by which the ultimate ends of nature – a fully realised humanity — are achieved. It is thus tied to education in Kant's view, "for behind education lies the great secret of the perfection of human nature" (*LP* 9:444). Kant states that "[t]he human being can only become human through education" (*LP* 9:443). To reiterate, for Kant, to be 'human' (i.e. a member of humanity) is to realise our capacity for freedom, which extends beyond the physical determinations of being a 'human being'. It is to be able to utilise the tools of our rationality. The reader should already see the problem that these positions engender. In Kant's writings on

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<sup>10</sup> The link between Kant's philosophy and the biological sciences is helpfully explored in Jennifer Mensch's *Kant's Organicism: Epigenesis and the Development of Critical Philosophy* (2013)

pedagogy, which he sees as playing an essential part in the ultimate ends of nature, the 'human' that he discusses seems to correspond to the idea that 'humanity' only presents itself in certain individuals. The problem, if this is true, is that Kant would thereby implicitly exclude a large swathe of persons from being considered as members of humanity, as rational, autonomous beings capable of critical inquiry, and as such excludes them from being able to take part in matters regarding the universal moral law.

The pseudo-empirical understanding of the concept of 'culture' outlined above, is given traction by Kant's continuing reference to the development of 'germs of nature'. Kant writes: 'The grounds of a determinate unfolding which are lying in the nature of an organic body (plant or animal) are called germs, if this unfolding concerns particular parts; if however, it concerns only the size or the relation of the parts to another, then I call them 'natural predispositions' (*DR* 2:434). This distinction between germs and natural predispositions becomes important because of the multitude of references to germs and natural predispositions that are scattered throughout Kant's "impure ethics". The examples Kant gives in the essay "Of the Different Races of Human Beings" (2006[1775]) refer to the difference between the two notions, as germs seem to define the development of new features in the species, while natural predispositions refer to the development of pre-existing parts of the species under certain conditions. As Lea Ypi (2014) writes in the context of Kant's essay on race, '[d]ifferent races develop as a result of different environments. Predispositions, on the other hand, provide the structural conditions under which the development of certain germs could be occasioned' (Ypi 2014:110; see also Zammito 2007: 53-75). In Kant's terminology, "predispositions" are able to be developed in each and every human being. They signify the universal potential of humanity. "Germs" on the other hand are circumstantially developed, arising in different environments. In this sense, "culture" becomes twofold. There is "culture" as a universal designator of human practices, and "culture" as a specific form of human practices that arises in specific environments.

In linking the concept of 'culture', defined above, back to our discussion of the equivocation between the "extensive" and "exclusive" concepts of 'humanity', what we find implied in Kant's thesis is that the development of the set of moral characteristics to be found in certain persons ("exclusive humanity") leads to the development of "extensive" humanity overall. What this seems to problematically suggest is that a distinction is made between those persons who are able to develop of their own accord, those who have the set of moral characteristics which Kant deems important, and those who must rely on the "exclusive" set of persons to develop first before they too can develop. If we understand 'culture' in the way I described above – as a method to grow and maintain the 'humanity' of human beings under controlled conditions – then some key questions arise: 1) Under what conditions does growth occur? 2) Under what conditions is growth maintained? 3) Is every human being included in the potentialities for development entailed in culture?

These questions bring into line Kant's historical and teleological writings. History, as Kant states, attempts to study the 'play of freedom of the human will' in order to uncover a 'regular course' that can be recognised as "a steadily progressing though slow development of its original predispositions" (*laG* 8:17). As we have seen, the 'natural predispositions' refer to the capacities of rationality and autonomy. Kant claims that the 'end goal' of nature is the perfection of these capacities (*TP* 8:310; *CJ* 5:444; see also Dean 2014). However, Kant believes that we, as rational beings, are unable to perceive the determining effects of nature (*laG* 8:18). It is the role of the philosopher to try and discover an aim to nature, despite the philosopher's inability (indeed all human beings) to presuppose any rational aim of "human beings in their play at large" (*laG* 8:18). For Kant, it is impossible to understand the systematicity of nature without first of all assuming some form of teleological principle. This principle, however, cannot be found in the concept of nature itself because "[not] only [do we have no a priori basis for such a presumption,] but even experience cannot prove that there actually are such

purposes..." (*CJ* 5:360). Such a principle can only be found reflectively, that is to say, we must abstract the principle of the teleology of nature from the particulars that structure nature. This briefly summarises the intention of Kant's "Critique of Teleological Judgment": to discover a principle that allows for the establishment of the systematicity of nature.

Turning back to the distinction between 'animality' and 'humanity' briefly touched on above, we can begin to pull these slightly differing strands of thought together. What I propose is that Kant attempts to use the notion of "culture" to properly bridge the gap between a transcendental universal consideration of "humanity" and an empirical consideration of "humanity". This is problematic Kant's position as it undermines the egalitarian ethos at the heart of his motivation to systematise a moral and political theory.

According to Kant, "culture" is a mechanism that helps to bring "humanity" out of its "animality". Animality is defined as an 'unmitigated, uncontrolled desire for freedom' propelled by the physical determinations of instinct and passions, what Kant referred to as *homo phaenomenon* (Wood 1999: 253-256; cf *MM* 6:240). Animality is distinguished from 'humanity' in that it is our savage impulses rather than our capacity for moral rationality that drives us to act (Marwah 2012). For Kant it is only once we have developed our rational capacities to the point where we no longer rely on our inclinations to guide our actions that we become free. "Freedom of choice is this independence from being determined by sensible impulses; this is the negative concept of freedom. The positive concept of freedom is that of the ability of pure reason to be of itself practical." (*MM* 6:214). If, as Kant states in the third *Critique*, the 'production in a rational being of an aptitude for any ends in general of his own choosing is culture' (*CJ* 5:431), then it is culture which allows humanity, in both its exclusive and extensive understandings, to meet this goal of freedom. Culture is then irrevocably linked to our moral development. However, as Kant makes clear in his anthro-political works, not all forms of "culture" are deemed appropriate for leading humanity to its natural ends (see *LP* 9:442; *Anth*

7:304; 7:191). ). 'Savage nations clearly comprise "bad" cultures; forms of sociality that mis-educate and cultivate "raw" human beings, whose capacities for moral progress are stunted' (Marwah 2012: 401). What "culture" seems to specify is a particular mode of moral development inherent to white, European forms of education that are not available to other societies.

The concept of progress in Kant's theory of history and in his political philosophy, is central to our inquiry given the specificity of 'culture' noted above. The human being is unique in being the only species for which individual agents are unable by themselves to reach their purpose guaranteed by nature; only humanity, as a species, reaches this pinnacle. As such, each generation, on Kant's view, builds upon the progress of the generation that came before them. The implication of this position as pointed out by Wulf Hund (2011) is that in any one generation there are those who are capable of achieving more in regards to this destiny of nature and those who are incapable of achieving much past the previous generation. For Kant, because only a select few individuals reach the pinnacle of humanity in any given generation, the rest must rely on those who have reached this pinnacle, to educate and to guide, while they continue the difficult journey toward humanity's purpose. It is here that the *historical form* of the emancipation paradox is realised. What is it that allows some individuals the ability to develop their capacity faster than others? Transcendentally speaking, by virtue of their capacity to rationally determine ends for one, all human beings are equal. However, practically speaking, this isn't what actually occurs. If the development of the capacities that lead us to the fulfilment of humanity's destiny was egalitarian, then it would be expected that anyone, of any gender, race or sexual orientation would be capable of achieving such ends. But this is certainly not the case according to Kant. As Wulf Hund states, '[t]he theory of the progress of humanity through stages of socio-economic development is the historico-philosophical foundation of modern racism' (Hund 2011: 77). Implicitly, on Kant's view, it is only the European male who amongst

humanity as a whole can properly lead the masses to follow nature's purpose. But this isn't just a case of a contingent case of racism, misogyny or classism (of which countless arguments against Kant exist). It points rather to the problematic consequences that are implied in the equivocation between the two conceptions of 'humanity' outlined above. This is why, understanding what Kant actually means by 'humanity' becomes important for any moral or political theorist who draws on Kant to develop their own theories. By doing so they may implicitly be carrying the ontological baggage of an exclusionary philosophy.

In terms of the emancipation paradox, Kant's attempt to suture the "fundamental gap" between egalitarian-universal moral claims and particular historical realities through the use of the concept of 'culture' merely undermines the egalitarian-universal by developing an inegalitarian conception of the development of "humanity". This idea of development implicitly suggests that the "exclusive" conception of humanity, as a set of characteristics, is only readily developed under specific cultural conditions which exclude the "extensive" whole of humanity from taking part. This aspect of Kant's discussion of 'humanity' seems to be further problematised when he introduces the concept of the 'innate right to Freedom'. In the next section I will move away from Kant's anthropological writings to show how his political writings reproduce the same problems that I have described above. In doing so I show that Kant, in his equivocation between the two concepts of "humanity" accentuates political inequalities in his discussion of political freedom, sovereignty and citizenship.

### **The Innate Right to Freedom, Sovereignty and Citizenship.**

Kant's conception of 'culture' rather than being able to act as a bridge between the pure principles of his moral theory and the empirical studies that take place in his practical writings actually accentuates the gap that exists between these two parts of Kant's philosophy. His attempt to link the moral development of 'humanity' to a teleological conception of history via

the concept of culture continues the equivocation between an extensive conception of humanity – as a class of persons – and an exclusive conception – as a set of characteristics held by some individuals. This equivocation gives rise to an inegalitarianism that I believe has not been adequately acknowledged.

‘Humanity’, whether it is merely understood in terms of a set of characteristics of persons, or whether it refers to the human race as a whole, is connected with the capacity for freedom. As is known, Kant's idea of freedom is based on the capacity to set one's own ends. This capacity in turn is what gives human beings the capacity to be ends in themselves. It is thus inherently also tied to the rational capacity of 'humanity'. Rationality, in this sense, is what allows not only the realisation of our ability to set our own ends, but also importantly the ability to act on these ends and recognise this ability in others. Kant shows the link in systematic terms in the *Critique of Practical Reason*, and it is of course repeated throughout his writings. For instance, Kant's brief consideration in his *Feyerabend lectures on Natural right* that "[f]reedom, only freedom alone, makes us into an end in itself" (*Fey* 27: 1321-2).

In political terms, this translates into a right to freedom. Based on the universalism inherent in the moral foundation, this right belongs to ‘every human being by virtue of humanity’ (*MM* 6: 237). This statement also seems to suggest, as discussed above, that ‘humanity’ correlates to a set of characteristics that every human being may possess.

Kant's political philosophy is premised on a right of equal, moral freedom (Ripstein 2009; Hodgson 2010), which can be defined as the ability of all individuals to act as their own master. This is what is suggested when Kant states that:

Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every human being by virtue of his humanity (*MM* 6: 237)

Louise-Philippe Hodgson (2010) has argued that the conception of freedom that this passage alludes to is the freedom to set and pursue ends without being subjected to the choices of others. Similarly, Arthur Ripstein (2009) holds the view that Kant's conception of freedom, in this regard, is to be understood as the ability of each agent to use their own powers to set their own purposes. Accordingly, any action by an agent that hinders another agent's freedom is wrong. This position accords Kant a justification, via the principle of contradiction, to restrict freedoms (i.e. coercion) insofar as those freedoms are not able to coexist with the freedoms of other agents, what Kant calls *a hindrance to a hindrance of freedom* (MS 6:231). Kant claims that an agent is free only insofar as their freedom can coexist with the freedom of others. This egalitarian position accords with Kant's universal principle of right. This principle states that:

Any action is right if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law (MM 6:231)

For Kant, any action which hinders the choice of an agent is wrong since that action cannot coexist with the freedom of other agents (MM 6:231). This position can be understood as a formal egalitarianism. Kant's egalitarianism is not based on the distribution or redistribution of any substantive good such as wealth, power or honour. Rather, for Kant, equality is a condition of an agent not recognising himself or others as morally superior. This means that persons see themselves as unable and unwilling to bind agents as a matter of a non-reciprocal right (MM 6:314). Notably, an agent may not use the force of law against another agent in such a way that the force of law could not be used against them in similar circumstances. In relation to political institutions, therefore, each member of the commonwealth has the same coercive right as every other member of the commonwealth. According to Kant, agents with 'rational agency', as he defines it, should agree to this. As Louis-Philippe Hodgson summarises: 'a rational agent is entitled to have force used against her only in ways that are justifiable from her point of view



qua rational agent' (Hodgson 2010:802). Kant's conception of legitimate coercion restates, implicitly, the universal equality of human beings. This occurs in its adherence to political autonomy – which can only make sense if it is grounded on a universal recognition of autonomous rationality. For Kant, the justifiability of coercion can only make sense if the rational agent is able to universalise their point of view – as an rational agent – for all other rational agents. However, despite this formal equality, Kant's political theory – in its account of 'independence' reintroduces arbitrary hierarchies based on one's position in the social order, or to be more explicit a rational agent's access to material goods.

The formal equality of all rational agents – which itself is recognition of their capacity to act autonomously and rationally – is undermined by an "anthro-political" fact of independence. While Kant's usage of 'Freedom' often refers to the moral and metaphysical freedom from other determinants, independence refers to economic freedom. An agent is independent insofar as the agent owes "his existence and preservation to his own rights and powers as a member of the commonwealth, not to the choice of another among the people" (*MM* 46: 314). According to Howard Williams (2006) the concept of independence that Kant seems to be championing is that of economic independence: "To enjoy economic independence an individual has to be an adult who owes his existence to no one other than himself" (Williams 2006: 375). This seems to be what Kant is referring to in using the concept of independence, as when he writes that:

an apprentice in the service of a merchant or artisan; a domestic servant (as distinguished from a civil servant); a minor (*naturaliter vel civiliter*); all women and, in general, anyone whose preservation in existence (his being fed and protected) depends not on his management of his own business but on arrangements made by another (except the state) (*MM* 6:315)

Despite this seemingly being at odds with Kant's moral commitment to a form of 'self-mastery', Kant maintains that 'this dependence upon the will of others and this inequality is, however, in

no way opposed to their freedom and equality as men, who together make up a people' (MM 6:315). As Jürgen Habermas has made clear, Kant's turn to independence as a necessary qualification for participation in the political sphere effectively limits who is able to participate in public (Habermas 1989a: 111). Despite Kant's claim of a universal-egalitarian moral claim regarding the autonomous rationality of all individuals qua human being, 'independence' limits those who are able to practice and realise that rationality – at least in the political sphere – to land-owning Men; excluding all females and those men who do not lay claim to their skill, trade or tools. There is clearly a tension between the idea of independence as it is presented above, and the universal-egalitarian moral claims that Kant is wanting to implement in his anthro-political work. For Kant, the "anthro-political" fact – that only those who can sustain their own livelihood have the means by which to make political claims – goes against, and is even paradoxical to, his claim that everyone qua human being has the capacity to realise and practice their autonomous rationality, regardless of which sphere it is practiced in. This I believe has severe repercussions because it seems to suggest that those who are incapable of acting within the public sphere do not have a claim to political freedom and sovereignty of the type that 'independent' persons do. Indeed, despite their capacity to act autonomously and rationally, non-independent persons are required to have their freedom and sovereignty distributed to them by some other means.

Antonio Franceschet (2001) has argued that the legacy of Kant's political philosophy is notoriously ambiguous, given the tension that arises between the conceptions of the sovereign state on the one hand, and the ultimate goal of freedom which underpins it on the other. Bracketing Franceschet's wider goal of disentangling the "legacy" of Kant's political philosophy for international relations (see Franceschet 2001), I want to explore the tension between sovereignty and freedom, which he identifies as the source of this ambiguity in liberal international relations.

Within the broader liberal tradition, the central commitment is to the respect of the autonomy of the individual (Raz 1986; Flikschuh 2007). In this sense, Kant's principle of right and the principle of the innate right to freedom can be considered liberal principles in the sense that they hold the autonomy of the Individual as central, and that any attempt to restrict the liberty of the individual must be justified insofar as the agent whose freedom is being restricted would accept such restrictions. This brings us back to the a priori principle of moral egalitarianism that marks the basis of Kant's political philosophy. As Kant consistently argues in his political writings, agents are equal to one each other insofar as no agent is morally superior to another. By this Kant means that no agent can be coerced, in accordance with the law, without that agent also being able to reciprocate, in accordance with the law. This position, however, seems to be in tension with the way Kant understands state sovereignty. According to Franceschet (2001): "[i]n the *Metaphysics of Morals*, Kant posits the a priori necessity of an absolutist sovereign agent in the state"" (Franceschet 2001: 219). According to Kant, the absolutist sovereign agent is necessary because 'man' in many instances, because of his animal inclinations, would not respect the freedom of other agents. As he writes in *Idea for a Universal History*,

[The] human being...misuses his freedom in regards to others of his kind; and although as a rational creature he wishes a law that sets limits to the freedom of all, his selfish animal inclination still misleads him into excepting himself from it where he may. Thus he needs a master, who breaks his stubborn will and necessitates him to obey a universally valid will with which everyone can be free (*laG* 8:23).

While attempting to respect the autonomy of the individual agent, Kant takes a decidedly Hobbesian line here, by implementing an absolutist sovereign whose function is to police the members of civil society. That is to make sure that the freedom of each individual is able to coexist with all members of the State.

The contradictory aspects of Kant's political philosophy come out here in full view. For Kant, the a priori principles of freedom cannot fully develop within the anarchic condition of the state of nature because the principle of freedom, which relies on the agent's freedom coexisting with all other agents, is not tenable without some form of protection. As Franceschet (2001) puts it, "[t]his situation is morally unacceptable because it logically negates our universal capacity to set and follow our own ends autonomously – the essence of our humanity" (Franceschet 2001: 219). Given his account of the theory of history, Kant holds that it is the duty of humanity to develop their universal capacities for moral judgment in such a way that benefits humanity as a whole. As such, it is the duty of each individual within the state of nature to enter into a civil condition with all other individuals, to join civil society. Unlike other social contract theorists, Kant does not take this to be a form of speculative claim about history, or an anthropological claim. Rather:

It is instead only an idea of reason, which, however, has its undoubted practical reality, namely to bind every legislator to give his laws in such a way that they could have arisen from the united will of a whole people and to regard each subject, insofar as he wants to be a citizen, as if he has joined in voting for such a will (*TP* 8:297).

In labeling his original contract an idea of reason, Kant moves it from a speculative empirical claim about the nature of the state, and instead makes it a normative claim for how civil constitutions ought to be organised. As a result, the legislative authority (i.e. sovereign) should act in such a way that the laws they produce would be the ones produced if it was the general will of the multitude of persons within the civil condition. Kant also binds the multitude of persons to the sovereign by suggesting that the rational agents within the civil condition have a duty to abide by the sovereign's authority. The reasoning for this seems to be that because the sovereign authority is put in place exactly as the protector of everyone's individual freedom to coexist with everyone else's individual freedom, to be able to criticize or overturn the protector would lead to the reappearance of our egotistical animal inclinations. Kant writes that 'a people

cannot offer any resistance to the legislative head of a state which would be consistent with right, since a rightful condition is possible only by submission to its general legislative will' (MS 6:320).

We can, at this stage, begin to see the tensions emerge within Kant's claim that the freedom, equality and independence of the members of a civil condition are essential for the establishment of a civil condition. This tension emerges specifically because the moral autonomy and rationality that defines the capacity of our freedom, equality and independence is undermined by Kant's emphasis on the political stability of the general legislative will.

The moral egalitarianism that is at the core in Kant's conception of the right to freedom also concerns the issue of how one can justify the use of force by the state against rational agents. According to Hodgson, it seems to follow from the universal principle of right that a conception of justified coercion is needed and such a coercive system is based on the fundamental right of freedom associated with the universal principle of right. According to Hodgson:

On Kant's view, the use of state power is justified only so long as it aims to protect freedom, and the sole aim of political philosophy is to determine the conditions under which rational agents can live side by side -- and thus affect each other through their choices -- without infringing on one another's freedom (Hodgson 2010: 794).

This position seems to be mirrored by Paul Formosa in his essay "The End of Politics" (2014). According to Formosa, one of the core questions of Kant's political philosophy is 'how to develop a coercive system of right that will protect its members' external freedom' (Formosa 2014: 38). Such a coercive system of right, states Formosa, is 'one that all participants could freely legislate for themselves since it equally protects the right of each citizen to make independent use of his or her power of choice in a way that is consistent with an identical right for all others' (Formosa 2014: 38).

The place of the sovereign holds an exceptional place within the context of Kant's political philosophy. Only the sovereign has the power to coerce others unconditionally. Not only then does the sovereign have the power to force others to follow laws that may or may not limit the freedoms of the people within the state, but more importantly there is no recourse for the people who are disgruntled by the actions of the sovereign. There seems to be a problem *prima facie* in accepting both Kant's position that everyone has a right to freedom and the contention that the sovereign has absolute power. This tension arises despite Kant's attempt to separate powers.

Paul Formosa (2014) has recently argued that this tension, which emerges in Kant's political writings, is based on confusion between two different concepts of sovereignty. Formosa distinguishes between absolute popular sovereignty and absolutist ruler sovereignty. In both senses, absolutism refers to the 'ultimate source of political authority which in turn is not subject to any higher legislative authority' (Formosa 2014:40).

Kant sets out three criteria in relation to sovereignty. Firstly, the legislative authority (who is sovereign) "can belong only to the united will of the people" (*MM* 6:313). This I take to mean that the sovereign can only pass laws insofar as those laws would have arisen out of a general will. It also, I think, supposes that the legislator can only pass laws in accordance with the universal law of the right to freedom, which is an innate right. To put it another way, no law should be passed by the legislator that infringes on the right to freedom of members of the commonwealth unless such a law is itself an infringement on a hindrance of freedom. The second criteria with which Kant conceptualises his notion of sovereignty is that the "will of the legislator...is irreproachable" (*MM* 6:317). According to Kant the actions of the legislative authority, as sovereign, are immune from any critical reciprocity which would seek to unseat the legislative authority. He writes:

There is...no right to sedition, still less to rebellion, and least of all is there a right against the head of a state as an individual person, to attack his person or even his life on the pretext that he has abused his authority (*MM* 6: 320)

As Kant writes in *What is Enlightenment?*, "Argue as much as you like and about whatever you like, but obey" (*WE* 8:55) At this point, some may wonder about the need for juridical review. If Kant indeed wants to avoid any kind of coercive paternalism, then another criterion for the sovereign should be imposed such that it conforms to the right to freedom. Kant accepts this and offers up a solution via the separation of powers.

[A] people's head of state (legislator) cannot also be its ruler, since the ruler is subject to the law and so is put under the obligation through the law by another, namely the sovereign (*MM* 6: 317)

Kant also suggests that neither the head of state (which holds legislative authority) nor the ruler (which holds executive authority) can judge. Rather, only the people have the capability to judge others, by means of a jury, whom it has delegated (*MM* 6: 318). Kant therefore distinguishes between three distinct authorities; the legislative, the executive and the judiciary. The conjunction of any of these powers in a single individual's hand would result, according to Kant, in despotism.

The sovereign of the state (i.e. the legislative authority) has the power to pass laws, in accordance with the general, united will of the people, and to, if necessary, take the role of the ruler away from him, and is untouchable in relation to either of these roles, in other words, the legislative authority cannot be overthrown. Formosa has argued that such a conception of sovereignty does not refer to an individual ruler as such, but rather refers to an absolutist popular sovereignty, and that understanding Kant's conception of sovereignty on this basis alleviates the tension that seems to arise between Kant's conception of sovereignty and the

normative commitments to freedom, equality and independence which are at the core of his universal principle of the right to freedom.

As I mentioned previously, according to Formosa, the core question of the political community in Kant's writings is how to develop a coercive system of right which is able to protect the idea of freedom as a universal principle of the right to freedom. Such a coercive system requires the reciprocal use of coercion in a way that is consistent with everyone's freedom in accordance with a universal law. Formosa proposes that only by understanding Kant's notion of sovereignty as the absolute popular sovereignty of the united general will of the people can the tension that seems to present itself between the right to freedom and Kant's notion of sovereignty be overcome.

As Formosa writes,

Popular sovereignty is the view that the general will of the people is sovereign and that the people's representatives may properly employ sovereign powers on their behalf only so long as they continue to represent their citizens' general will. From the doctrine of popular sovereignty we can reasonably draw the following implications. Internally, the obligation of citizens to obey their ruler or government is always conditional on that ruler or government retaining its legitimacy and that is dependent on it representing and uniting the people's general will. (Formosa et al 2014: 43)

According to this reading, the normative implications that follow the absolutist popular sovereignty map on to the normative commitments that Kant sets out as implications of the right to freedom. That is to say, because the legislator is recognised as the general will of the people, rather than a single absolutist leader, the tension of the right to freedom with the conception of sovereignty is relieved.

Contra Formosa, I want to propose that the tension between the right to freedom and Kant's conception of sovereignty remains even under the conditions of the absolutist popular sovereignty. While I agree with Formosa that the absolutist popular sovereign interpretation



appears to be the correct interpretation of Kant's conception of sovereignty, albeit implicitly, I do not think this conception fully escapes the tension I have outlined in the introduction to this thesis, in the continuation of Rancière's critical, egalitarian questioning of the tradition. This, I want to propose, is because of a number of factors revolving around the criteria that Kant sets up as to who can be understood as an active participant (i.e. a citizen) in the commonwealth. If I am correct in suggesting the persistence of this tension in Kant's political philosophy, then this would suggest, despite allusions to the contrary, that Kant must rely on some form of hierarchical, paternalistic domination in order to secure his notion of freedom, a form of domination which ultimately undermines any attempt to develop a political theory of freedom. I want to show that, in his political theory as well, Kant ends up defending a notion of "the rights of freedom for some" rather than a universal conception of freedom.

As I mentioned already, despite the substantive inequality that Kant allows for within the commonwealth, in regards to women and workers, he does not think that this contradicts his position on equality. Indeed, he argues that despite not being citizens of the state due to their dependency on others for their subsistence, they still have the capacity to demand equality in accordance with the laws of natural freedom and equality (*MM* 6:315). There is within Kant's political structure recognition that those deemed not fit to hold the right to vote are still to be treated equally under the law.

Whatever sort of positive laws the citizens might vote for, these laws must still not be contrary to the natural laws of freedom and of the equality of everyone in the people corresponding to this freedom, namely that anyone can work his way up from this passive condition to an active one (*MM* 6:315)

Despite this acknowledgement relating to a possible future of passive citizens, in the present of the legislative act they are very much asked to accept laws to which they did not participate.

Similarly, in the "*On the Common Saying*", he writes:

All who are free and equal under existing public laws may be considered equal, but not as regards the right to make these laws. Those who are not entitled to this right are nonetheless obliged, as members of the commonwealth, to comply with these laws, and they thus likewise enjoy their protection (not as citizens but as co-beneficiaries of this protection) (*TP*: 77)

However, this division between co-legislators and co-beneficiaries, I believe, undermines the egalitarianism of Kant's position. This division develops what is an obvious hierarchical division, based on the capability of some over others, which manifests itself in the relation between citizen and non-citizen, or as Nussbaum put it between 'framers' and 'non-framers' (Nussbaum 2003). This relation is epitomised in what the non-citizen is said to be incapable of doing; namely, to vote, because of their dependence on others. This incapacity is constructed in terms of the distribution of wealth and assets. Indeed, this view of an incapability to vote is founded on a number of other issues regarding the exclusion of persons from political engagement. The structure of Kant's political philosophy in accordance with his conception of the right to freedom, sovereignty as understood as absolutist popular sovereignty and the division of powers between the legislative, executive and judiciary, suggests an inequality in which, what is recognised in society is a distribution of parts understood as those who are able to take part, and those who are unable to take part. Put another way, between the 'passive' citizen who is protected by the law and is a beneficiary of the law, and the 'active' citizen who contributes to the law. Kant's notion of citizenship is based on the a priori principles of freedom, equality and independence. While these universal claims are important for presenting a conception of political theory that develops an egalitarian position, Kant has not been able to realise these claims fully, in part, due to the deficiencies of his political theory.

As has been mentioned already the universal principle of freedom is an innate right given by virtue of an agent's humanity. To put it another way, all human beings are free, insofar as their choices are of their own volition, as a result of being understood to be ends in themselves, and that in turn is based simply on their being human beings. Humanity is an end-

in-itself because of the rational nature of human beings (*GMS* 4:429). Thus, on this premise, all human beings, as subjects of humanity, have a rational nature. Freedom, that is to say, the mastery of one's own choices, is thus only universally applicable if Kant also accepts the rational nature of human beings as a universal condition of humanity. However, when Kant attempts to make real and concrete this formal equality of all human agents, his political theory breaks both these universal conditions. Kant's political philosophy, premised on the notion of a universal sharing of rational powers, ends up having to rely on the very paternalistic nature of governance that he wished to escape from in the first place.

### **An Answer to the Question: What is Enlightenment? A Microcosm of the contradictions in Kant's Political Philosophy.**

In the above section I illustrated three particular problems within Kant's political philosophy that I have called the *historical*, the *pedagogical* and the *institutional* paradoxes of emancipation. My aim in developing these forms of the paradox is to show the problem that Kant runs into in his equivocation between two understandings of 'humanity'. In this section, I want to continue this line of criticism by focusing on one of Kant's most famous texts, *An Answer to the Question: What is Enlightenment?* I focus on this text because I believe that it can be read as a microcosm, not only of Kant's political philosophy, but also of the problems inherent within it.

The issue at stake is the implementation of equality in the political realm. Joseph Tanke, drawing on the ideas of Rancière explored in the previous chapter, writes that "[e]quality cannot...be gradually implemented with measures partaking of inequality" (Tanke 2011: 36). But this is exactly what occurs in Kantian political philosophy. Despite the assurance of a universal principle of freedom, one which also relies on a principle of egalitarianism, Kant relies on certain positions which are implicitly inegalitarian.

I present a reading of Kant's famous essay in the context of the problems analysed in the previous sections and from the perspective developed by Rancière which I presented in the first chapter, namely by asking: who is the subject of enlightenment? Furthermore, does this subject correspond to Kant's views on the presumed (moral) equality of persons? In reading this essay, I attempt to make explicit the paradox of egalitarian political philosophy, namely the use of inegalitarian procedures to bring about equality. This is paradoxical given the assertions of a 'transcendental' equality based on the virtue of humanity. A situation therefore arises such that, while the philosopher recognises the 'transcendental' equality of political agents, there are substantive barriers that do not allow that equality to be realised; therefore, the philosopher concludes, we must rely on paternalistic structures in order to guide those 'transcendentally equal' political agents to their substantive equality. Nowhere is this problem more clearly visible than in the essay *An Answer to the Question: What is Enlightenment?* Such an accusation is indeed striking. The essay, one of the most widely read of Kant's corpus is also often considered one of the foremost pieces of progressive political theory (Cronin 2003; Peterson 2008).

The "enlightenment" essay begins with a definition: "Enlightenment is the human being's emergence from his self-incurred minority" (WE 8:35). Minority is the 'inability to make use of one's own understanding without direction from another' (WE 8:35). Minority, on this understanding, is not due to a lack of knowledge or intellectual capability. Rather, it is due to a lack of resolution and the courage to use one's own rational autonomy, instead relying on direction from another. This, as I mentioned previously (in chapter one), comes close to Jacques Rancière's own regarding the supposed inability of free and equal agents to embrace their intellectual equality. For Kant, they (those in a situation of "minority") are not in the position they are in because of a lack of ability; it is because of a lack of willingness. What Kant seems to be attempting to do is to find the motivating factor that would allow the minority to escape

their "self-incurred minority". For Kant, following Horace's motto *sapere aude*, it is decisive for the political agent to realise their capacity to make their own choices away from the determination of others. We have already seen how Kant motivates this position morally; by the virtue of their humanity, agents are free insofar as their choices are their own.

However, the actual enlightenment essay seems to deny the 'virtue of our humanity' to act in such a way as our capacities for rationality and autonomy allow us to. It does this in three specific ways: by offering a 'historical' explanation for why some won't achieve enlightenment; by suggesting that the way towards enlightenment is through moral development, which requires the intervention of superior teachers; and through the setting up of institutions to help develop enlightenment. These methods do not seem *prima facie* to deny the universal virtue of humanity. But in fact, they greatly undermine it. Such a reading of course is at odds with the usual way of reading the essay, which emphasises it as a continuation in the realm of politics and history, of Kant's moral philosophy.

The problem that appears here is that if an agent's choice to remain in a state of minority is indeed made through their own understanding, then Kant would appear to reject the moral underpinnings of 'humanity' discussed above. Kant would have to reject the "understanding" of those who choose minority, as not being the correct type of "understanding". Since reaching "maturity" is part of our moral development ("culture"), as both an individual and as a member of the human species, then Kant, in his anthro-political work must undermine or at worst exclude the rationality of those who choose to stay dependent on others' authority as not being properly rational. Kant, in keeping with his concerns about moral development, must then commit himself to forcing the correct "rational" choice on those persons, thereby undermining their moral autonomy and moral equality. Furthermore, it would seem that those who choose "minority" are not acting as "minors"

because they are in fact using their own understanding, without the direction of another, to choose to live under the directions of others. The designation of 'minority' must therefore be external to the agent. And so, while Kant establishes the universal principle of freedom, and as such the importance of recognising freedom, not merely as freedom from interference but as freedom to choose one's own actions, he seems to shift in fact towards a somewhat elitist platform, according to which some agents are in fact incapable of achieving their capability, to be masters of their own choices alone, and must rely on others to guide them there.

This shift towards elitism can, I suggest, be seen in three subtle ways in the enlightenment essay, which I have described above as the *historical*, the *pedagogical* and the *institutional forms* of the emancipation paradox.

Enlightenment in Kant's essay is understood in temporal terms. No one achieves enlightenment immediately, but much like Kant's concept of humanity, it is developed over time. Enlightenment thus has some relation to Kant's claim in *Conjectural Beginning of Human History* (2008[1786]) that the human capacity for reason develops in stages.

Those who designate persons as being in a state of "minority" are also those who contend that "minority" is not a state that persons should reside in. The radical egalitarian moral justification of the equal freedom of all to act in such a way that their freedom doesn't inhibit the freedom of others seems to be abandoned, and a specific set of ideals, which reflect a top down understanding of society, is allowed to arise.

It would seem, to readers of Kant's enlightenment essay, that I am attributing to Kant exactly that position of the 'guardians' who have no desire to see us think for ourselves. This is not what I am doing. I accept Kant's admission that sometimes a stronger will is essential to lead weaker wills out of their oppressive position. This will-to-will relationship becomes even more problematised when it turns into one of 'intellect-to-intellect. Where one "will" supposes its

epistemic authority over another "will" and therefore enshrines a space which can only be filled by the "Stronger intellect's" admission. One of the aims of this critical perspective (see chapter one), is that even those with an egalitarian ethos at the heart of their political and moral theories tend to end up supporting, implicitly, inequalities. Kant writes that "it is because of laziness and cowardice that so great a part of humankind, after nature has long since emancipated them from other people's direction (*naturaliter maiores*), nevertheless gladly remains minors for life, and that it becomes so easy for others to set themselves up as their guardians" (WA 8:35). A key contradiction that is highlighted here is the distinction between the universal capacity for reason, freedom and morality, versus the empirical 'inability' based on the laziness and cowardice of the Individual. The 'humanity' of human beings, that capacity to use rationality and autonomy, thus comes into conflict with the empirical determinations of laziness and cowardice which restrict this capacity. 'Laziness' is a common description in Kant's anthropological work to designate those whom he does not think have the capacity to utilise their rationality and autonomy. In *Groundwork of the Metaphysics of Morals* he famously describes "'South Sea Islanders' as those who let their talents rust because they are given over to 'idleness, amusement, procreation'" (GMS 4:423); Such laziness is also an essential aspect of the 'fairer sex' for Kant, of whom the entire collective "'should hold the step toward majority to be not only troublesome but also highly dangerous..." (WE 8:35; cf GSE 2:228-242). In essence, Kant uses the description of "laziness" as an attempt to fill the void that is left by his recognition of a universal - and therefore egalitarian - capacity for reason and autonomy, and his own perception that some people are unable to realise this capacity in the world. This suturing of the void, however, is not generated in line with the egalitarian ethos that is at the heart of Kant's conception of capacity. Rather, despite a formula which attempts to bring everyone out of their "immaturity", Kant's denigration of some individuals and groups as incapable of realizing their autonomy and equality problematically produces a paradox of equality.

Kant tells us that laziness and cowardice are the reasons why such a large portion of men [and all women] gladly remain immature for life (*WE* 8:35). Yet such laziness and cowardice also create the conditions that allow the "guardians" to manipulate the immature, to finally guide them towards "mature" decisions. At the same time though, such a relationship based on paternalism and inertia "is the main obstacle to the elimination of immaturity and the dawning of enlightenment" (Braeckman 2008: 293). It would seem therefore that this relationship between inertia and paternalism creates a vicious circle, which cannot be resolved via the methods which Kant thinks is required; this has strong connections with Rancière's critique of the explicative order discussed in chapter one. For Rancière, the method of explication does not lead one out of their lack of knowledge. Rather, it merely develops a hierarchy of intellect, in which the only way to ascend the hierarchy is to have those at the highest order recognise that you have the capacity to ascend to the next level. If guardians constantly create the conditions by which people can live their lives without having to engage in any critical reflection about the decisions they make, then both the inertia and the paternalism affect each other in a way that seem unsolvable. Kant explicitly identifies this vicious circle when he writes:

Having first infatuated their domesticated animals, and carefully prevented the docile creatures from daring to take a single step without the leading strings to which they are tied, they next show them the danger which threatens them if they try to walk unaided. Now this danger is not in fact so very great, for they would certainly learn to walk eventually after a few falls. But an example of this kind is intimidating and usually frightens them off from further attempts (*WA* 8:36)

Kant optimistically suggests that the unfettered freedom of the public use of reason, in the long run, encourages people to think for themselves. Furthermore, the more agents involve themselves in public debates, the easier it will be to take up the task of 'enlightenment' for oneself<sup>11</sup>. Society must work together in order to achieve enlightenment; although, as we just

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<sup>11</sup> Thanks to Michael Olson for this suggestion



saw, Kant in the same move empirically restricts this ability to less than half of all the agents (all women and all the economically dependent are excluded).<sup>12</sup>

We can see the problem arise that I posed at the beginning of this chapter. Despite the transcendental claims of Kant's universal principle of freedom, the 'reality' of the social situation imposes itself and shows that in fact not all are free and equal by virtue of their humanity. A vast majority of human beings are in fact unable to achieve enlightenment, whether they are Women, Africans, or South-Sea Islanders. Those passive, not-quite-rational human subjects then will have to rely on the 'already enlightened' white male to reach enlightenment. For Kant, equality is guaranteed at the outset of his political philosophy, but such equality can only be achieved with reference to inegalitarian institutions of paternalism and hierarchy. These inegalitarian measures are developed in a number of ways by Kant. They appear as historical, pedagogical and political interventions into the already given formal freedom and equality of agents. My position is that the failure to achieve freedom and equality rests not in the practical failure of these interventions but in the very logic of these interventions. Equality and freedom, I propose, following Jacques Rancière, can only be properly achieved by committing to equality and freedom from the outset, as fundamental assumptions of a theoretical intervention, and verifying such positions at each stage in the political relation.

## Conclusion

Despite Kant's assertions that his political philosophy is based on three universal transcendental measures of freedom, equality and independence, the political realisation of these positions fails to live up to his universalist premises. In attempting to justify the discrepancy between the "transcendental" and the "empirical" dimensions, Kant distinguishes

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<sup>12</sup> We can see in *Observations on the Feeling of the Beautiful and the Sublime* Kant's attitude towards women and racial minorities. For instance he talks of people from Africa being incapable of learning anything other than how to be a slave and in reference to Hume questions the ability of 'Negroes' to demonstrate accomplishment of something great in art and science (2:253)

between 'legal' or 'economic' equality, which only a few 'rational agents' can achieve, and the universal 'natural equality'. To take another typical example, in relation to marriage rights he states that the legal dominance afforded to men over their wives does not conflict with their natural equality because such dominance, within the legal and economic sphere, "is based on the natural superiority of the husband to the wife as his capacity to promote the common interest of the household, and the right to direct that is based on this can be derived from the very duty of unity and equality with respect to the end" (*MS 6:279*). The end that Kant refers to in this respect is the ultimate purpose of humanity; where humanity, as a species, achieves the full extent of the moral and rational capacities given to them by nature.

These problematic instances of inequality I believe are founded on the equivocation between two conceptions of 'humanity' that appear in Kant's moral and political philosophy. This equivocation, I believe, leads Kant to rely on inegalitarian, paternalistic and oppressive measures in order to secure the very transcendently based freedom and equality that he affords agents by virtue of their humanity. I showed how this theoretical conundrum, which I call the emancipation paradox, can be delineated in three different ways in Kant's philosophy. Firstly I argued that Kant develops historical contingencies to justify the use of coercive, paternalistic measures of guidance against social groups, thereby excluding them from the concept of humanity. Secondly I analysed Kant's theory of moral education showing how once again he excludes various social groups and substantiates the myth of the "white" saviour. Lastly I showed the extent of Kant's process in which he establishes a theoretical conception of equality and liberty and then proceeds to attempt to develop the political realisation of this concept through inegalitarian measures. This process fundamentally undermines any liberal or egalitarian position that Kant seeks to develop, and leads to a paradoxical position in which Kant's egalitarian intentions are eroded under inegalitarian procedures which remove the autonomy of persons.

In the next chapter I shall develop this critique of political philosophy by looking at the work of John Rawls. Given Rawls's importance in contemporary political philosophy, and his reliance on much of Kant's work, there is good suspicion to think that Rawls's project is also affected by some version of the emancipation paradox.

# Who is the subject of justice? John Rawls, equality and the emancipation paradox

## Introduction

In the previous chapter, drawing on the theoretical intervention made by Jacques Rancière, I revealed a problem within Kant's political philosophy. This problem - which I called the "emancipation paradox" - suggested that the inability of Kant properly to implement his egalitarian moral theory into an egalitarian political structure rested on the equivocation between two understandings of the term "humanity": the "exclusive"; and the "extensive". The latter identifies "humanity" as a class of person of which everyone is a member *qua* human being; and the former identifies a particular set of characteristics which only certain individuals can ever reach fully. For Kant, this equivocation leads him to suggest inegalitarian "fixes" to the perceived problem that some people are just not capable of participating in moral and political discourses, for a variety of reasons, despite their universal moral equality.

In the remaining chapters of this thesis I seek to expose how the emancipation paradox also takes place within those thinkers oft-described as egalitarian, who base their egalitarian political theories on Kantian moral philosophy: John Rawls, Jürgen Habermas, and Rainer Forst. I mean to suggest, those thinkers that base part of the foundational structure of their political theory on the moral theory of Kant, particularly the principle of autonomy - or at the very least a variation of that principle. As it appears in the work of these theorists, however, the *emancipation paradox* does not have the exact symptoms of analysis that appeared in Kant. The "paradoxes" that occur within these thinkers range from: an equivocation between two understandings of a purported universal concept, as in Kant; a contradiction between the universal and the particular; and the tension between an ideal that is intended to be universal and inclusive of all persons and the political processes attempting to implement this ideal,

which are not actually inclusive. These contradictions found within supposedly universal, egalitarian political philosophies are not mutually exclusive. They may all appear in one theory; alternatively, a theory may contain only one. Contemplating the difference between Kant and contemporary political philosophy, we may suggest that political philosophy, as it progresses, undoubtedly becomes more egalitarian in its theoretical outlook. The political exclusions proffered by Kant by way of "anthro-political" facts seem to be successfully exorcised from theories of justice presented by these subsequent theorists. This exorcism takes place in the procedural accounts offered by these theorists. However, the way in which their procedures are implemented calls into question the democratic and emancipatory potential of their own egalitarian projects. It is in this vein that I turn to the important contributions to political philosophy made by John Rawls.

Before I embark on the critical interrogation of Rawls that comprises this chapter, it is worth restating the foundational intuition that motivates this critique: that the theorists at issue have manipulated proposed principles of egalitarian justice in order to make them fit the "anthro-political" facts of society. That is to say, these theorists, while explicitly holding the principles of equality and autonomy as fundamental conditions of a just society, implicitly read inegalitarian elements into the basic structure of society. These inegalitarian elements bear the consequence of evacuating the autonomy from political agents themselves, turning our theorists' political conceptions into "parapolitics", as described by Jacques Rancière. As I showed in the previous chapter, despite the assertion of an egalitarian moral theory, Kant in his anthropological and political writings makes certain questionable assumptions about the capacity of persons *really* to participate in political discourse.

Regarding Rawls, my argument is structured as follows. Rawls attempts to implement a theory of justice which aims to provide the foundations for a constitutional democracy. However, it reneges on its universalistic foundation of persons as free and equal, leading to the

implementation of inegalitarian procedures that undermine the egalitarian ethos at the heart of Rawls's theory. At the core of this problem is Rawls's own attempt properly to bridge the gap between his conception of moral personhood and the "anthro-political" facts of society. My argument aligns with the position described in chapter one in reference to the pedagogical work of Jacques Rancière. In *The Ignorant Schoolmaster*, Rancière proposes that our political and social institutions already imply a presumption of equality, in their reference to the communicative ability of citizens to deliberate over principles of justness and freedom; however, against this presumption we introduce arbitrary hierarchical positions favouring certain discourses over others, or, to be more explicit, we deny the ability of some discourses even to be heard. I contend, expanding on Rancière's position, that despite Rawls's implicit assumption of persons within society as free and equal (in the moral sense), the capacities illustrated by the moral consideration of personhood are undermined by institutional, "anthro-political" facts. This can be further understood through Todd May's distinction between "active citizens" and "passive citizens". As May writes, passive citizens "do not create, ensure or protect their equality. They are the objects of equality rather than the subjects of equal consideration" (May 2008: 32).

This claim may seem odd, indeed wrong, to those familiar with Rawls's account of deliberative democracy in *Political Liberalism*. I will suggest that despite contending that persons have the capacity to act as "active citizens" within the well-ordered society, the way in which Rawls constructs the "basic structures of society", grounded as they are on principles of justice, is reminiscent of Kant's own construction of the passive actor, which I explored in the previous chapter. As Miriam Bankovsky states, Rawls must severely weaken the claims of *A Theory of Justice* to resolve the demands of justice (Bankovsky 2012). I take this to mean that the radical egalitarianism implicit in the moral theory that Rawls draws from Kant is weakened in *Political Liberalism* to contend with "anthro-political" facts of the constitutional democracy

that Rawls attempts to establish. This weakening, I suggest, is laid bare through the inequality that permits itself within Rawls's account of justice. In this spirit, we may contend that Rawls, like Kant, presents a form of what Rancière calls *parapolitics*: the reduction of disagreement to the limits set by institutional structures. Before beginning the more critical aspect of this chapter, I will reconstruct Rawls's procedure of justification in *A Theory of Justice* and specify the "weakening" that takes in *Political Liberalism*. I focus on this part of Rawls's theory because it develops a systematic account of how Rawls believes that the Kantian moral consideration of persons, as universally equal, can be realised in social and political structures. Later in the chapter, I will show how various ellipses and anomalies in this particular conception of construction lead Rawls to propose a basic structure of society which eclipses the agency of political subjects.

## **The Kantian interpretation of justice as fairness**

John Rawls's model of a theory of justice - justice as fairness - is motivated by an attempt to realise a practicable account of Kant's moral theory based within an empirical framework. The debate as to whether Rawls is a Kantian or not has been well explored in the literature, my aim however is different. While sympathetic to the notion that Rawls is a Kantian, my position in this thesis is to focus Rawls's interpretation of the Kantian notion of autonomy without falling into the debate of whether it constitutes a "proper" adherence to Kant<sup>13</sup>. As explored in previous chapters, Kant's account of autonomy recognises, at least in one version, the capacity of human

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<sup>13</sup> For the specific debate as to whether Rawls is a Kantian or not see Darwall (1985, 1980), Davidson (1985), Guyer (2000) and Kaufman (2012). Those who have criticised such a relation: Levine (1974), Johnson (1974), Höffe (1984), Krasnoff (1999), O'Neill (2003), Budde (2007). Robert S. Taylor (2011) has recently argued that while Rawls' is not initially Kantian enough, a reconstruction of *Justice as Fairness* along more stringent Kantian grounds reveals a more apt theory for dealing with a multitude of problems. Further Williams (1999) has argued that while Rawls has abandoned the original project of Kant, he draws heavily from Kant in developing his own course but reaches a number of differing conclusions that may not fit within Kant's original project; Baynes (1992) and McCarthy (1994) draw similar conclusions.

beings as members of humanity to be able to co-legislate moral laws. That is, all free and equal moral persons - meaning those persons with the capacity to hold and to act on a conception of the good, as well as to recognise and accept everyone else's capacity to hold and act on conceptions of the good - are able to deliberate about which principles ought to ground the behavior of individuals within a society of like individuals, insofar as each individual is able to realise their free and equal moral status.

Rawls's interpretation of the Kantian notion of autonomy attempts to derive the essential characteristics of this notion, and specify its real force for legislating conduct within an ethical community. Rawls thus takes up Kant's idea of legislation in the kingdom of ends. For Rawls, according to this legislative procedure, the principles that govern our conduct "must not only be acceptable to all but public as well" (*TJ*: 221). Against Kant, this does not specify that every rational being will come to arrive at the principles in any circumstance, but rather that those persons, appropriately conceived of as free and equal moral persons, will arrive at these principles within a highly rigorous context-specific position (O'Neill 1989). This framework, which seemingly specifies the conditions by which like individuals will choose principles that are acceptable to all, takes place in what Rawls calls the "original position". The original position maps broadly on to what Rawls calls the "categorical imperative procedure". As he elaborates in his *Lectures on the History of Moral Philosophy* (Rawls 2000, hereafter *LHMP*), the categorical imperative procedure "takes into account the normal conditions of human life by means of the law of nature formulation" (*LHMP*: 167). That is to say, the categorical imperatives legislated by like-minded free, equal and rational persons are then applied to the empirical framework of actually existing society. The categorical imperative procedure "applies, then, to maxims that lucid and rational agents have arrived at in view of what they regard as the relevant features of their circumstances" (*LHMP*: 168). The issue of what Rawls considers to be relevant features is addressed below, where I critically outline the structure of Rawls's original position. First,



however, I want briefly to remark on the other characteristic regarded by Rawls as the "real force" of Kant's notion of autonomy: that the principles which regulate our conduct should be public. By "public", Rawls means that the principles chosen within the original position must not only be acceptable by all - a condition supposedly fulfilled by the original position - but that they must be open and transparent. As Rawls puts it, "a conception of right is a set of principles, general in form and universal in application, that is to be publicly recognised as a final court of appeal for ordering the conflicting claims of moral persons" (*TJ*: 117). The principles that are agreed to, in order to regulate our conduct, must be public in the sense that everyone is capable of knowing what these principles are, and how they regulate our conduct. They are not implicit, hidden or secret. As such, publicity adds another layer of security to the acceptability condition.

The other element which frames Rawls's Kantian interpretation of justice as fairness is the moral personality of participants who are able to take part in the legislative procedure. According to Kant's notion of autonomy, as implied in his *formula of humanity*, all persons, as members of humanity, ought to be treated not merely as means, but rather as ends in themselves. By this Kant understands that persons have the ability to choose and act on their own ends insofar as their actions do not contradict other persons' conception of ends. This is a reciprocal position. Each person has the ability to choose and act on their own ends in such a way that respects everyone else's ability to do the same. Rawls, in presenting a practicable interpretation of this conception of moral persons, writes:

Moral persons are distinguished by two features: first they are capable of having (and are assumed to have a conception of their good (as expressed by a rational plan of life)); and second they are capable of having (and are assumed to acquire) a sense of justice, a normally effective desire to apply to act upon principles of justice (*TJ*: 442).

At least in *A Theory of Justice*, Rawls is often considered to have presented a (non-Kantian) game-theoretic interpretation in which the most effective means to an end is what the person should act on (*TJ*: 12). This interpretation is given credence when Rawls writes:

A rational person is thought to have a coherent set of preferences between the options open to him. He ranks these options according to how well they further his purposes; he follows the plan which will satisfy more of his desires rather than less, and which has the greater chance of being successfully executed (*TJ*: 124).

However, throughout *A Theory of Justice*, and then in greater detail in *Political Liberalism*, Rawls develops a conception of "rationality" more compatible with his claim of developing a Kantian interpretation. The second moral power - the capacity of having a sense of justice - provides limitations to the ability of moral persons effectively to achieve their ends. The capacity of a sense of justice introduces a conception of social cooperation that Rawls will expand further in later work. In this sense everyone recognises that their means of achieving their ends must be acceptable to those who may be affected by them. In Kantian terms, the rationality of individuals is analogous to the "hypothetical imperative", or their ability to will an end, while their ability to reason is analogous to the "categorical imperative", or their ability to generalise that will insofar as it can apply to everyone. The reasonable person, as implied by the second moral power, acts in cooperation with others on terms that all can accept (*PL*: 50).

I have attempted in this brief overview to highlight the motivating force of Kant's notion of autonomy as Rawls interprets it within an empirical framework. I have yet to specify what this empirical framework is. Before I do this, however, I want to point out the egalitarian ethos with which this interpretation attempts to match. As I have discussed in chapters one and two, the Kantian notion of autonomy implies a radical egalitarian ethos in which all of humanity are understood as having the capacity to be co-legislators of moral laws. If we understand this in conjunction with the *formula of humanity* outlined in the previous chapter, it paints the picture

that no one, as a member of humanity, can be arbitrarily excluded from participating as a moral and political person in the co-legislation of laws that govern all our conduct. As a rational being, everyone must be afforded the capacity to participate. Rawls is not interested in developing a "moral law". This much is implied in a conception of justice which is political, not metaphysical. If this egalitarian conviction is implied, as I suggest it is in Kant's notion of autonomy, then Rawls's attempt to implement a practicable and realisable illustration of this notion must also be motivated by this egalitarian ethos. As I will show later, while there is an egalitarian ethos at the heart of Rawls's theory of justice, premised on the interpretation that he offers of the notion of autonomy, this ethos is undermined by Rawls's attempt to "fix" a number of gaps which arise in his empirical framework. To put it in Rancièrian terminology, Rawls's theory of justice is a *parapolitics* which evacuates *real politics* from the social order by implementing it within a police order which is able to account for all disagreement within that social order. In doing so, Rawls shuts down the ability of disagreement to arise outside of the social order. That is, disagreement must already abide by the conditions set in place by the parameters of justice that regulate the conduct of the basic structures of society. Before turning to this critical perspective, I will now outline the structure of Rawls's procedure of justification to show how it leads to those principles which would regulate the basic structures of society.

### **Rawls's procedure of justification**

Above, in outlining the Kantian motivation of Rawls's theory of justice, I observed that principles chosen by free and equal persons would regulate the conduct of persons living in an ethical community. For Rawls, this is not explicitly the case. Rawls moves away from what he sees as the moral determination of Kant's categorical imperative in determining how persons ought to act, and instead attempts a political interpretation which seeks to determine the conduct of the

major institutions of society. The obligations and duties that are often associated with a moral point-of-view are then only indirectly applied via the structure of major institutions. The principles of justice do not directly affect those who choose them. Rather, they are chosen as conditions by which society ought to be structured so that the structure of society adheres to the autonomy of individual participants. In this section, I will explore how Rawls envisages how the principles of justice, which are to be to the benefit of all persons within society, are chosen within his procedure of justification.

The original position, as a procedure of justification, matches on to the categorical imperative procedure. That is to say that the original position presents a fair and impartial procedure wherein the participants choose the principles of justice which will conform to all persons as free and equal moral persons, on the basis of basic facts which shape the potentiality of justice. These basic facts, which Rawls, drawing on Hume, calls the "circumstances of justice" are "those conditions under which human cooperation is both possible and necessary" (*TJ*: 109; cf Hope 2010). Participants within the original position know "objective" general conditions, such as general facts about the biology and psychology of human beings and the moderate scarcity of resources, as well as "subjective" conditions of human cooperation. Along with these forms of knowledge, it is also understood that participants know the publicity condition by which the principles must abide: that the principles will be publically known and recognised as the most appropriate means by which to construct a society of fair cooperation. The fairness and impartiality which the original position is supposed to produce is not, in fact, developed in what is known to the participants of the original position, but rather is produced because of what the participants do not know. In order to accord with the impartiality, a requirement implicit in Kant's notion of autonomy, Rawls writes that "we must nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage" (*TJ*: 118). In order to specify the forms taken by this

epistemic lack among participants, Rawls introduces the veil of ignorance in a fairly long passage:

It is assumed, then, that the parties do not know certain kinds of particular facts. First of all, no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. Nor, again, does anyone know his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology such as his aversion to risk or liability to optimism or pessimism ... I assume that the parties do not know the particular circumstances of their own society. That is, they do not know its economic or political situation, or the level of civilization and culture it has been able to achieve (*TJ*: 118).

The veil of ignorance thus provides a formal account of participants entering into the discursive procedure of the original position without the use of resources which may give them an improper advantage in choosing the particular principles which would shape society. In doing so, Rawls seems effectively to cancel the possibility that persons could shape society in a way that would be advantageous to a particular group of people, and as such disadvantageous to everyone else. While Rawls offers at least a formalistic account of an egalitarian procedure of justification, several theorists have raised concerns which seem to undermine this egalitarian claim. It has been noted that there are competing claims in operation: on the one hand, the idea that participants would not know the "level of civilization and culture"; on the other hand, that they are assumed to know that they are developing principles of justice premised on a form of constitutional democracy. Given the historical association of constitutional democracy with a particular period of human political development, the elements of discourse surrounding principles of justice would be marked in some way by an understanding of a "constitutional democracy" and what that entails. More pertinent for our analysis, Susan Moller Okin has suggested that despite Rawls's assertions that participants in the original position lack knowledge about the natural and socially-given endowments of agents, the agents within the original position have some idea about the "general facts" of human society. It is safe to assume, Okin contends, that they would know that the general structure of society is skewed

towards white, heterosexual males, and that a gendered division of labor prevails (Okin 1989, 2005). While Rawls, in later work, attempts to rectify this position (see *JF*, 162-168), there is a lingering uncertainty about the egalitarian nature of the original position. If the original position is to maintain an egalitarian ethos, in a way that is inherent to its Kantian interpretation, then it has to maintain that the types of knowledge allowed to the participants cannot give any unfair advantage to any of the participants. Let us, for now, agree that the veil of ignorance introduces a reasonable procedure of the original position which insures the impartiality of the judgement of participants in the procedure of justification, and presents all participants as reasonably equal in relation to one another.

I have so far referred to those agents within the procedure of justification as "participants" rather than moral persons. This is because "participants" in the procedure of justification are not moral persons in the way that Rawls considers "citizens" within the well-ordered society to be moral persons. In the previous section I outlined Rawls's view of moral persons as having two moral powers, known as "rationality" and "reasonableness", as Rawls dubs them in *Political Liberalism*. They (1) have a conception of the good, and know of the means by which to achieve this conception and (2) recognise everyone else's ability to hold that conception of the good, and act accordingly, and therefore only act in such a way that their actions are amenable to social cooperation. Rawls takes this to be the capacities of citizens in the well-ordered society. In the original position, participants are understood to be rational representatives of those citizens who will take part in the well-ordered society. They are to choose those principles which citizens in the well-ordered society would agree to. They must rationally match the most effective way to achieve their ends which all citizens would accept. Given, however, that one of the conditions of the veil of ignorance is that no participant knows their particular conception of the good, participants must be able to generalise on this account. Therefore, while still retaining a "game-theoretic" account of rationality, the participant cannot

rationalise the principles in accordance with a specific end (TJ, 123). A rational person within the original position is:

... thought to have a coherent set of preferences between the options open to him. He ranks these options according to how they further his purposes; he follows the plan which will satisfy more of his desires rather than less, and which has the greater chance of being successfully executed (TJ, 124).

The participants within the original position thus generalise the idea that they all hold conceptions of the good in order to arrive at those principles that will give them the greatest chance of achieving their conception of the good - whatever that conception of the good turns out to be. The "reasonableness" of citizens in a well-ordered society is thus contained in the decision procedure itself, rather than in the participants. Because of the veil of ignorance, rational representatives within the original position must take all possible conceptions of the good into account. Their lack of knowledge about their own conception means that they are unable to choose principles which may point to the successful achievement of a particular conception of the good while being disadvantageous to others.

The participants within the original position do not represent a literal interpretation of actual persons. In conjunction with Rawls's method of "ideal theory" representing "realistically utopian" conditions for the development of a conception of justice, the participants represent an "artifice of reason" which allows us to theorise a conception of justice. They are representatives of the citizens in the "well-ordered society" who choose the principles which they believe the persons they represent would find acceptable as free and equal moral persons.

Later in *Political Liberalism*, Rawls introduces a number of changes regarding the rationality of the participants in the original position, while maintaining the basic structure of the procedure of justification as constructed in *A Theory of Justice*. Between participants in the original position and citizens in the "well-ordered society" exists a distinction between their

autonomous natures. Citizens of the well-ordered society are conceived as fully autonomous, in a way that participants in the original position - who are merely rationally autonomous - are not. "As merely rationally autonomous the parties are but artificial persons we fashion to inhabit the original position as a device of representation" (*PL*: 75). Participants in the original position are said to be rational insofar as they have the capacity to develop, change and act on a conception of the good - though as per the constraints of the veil of ignorance they do not know the specificities of their own conception. Given the "reasonable constraints" set in place by Rawls's veil of ignorance, participants in the original position also have the power to deliberate with others on the issue of which principles would best secure the agreement of those citizens in the well-ordered society. The original position is said to model the deliberations of those participants in such a way that they match with the rationality of citizens in the "well-ordered society". Further, Rawls considers participants as "rationally autonomous" in two specific ways. First, rationally autonomous participants "recognise no standpoint external to their own point of view as rational representatives from which they are constrained by prior and independent principles of justice" (*PL*: 73). For Rawls, this is analogous to the way in which citizens, when situated in relation to others, would specify the conditions under which the fair terms of cooperation could take place with recourse neither to a metaphysical or transcendent outside authority nor prior independent values garnered through rational intuition. Participants are rationally autonomous insofar as they regard only their own advantage in relation to the conditions which specify terms of cooperation. Second, Rawls specifies that participants in the original position have higher order interests and are able to recognise that others have higher order interests. These higher order interests include an interest in developing to an adequate degree the conditions of responsible agency and social cooperation as well as an interest in obtaining an adequate supply of primary goods (Freeman 2007: 159-160). Primary goods in this context refers to those social means which are necessary to be able cohesively to develop and



exercise the two moral powers. They are the goods that any rational person ought to want in their active pursuit of a conception of the good, whatever that conception may be.

The capacity to develop the two moral powers outlined above is a substantive element of Rawls's conception of persons as rationally free and equal. If persons were unable to develop a capacity for reasonableness then social cooperation could not take place. As such, it is an aspect of the representative parties' "rationality" that they configure principles of justice that will accord with the development of a sense of justice under the conditions specified by the well-ordered society. If this capacity is unable to be developed, it is unlikely that such a person would be unable to participate cooperatively within society. As Freeman writes: "If others are not convinced that you are capable of understanding laws and other norms of justice, applying them, and complying with their demands, they will be unwilling to cooperate with you in any enduring relationship" (Freeman 2007: 151). As such, it is in the higher order interest of participants within the original position to recognise the importance that developing a sense of justice has in relation to participating in a society of fair cooperation. For Freeman: "Whereas the principles of rational choice provide formal structure, the higher order interests provide substantive content to Rawls's account of rationality and the good" (Freeman 2007: 152).

With the moral powers of the participants in the original position so understood, we are now in a position to consider what principles would be chosen under the constraints of the original position. Not only those parameters situated within the epistemic lack behind the veil of ignorance, but also those parameters that deem the forms of knowledge available to the participants: their higher order interests and their moral powers.

For Rawls, the two principles of justice would (1) ensure equal protection of an individual's liberties within the well-ordered society and (2) be protected from the risks of

disadvantageous circumstances that arise from the lottery of birth. Rawls thus specifies the two principles as follows:

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all (*TJ*, 53).

The principles, so stated, are arranged so that the first principle, that of equal basic liberties is given priority over the principle of fair equality of opportunity and the difference principle. For Rawls, "the claims of liberty are to be satisfied first ... The precedence of liberty means that liberty can be restricted only for the sake of liberty itself" (*TJ*: 214; *cf PL*: 295). These principles, as stated above, apply to the basic structure of society and so govern the distribution of rights, duties and obligations of the citizens within the well-ordered society and regulate the distribution of social and economic advantages. Importantly, as we shall see below, I take issue with the contention that the basic structure determines the distribution of such things as rights and duties. Following Todd May, I suggest that this turns citizens of the "well-ordered society" into passive agents of political discourse. That is to say, those citizens who take part in the "well-ordered society" do not participate. More forcefully, they are *unable* to participate in such distributive acts as subjects, but are instead the objects of distribution; they are not the enactors of their own rights. This is, of course, a controversial stance, given that Rawls articulates repeatedly that the citizens in the well-ordered society have veto powers to renegotiate principles if their basic structure starts to act unjustly. However, my concern is not over the "justness" of the basic structure itself; my concern is over the ability of citizens to be fully recognised as political actors in the distributive practice. I will develop this concern in later in the chapter with reference to Rancière's contributions to political philosophy, as outlined in chapter one.

Another problem arises in Rawls's consideration of the principles of justice. In *A Theory of Justice*, Rawls argues that - by the very nature of the conditions of the original position - all citizens within the well-ordered society would accept the same two principles that would regulate the basic structure of society. He states: "unanimity is possible; the deliberations of any one person are typical of all" (*TJ*: 232). This is in keeping with a Kantian interpretation, though it problematically recreates the monological decision procedure represented in Kant's moral theory - a procedure which Jürgen Habermas has heavily criticized. Before outlining the principles that are chosen, I want to explore this monological problem.

Rawls seems to admit this monological underpinning of his justificatory procedure when he writes that "we can view the agreement in the original position from the standpoint of one person selected at random" (*TJ*: 120). A concern that arises from this is that it seems that the principles of justice can already be intuited before any deliberative decision procedure has actually taken place. If the "general facts" of society are known and presumed to be agreed upon, and any participant in the original position - given what they know, and what they do not know - would choose the exact same principles, then there doesn't seem to be space for any participant to engage in an actual discursive procedure through which principles are to be chosen. The theorist (in this case Rawls) simply assumes what he thinks the participants would choose. If Rawls is looking to develop a democratic procedure sustained by the universal-egalitarian moral claims underpinning such a procedure, then the pre-emptive decision of which principles are to be chosen, from the point of view of the emancipation paradox, seems to contradict this goal. There is no need for a deliberative procedure, if the principles themselves can already be intuited from a transcendental standpoint (though Rawls would reject such language). Furthermore, even if Rawls's lone participant in the original position - just like Kant's moral decider - knows the details of all available alternatives, it does not seem like a democratically reasonable form of decision-making, in stark contrast to Rawls's egalitarian

intentions. We can, from this position, already begin to locate the places in which Rawls's egalitarian ethos is twisted into an account of *parapolitics* in which disagreement on the principles of justice is unable properly to take place given the constraints on disagreement presented by Rawls. The procedure of justification, implicitly cancels out the ability of all persons - whose disagreements arise outside of the parameters of the procedure - not only to have their disagreement heard, but, more importantly, to have their disagreement understood. In the original position, this means that certain disagreements about the nature of the principles would not be identified and therefore could not be represented, even when those constraints are lifted in the "well-ordered society". The procedure of justification, as it is constructed, begins the process of closing off politics within the "well-ordered society" by the implicit pre-emptive decision of the principles of justice before any open deliberation can take place. The egalitarian ethos by which all are involved by virtue of their place as a member of humanity is thus undermined by Rawls's monological conditions. The equal access to all, in the process of deliberation implied in Rawls's Kantian interpretation, is undermined by aspects of the procedure of justification which do not allow some equal members to speak. In the remainder of this chapter, I will entertain this critical perspective more directly in relation to the principles of justice and the basic structures of society.

### **The principles of justice and the closing off of politics**

In the remainder of this chapter, I will develop the critical perspective, based on Rancière's contribution to political philosophy, that I have already applied to Kant in the previous chapter. The aim of taking this critical perspective is twofold. Firstly, we are able to identify the egalitarian ethos that is implicit in Kant's notion of autonomy, and how this egalitarian ethos is pursued by the various interpretations of this conception of autonomy found in the work of

Rawls, Habermas, and Forst. By identifying this egalitarian ethos in the various interpretations I suggest that Immanuel Kant, John Rawls, Jürgen Habermas, and Rainer Forst similarly presume the equality of intelligences that Rancière himself identifies. More specifically, the Kantian notion of autonomy identifies, as I see it, the capacity of all human beings *qua* humanity to be rational and autonomous; in Kantian terms, autonomy means to have the capacity to be co-legislators in political and moral discursive practices. This can be similarly transformed into the idea of recognition of all members of humanity being equal speaking beings. For Rancière, the equality of intelligences, understood through the presupposition of equality that takes place in discursive practices, is that which constructs the social order, which allows the social order to exist. Everyone is equal, in the sense that we can all understand what everyone else is saying, and what they mean in their utterances. Without this presupposition of equality the social order would be built merely upon brute physical force. Furthermore, this equality is a necessary presupposition of the various Kantian interpretations of autonomy - two of which have already been explored. The second element of this critical perspective is in the identification of a problem - which I have called the *emancipation paradox* - in which the equality of communication becomes the foundation of an inegalitarian procedure of justice which derives the rationality and autonomy of participants and places it within the major institutional structures of society. In doing so, I argue, the normative philosophers I am examining in this thesis evacuate politics from the social order, turning their "well-ordered societies" into *parapolitics*. The first aspect of this critical perspective has already been developed above. In the remainder of this chapter, I will turn to developing the second part of this critical perspective. First, I will examine how the principles of justice seem to accord an agential character to the basic structure of society which closes off the possibility of political disagreement, in the sense discussed in chapter one. That is, the principles of justice seem to

preclude political disagreement, as an irruption of the current status quo, and the constitution of a new identity that could not be previously recognised before.

At the end of the previous section I briefly outlined those principles of justice that Rawls thought ought to be adopted, given the limiting conditions of the original position and the participants who take part in the justificatory procedure. According to Rawls, the principles chosen in the initial situation should (1) ensure the most extensive, non-contradictory scheme of liberties for individuals within the well-ordered society and (2) ensure that economic and social inequalities are arranged so that they are (a) to the greatest benefit of the least advantaged and (b) that there be fair equality of opportunity (*TJ*: 266). Further, as Rawls tells us in *A Theory of Justice*, these principles would be chosen unanimously among the representative parties within the original position, and could be considered to be agreed to unanimously by citizens in the well-ordered society. In the following I will address the exact nature of the principles of justice as well as Rawls's theories about how they may come about.

The first principle, as I believe is clear, is formulated so as to provide the protection and distributions of certain liberties that are held by the citizens within the "well-ordered society". The equal access and protection of these liberties - such as the right to vote and hold public office; freedom of speech and assembly; liberty of conscience; the right to hold property; and so on - are understood to have lexical priority over the other principles of justice: "this ordering means that infringements of the basic equal liberties protected by the first principle cannot be justified, or compensated for, by greater social and economic advantages" (*TJ*: 54). This is to insure that no one who may be at a socio-economic disadvantage is able to trade their basic liberties for financial gain. Everyone, as a "citizen" of the well-ordered society, has equal access to and protection of these liberties. They guarantee the equal ability of persons to participate in political discourses without fear of exclusion. Even if questions arise from giving priority to individual freedoms over popular sovereignty (questions which will be explored in the next

chapter when I turn to Habermas's contribution, as well as to the idea of a "distribution of rights"), Rawls's principle of equal basic liberties strongly presents an account of the egalitarian ethos which I have assumed is one of the motivations behind Rawls's conception of justice. Not only does this principle ensure the basic liberties of citizens, it significantly presupposes the capability of citizens to take part in political discourses as equal speaking beings. The problems I identify regarding the undermining of the egalitarian ethos inherent in the Kantian notion of autonomy, and the evacuation of politics that takes place in Rawls's account of justice, are chiefly associated with the second principle.

The second principle attends to social and economic inequalities. Given the scarcity of natural resources, Rawls states that it is unlikely that everyone will have equal access to those resources. As such, the second principle attempts to ensure that no one is largely disadvantaged by the general distribution of socio-economic goods in the "well-ordered society". Firstly, it prescribes that socio-economic disadvantages be distributed so as to be to the greatest benefit of the least-well off, without undermining anyone's advantage. Secondly, it prescribes that legal, social and economic administrative positions are open to all. The second element - which Rawls calls the fair equality of opportunity principle, or the "principle of open positions" - restricts totally the assigning of certain roles, powers and benefits to persons where others are excluded therefrom. While Rawls suggests that there may be some circumstances in which it is to everyone's advantage to place certain restrictions of access to positions and offices, such a situation would be unjust. For Rawls:

They would be justified in their complaint not only because they were excluded from certain external rewards of office but because they were debarred from experiencing the realization of self which comes from a skillful and devoted exercise of social duties. They would be deprived of one of the main forms of human good (*TJ*: 73).

As Rawls makes clear, the fair distribution of disadvantage, while making sure that persons within the well-ordered society are reasonably accounted for in terms of socio-economic matters, also reasonably accounts for someone's self-respect. As he writes later in *A Theory of Justice*, "A person tends to be more confident of his value when his abilities are both fully realised and organised in ways of suitable complexity and refinement" (*TJ*: 387). Rawls recognises the importance of a social basis of self-respect as an appropriate need for citizens as free and equal persons (*PL*: 180). Extravagant differences in income and opportunity can have a detrimental effect on the conditions of interaction that persons may experience in society. However, it must be made clear that a distributive framework cannot attend to the feeling of social isolation that may occur even when distribution favours those most at risk of political and social isolation. The conditions of self-respect require an active participation within political and social life. Following Todd May, I question the conflation of "equal consideration" and "equal rationality" which seems to arise in Rawls's reckoning of these issues. While an equal consideration of the effects that social isolation may have on participants in the well-ordered society may be addressed through a framework which fairly distributes disadvantages so that they are to the benefit of those who may go through undue social and economic marginalization (due to, inter alia, the lottery of birth), such equal consideration does not seem to recognise the "equal rationality" which is important for the egalitarian ethos that, as I have been arguing, underpins Rawls's theory of justice. I will return to this matter below, but for now I wish to note that the participation within an active political and social life (requiring "equal rationality" at a fundamental level) becomes a secondary concern in favor of "equal consideration". For Todd May, this gives credence to the idea that Rawls evacuates autonomy from the actual citizens of the well-ordered society, and as such, as I have argued, the "well-ordered society" produces docile, "passive" citizens who are unable to think for themselves, despite their presumed status as equal, autonomous, speaking beings.



The first element of the second principle further accentuates this problem. The difference principle specifies that social and economic advantages must be to the benefit of the least-well off. Rawls remarks that "... the difference principle is a strongly egalitarian conception in the sense that unless there is a distribution that makes both persons better off, an equal distribution is to be preferred" (*TJ*: 66). As Rawls writes somewhat differently in *Political Liberalism*, though the general thrust of the point remains: the principles "express the idea that no one should have less than they would receive in an equal division of primary goods, and that when the fruitfulness of social cooperation allows for a general improvement, then the existing inequalities are to work to the benefit of those whose position has improved the least, taking equal division as the benchmark" (*PL*: 284). To summarise: the difference principle prescribes that social and economic inequalities are to be arranged so that they can reasonably be expected to be to everyone's advantage. Against those who consider the "difference principle" to be in-egalitarian, such as Leonard Choptiany (1973), or is easily "hijacked" by right-wing libertarian economics, as Mark Reiff (2012) has claimed; the idea is ostensibly egalitarian. In fact, many theorists have considered the difference principle to be compatible with more radical egalitarian frameworks, including socialism, the work by Jeffrey Reiman (2012) and Ian Hunt (2015) being two recent examples. The difference principle requires that any mechanism that shifts the distributive efforts of social goods among the population must adhere to the rule that it does not make anyone worse off than they were before the shift in distribution. What is implied in this position is that the distribution of social and economic goods should be to the advantage of the least well off, without imposing distributive losses on the most well off. According to the emancipation paradox, then, how is the difference principle problematic? What seems to be advocated in Rawls's formula is a radical egalitarian position allowing for all free and equal persons to benefit from the basic structure of society. Having outlined the

principles and their effects, I will now outline how Rawls views the implementation of these principles.

Rawls produces what he calls the “four-stage sequence”. As Samuel Freeman writes, the four-stage sequence provides “a reasonable ‘decision procedure’ of sorts for applying the principles of justice ... by extending the basic idea of the original position via a series of hypothetical deliberative procedures ...” (Freeman 2007: 201). Rawls prescribes that, in applying the principles of justice to the basic structure of society, citizens within the well-ordered society must consider three kinds of judgments. First, citizens must judge whether or not the legislation and social policies that are derived from the application of the principles of justice to the basic structure of society are just; second, given that their opinions may not coincide with the opinions of others, citizens must also consider which “constitutional arrangements are just for reconciling conflicting views of justice” (*TJ*: 171); and third, citizens within the well-ordered society must consider the grounds and limits of political duty and obligation. While at first glance it may seem that these considered judgments contradict my assertion that the conception of justice introduced by Rawls evacuates politics from the social order insofar as the principles attribute agency to the basic structure, my claim here is more nuanced. As I have suggested above, I believe Rawls’s principles of justice do indeed take on board the egalitarian ethos at the heart of Kant’s notion of autonomy, as interpreted by Rawls. My problem lies in the actual implementation of this notion as grounding the basic structure of society. Before taking up this problem, I want to be more clear about what the principles of justice are actually ensuring, and how they are implemented through the considerations of citizens.

Rawls’s sequence of stages offers a device by which the principles of justice are implemented, not an actual account of the conditions by which constitutional and legislative procedures arise. The first stage, represented by the procedure of justification that is the original position, outlines how the principles of justice are to be chosen in respect of the

constraints that Rawls believes constitute a fair and impartial system of justification. The second stage moves from the original position to a deliberative procedure over the choice of a constitution. At this stage, the constraints put in place in the original position are partially lifted to allow delegates to "know the relevant general facts about their society, that is, its natural circumstances and resources, its level of economic advance and political culture, and so on" (*TJ*: 173). With this arrangement in place, and with new knowledge available to the delegates not available in previous deliberation over the conception of justice, delegates are now, according to Rawls, in a position where they can choose the most effective just constitution: "the constitution that satisfies the principles of justice and is best calculated to lead to just and effective legislation" (*TJ*: 173). To put it another way, at this "constitutional stage" (Freeman 2007: 203), delegates choose a constitution that could be agreed upon by rational delegates who are considered to be free and equal moral persons. As Freeman goes on to say, "the primary purpose of constitutional deliberation is to put into place constitutional rights and procedures that specify and protect the equal basic liberties" (Freeman 2007: 205). This follows from the explicit priority that the security of basic liberties for individuals are to be given above the establishment of any principle of equal opportunity, or advantages to the benefit of the least well off. As Rawls writes, "The first principle of equal liberty is the primary standard for the constitutional convention. Its main requirements are the fundamental liberties of the person ..." (*TJ*: 174-5). The priority of the first principle - equal access to basic liberties - is thus reflected in the priority of the constitution over laws and policies that will reflect the constitution.

At this stage, the agency of the political actors still seems to be more important than that the agency of the basic structure. However, above I showed that the basic structure acts in such a way that political agency is no longer required on the part of the actual citizens in the "well-ordered society". At this point in his application of the principles of justice Rawls reveals that a perfect procedural justice is unobtainable:

... there is no scheme of procedural political rules which guarantees that unjust legislation won't be enacted. In the case of a constitutional regime, or indeed of any political form, the ideal of perfect procedural justice cannot be realised (*TJ*: 173).

On this point, we find Rawls and Rancière in broad agreement, but for different reasons. For Rancière, the attempt to realise a perfect procedural justice would evacuate fully politics from the social order. This is not a *parapolitics* which just subsumes politics within the remit of the basic structure of society, but a platonic *Archipolitics* (see chapter one), a conception of *policing apparatus* which accounts for all, without remainder. On Rancière's reading, *politics* is unable to perform, or disrupt, because there is no place for it to disrupt. Drawing on the force of a non-metaphysical conception of justice, Rawls argues that a perfect procedural account of justice is unrealisable because it requires an independent criterion defined separately from the procedure of justification (*TJ*: 74). However Rawls still problematises the place of politics by understanding the "disruption" which politics brings forth to occur entirely within the boundaries of the basic structure of society. Following Rancière's critical perspective, my claim is that Rawls evacuates politics from the social order by implementing it into basic structure of society – which Rancière calls the *police*.

The third stage in the sequence of implementation is described by Freeman as the "legislative stage". In the legislative stage the requirements dictated by the principle of fair equality of opportunity and the difference principle are applied. As Rawls writes,

The justice of laws and policies is to be assessed from this perspective. Proposed bills are judged from the position of a representative legislator who, as always, does not know the particulars about himself (*TJ*: 174).

The constraints placed on the legislator follow in the path of the fairness that is supposedly derived from the procedure of justification. In not having any particular knowledge about himself, the legislator is unable to develop laws and policies which would be to his unfair

advantage. Then, according to the second principle, laws and policies ought to be aimed at being to the greatest benefit of the least advantaged, subject to the priority of basic liberties. Within this stage, knowledge of the general economic and social facts concerning their particular historical construction are brought to bear on the legislators.

The final stage of the sequence concerns "the application of rules to particular cases by judges and administrators" (*TJ*: 175). At this point, the veil of ignorance is lifted entirely and everyone has complete access to the facts which shape their society. Now the principles of justice in tandem with the constitutional and legislative requirements already chosen (under an amended original position of epistemic lack) provide specific prescriptions for the actions that Institutions and individuals can take in particular cases. "It is the stage at which we finally learn the specific actions we are obligated to perform under the principles of justice and the constitutions and laws that satisfy them" (Freeman 2007: 208).

Rawls does not take this sequence of stages to be an exact understanding of how the conventions of constitutional agreement and legislation actually come about. Rather, the stages, according to Rawls, allow us to look at how different problems arise, and the best and most practicable way to attend to those problems. In this case, we are still within the format of a "realistic utopian" procedure of justification. However, despite the egalitarian ethos still presumably being embedded in this realistic utopian model of the development of a conception of justice, significant problems arise.

Todd May has questioned the extent to which this agency of citizens in the "well-ordered society" is practiced. This procedure of justice is justified by an appeal to equality represented in the veil of ignorance. The veil of ignorance imposes two forms of equality on the procedure. First, it is required that the participants behind the veil of ignorance take all applicable positions into account. Second, the participants behind the veil of ignorance are

themselves equal to one another, “uncontained by the particular interests or resources any of them happens to possess” (May 2008: 10). May calls these forms “equal consideration” and “equal rationality” respectively. As May notes, while “equal rationality” propounds the active participation of persons, it is “equal consideration” that becomes the primary aspect of Rawls’s procedure of justice: “The act of choosing becomes secondary in the face of the principles that are chosen; and thus the active equality bound up with choosing the principles is overtaken by the passive equality of receiving equal consideration” (May 2008: 10). With this description, May shows how Rawls, despite recognising the agential nature of citizens to be able to contribute to political discourses regarding the conception of justice, attributes this agency to basic structure of society, thereby limiting the ability of citizens to present certain avenues as unjust. The citizen is no longer required to be a “political agent” once the participants in the procedure of justification come to agreement on “equal consideration”. The consequence of this position is that unjust actions may occur if it is considered to be within the reasonable remit of equal consideration.

May’s criticisms resonate with Miriam Bankovsky’s (2012). For Bankovsky, in Rawls’s determination to show how the principles of justice are applied to the basic structure, Rawls admits “that laws enacted under a just constitution can nonetheless be unjust if they deviate from the principles. This does not mean, however, that we should take it on ourselves to actively oppose their injustice” (Bankovsky 2012: 80). For Rawls, an injustice is allowable insofar as it does “not exceed certain limits of injustice” (*TJ*: 308). Rawls only ever contends that he is attempting to provide a realisable and practicable interpretation of a conception of justice based on the Kantian notion of autonomy. That is to say, an imperfect procedure. Hence injustices are to be expected. For Bankovsky, the critical question is:

At what point does the duty to comply with laws enacted by a legislative majority (or with executive acts supported by such a majority) cease to be binding in view of the right to defend one’s liberties and the duty to oppose injustice? (Bankovsky 2012: 82; *TJ*: 319)

Rawls, as is known, restricts the ability of citizens to question unjust laws to those laws that are "serious infringements of the first principle of justice ... and to blatant violations of the second part of the second principle: the principle of fair equality of opportunity" (*TJ*: 326). While Rawls believes that socio-economic injustices can be regulated through normal political processes, Bankovsky contends that such restrictions lead to the inability of contesting socio-economic injustices. As she writes, "The socio-economic injustice to which permanent minorities submit tends to go unscrutinized both by the majority and courts alike, precisely because the basic liberties and some form of weak equal opportunity principle continue to be upheld" (Bankovsky 2012: 84). While I am sympathetic to Bankovsky's critical perspective, I propose that the attempt to derive the "undecidability" of the justificatory procedure presented by Rawls fails to address some problematic occurrences within Rawls's position. Bankovsky recognises that while minorities often have access to the basic liberties accorded by the first principle, they often miss out on materialistic equalities for the very reason that their basic liberties are accounted for. However, this points, I suggest, to a much more serious problem concerning the notion of equality within Rawls's procedure of justice. Drawing on the Rancièrian perspective provided in chapter one, we can begin to see that the very claims to injustice are not only ignored but unable to be recognised in the first place. This is a more crucial problem than just a lack of scrutiny of the proposed injustices. It indicates a denial of the equal autonomy of citizens to participate in the political process, effectively undermining the egalitarian ethos that Rawls wants to implement in his conception of justice. Rawls does not intend this, of course. It is simply an effect of quarantining disagreement to take place only within the major institutions of society.

## Rawls and the evacuation of politics

In the previous section, I suggested that the way in which Rawls attempts to realise the practicable force of the principles of justice within the basic structure of society implicitly evacuates politics from the social order. In this section, I will resume this critical approach, showing how this evacuation takes place by drawing on the considerations of political philosophy developed by Jacques Rancière. We can identify two problems that this critical approach unveils. First, there is the problem of Rawls's theory of justice as a *parapolitics*. Second, there is the problem that Rawls's theory of justice implicitly excludes forms of disagreement by establishing the parameters for what is considered to be "disagreement".

As outlined in chapter one, in *Dis-Agreement: Politics and Philosophy* Rancière theorises three ways of evacuating politics from the social order. Politics is, as I suggested in chapter one, a disruption of the status quo constituting a new identity that was not previously recognised as such, within the context of the universalistic understanding of equality and autonomy. *Politics*, in Rancière's terminology, reconfigures the "distribution of the sensible" - what can be thought and said - and as such brings new identities into the fold of universal moral recognition that were not previously understood to be capable of those abilities often recognised as moral powers. Therefore, evacuating politics means properly to account for all possible identities that could - or will ever be able to - be recognised within a universalistic theory. Of the three ways of removing politics, the one I focus on is *parapolitics*. Parapolitics, according to Rancière, initially arises in Aristotle's attempt to reconfigure Plato's political order, and is further extended by Hobbes. In the history of philosophy that Rancière has constructed, we can see a further development with the introduction of Rawls's theory of justice. As Rancière states, with Hobbes in mind: "Modern parapolitics begins by inventing a specific nature, an 'individuality', strictly correlating to the absolute of a sovereign power that must exclude quarreling between fractions, quarreling between parts and parties" (Rancière 1999: 78). Rawls advances this



position, as do most normative political philosophers, by substituting the "absolute sovereign" with a democratic constitutionalism consisting of the consensual agreement between individuals, as authors of their intuitions. While this substitution seems to suggest a move towards a more egalitarian and "active" participatory practice, this is not in fact the case. As Todd May succinctly writes, recalling political philosophers such as Robert Nozick and Amartya Sen, among others:

What each asks of the *demos*, of the people who are its objects, is that they ratify an order that distributes the social goods or the conditions for obtaining or realising those goods without necessarily participating in that distribution ... Each, in its own way, embraces the concept of equality whose price is to be its recipient rather than its creator (May 2008: 46).

Regarding Rawls's project, what we can say? Simply that, while Rawls is committed to equality of "citizens" within the well-ordered society, as motivated through the Kantian notion of autonomy, this commitment is undermined by the basic structure of society, and the procedures and justifications which put them in place. For Rawls, the procedure of justification carries the realisable and practicable egalitarian ethos at the heart of Kant's notion of autonomy. It distributes equality. For Rancière, by contrast, it verifies equality. In Rawls's project, the agency of political actors only goes so far as to give formal consent as to their own reduction as objects under the basic structure of society. Unbeknownst to Rawls, the procedure of justification, structured as it is on Kantian autonomy which contends the equal rational ability to participate in discursive practices aligning to political and moral matters, actually undermines this very autonomy. It does so by implicitly having the representative parties deliberate and come to agreement on principles which in the end will regard "citizens" not as active participants in a constitutional democracy, but as recipients of the primary goods that constitutional democracies are set up to ensure.

The second problem is that some claims to justice and equality are unrecognisable in Rawls's framework. I have suggested above that a variant of this problem is already identified by Miriam Bankovsky in her criticism of Rawls in *Perfecting Justice in Rawls, Habermas and Honneth* (2012). As stated above, I am sympathetic to Bankvosky's argument. If Rawls is to provide an egalitarian theory of justice - which properly accounts for all as free and equal moral persons - then all must have the capacity, within society, to make demands against felt injustices, whether or not those injustices are clear infractions against the conception of justice that holds in that particular social order. From the critical perspective that I have developed in this thesis, the emancipation paradox arises. Despite recognising citizens as free and equal persons with the moral powers of rational autonomy and a sense of justice, Rawls excludes their claims to justice which are not immediately recognizable as such claims. This theory therefore implicitly brands such claims as unable to be accounted for, as in the Aristotelian sense of *phône*: merely claims against painful experiences. On the one hand, an egalitarian ethos explicitly presumes the capacity of autonomous and rational beings to make demands for and against others in relation to just treatment; on the other hand, the parameters by which the social order is constructed ignores such explicit equality.

Bringing together these two problems - the political actor as "recipient"; and the inability of some to claim the justness available to all - we can see that the egalitarian ethos inherent in Rawls's Kantian theory of justice begins to fall in on itself.

## **Conclusion**

Rawls conceives of the basic structure of society in such a way that it seems able to identify and regulate inequalities that arise over time. In doing so, Rawls eliminates the need for active political agents, reducing their position to one of passivity. This form of theorising therefore can be said to attempt to close off politics, by reducing political engagement to the rule of the

administration and the procedure of distribution. To use the words of Rancière, it can be said to be “transforming the actors and forms of action of the political conflict into the parts and forms of distribution of the policing apparatus” (Rancière 1995: 72). This passivity is exemplified by the foundations of Rawls’s theory of justice.

Referencing the work of Todd May, Susan Okin and Miriam Bankovsky, I have shown that this passivity is symptomatic of a larger problem: *the emancipation paradox*, which denotes the contradiction that occurs when a theorist describes equality as a condition which is available to all, and which all have the capacity to enact, but only on the proviso that they follow a set of normative ideals set out by the theorist himself. This undermines the theory’s very egalitarianism. By setting up this relationship between himself as the political philosopher and the political subjects to whom his work is addressed, Rawls in effect reiterates the platonic gesture according to which everyone belongs to a particular space in society set apart from all other spaces, and politics is only about the proper management of these spaces.

At the end of her essay on Rawls, Lisa Schwartzman writes that Rawls, in the way he conceptualises “equality”, considers it a matter to be solved “only after individuals are socially situated in various different positions, as though the positions themselves were not sociopolitical creations” (Schwartzman 2006: 41). This seems odd given Rawls’s ongoing claims, throughout his corpus, that everyone has an innate sense of freedom and equality, at least to the minimum degree required to hold a conception of the good. However, when we look at Rawls’s attempt to situate this conception of persons within a political framework, we can see that holes begin to appear in his project. Rawls attempts to set up “just” institutions that delegate to each and every person their equality. In doing so, his theory undermines their ability, as equals, to engage in political participation, and to make claims against injustices.

# Habermas and discourse ethics and the subject of communication

## Introduction

Rawls's attempt to provide a realisable and practicable interpretation of Kant's notion of autonomy by developing it within an empirical framework ultimately fails to bridge the gap between principles of justice and their realisation. As I showed in the previous chapter, Rawls's attempt to realise these principles within the basic structure of society ends up closing off politics, in the sense understood by Rancière as overcoming current distributions through the introduction of a previously unthought-of identity, and subsuming claims of injustice to only those that may occur within the parameters set by the basic structure.

A similar critique was proposed by Jürgen Habermas in his debate with Rawls (see *IO*: 49-104; *PL*: 372-433 for Rawls's response). For Habermas, the procedure of justification which Rawls develops in *A Theory of Justice* and then expands in *Political Liberalism* does not take into proper account those forms of injustices which may fall outside the majoritarian viewpoint implicitly established in Rawls's account of justice (Habermas 2005; cf Bankovsky 2012). In contrast, Habermas offers a "more open procedure of an argumentative praxis that proceeds under the presupposition of the 'public use of reason'" (*IO*: 59). For Habermas, the Kantian conception of autonomy which underpins the moral claims at the heart of Rawls's theory are already implicit in relations of reciprocity and the presuppositions of communicative practice. The job of the theorist is then to reconstruct the moral claims embedded in everyday communicative practices. This debate can be said to revolve around the best way to interpret Kant's notion of autonomy in a realisable and practicable way. For Habermas, this means renegotiating the Kantian notion of autonomy in such a way which reintroduces the universal standards of validity by which justification of norms can take place.

In this chapter I will explore Habermas's own attempt to provide a realisable and practicable account of Kant's notion of autonomy. Through what he calls discourse ethics, Habermas provides us with another set of methodological procedures which, for him, illustrate the way that Kant's notion of autonomy can be embedded in those institutional structures which regulate our common lives. While I am more sympathetic to the intersubjective framework that Habermas introduces through his critique and reconstruction of Kant's moral theory, similar problems arise in Habermas's application of this reconstruction in his work on law and democratic theory, resulting in paradoxical applications of autonomy and equality. Drawing on the critical perspective developed from Jacques Rancière's contributions to political philosophy, I will once again show, as I did in previous chapters regarding Kant and Rawls, that Habermas's implementation of his conception of justice close off politics. As I will show, Habermas's attempt to contain politics within the major institutions of the basic structure of society has the consequence of determining which claims for justice are recognisable. This, I argue, creates paradoxes of equality. Those whose demand for justice lies outside the parameters of the basic structures and procedures implemented by Habermas cannot be heard, or indeed understood, and are thus ignored. This undermines the egalitarian ethos at the heart of Kant's notion of autonomy which presumes the force of Individuals to participate in political and moral discourses as equal speaking beings and as such to have their claims heard. This critique of Habermas intersects with contemporary critiques by Amy Allen (2008) and Axel Honneth (1995). In her book *The Politics of Ourselves* (2008), Amy Allen has developed a critique to show that Habermas's account of discourse is unable adequately to account for the way in which power is mediated within the lifeworld. For Allen, the place of power in the lifeworld does not seem to follow the egalitarian ethos on which Habermas's project is based. In short, it does not allow for free and equal interactions between discursive participants, which provide

the core mechanism of emancipatory politics, since this is the mechanism by which valid claims of justice can be heard (Allen 2008).

Similarly, Axel Honneth, in an early critique of Habermas, argued that that the normative procedures developed by Habermas are unable to take into account those locally situated forms of morality that arise in everyday practices within, specifically, the working class (Honneth 1995b). Problematically, Habermas's attempt to implement a universalistic notion of autonomy based in part on intersubjective procedures cancels out the ability of some autonomous persons to realise their equality because their claims to justice are ignored, precisely because the normative structure that Habermas constructs does not allow for such demands to be heard. In Allen's more recent criticism of Habermas (Allen 2016), she takes up the problem that Habermas's attempt to implement normative procedures ignores those morally-situated practices that occur outside a Eurocentric perception of the world. Examining the normative standards that define our current political and moral progress, Allen argues that Habermas takes this "progress", in both its historical and moral understandings, to be a "fact" of human development premised on particular western historical and social developments. What these critiques have in common, I argue is that they all point to the failure of Habermas properly to differentiate between the autonomy of social subjects and the autonomy of social systems. As such, Habermas is unable to yield, in his theory of justice, an account of the autonomy of Individuals acting apart from that of the social system. Furthermore, situated within the framework of my own critical perspective - developed in accordance with the work of Jacques Rancière's contributions to political philosophy - this results in the closing off of politics. The standards underpinning the basic structure of society that Habermas attempts to implement, as well as the procedure of justification that allows him to arrive at this position, together exclude particular claims to justice and thereby implicitly undermine the egalitarian ethos at the heart of his reconstruction of Kantian autonomy.

Similar arguments have also been put forward by Lasse Thomassen (2007) and Miriam Bankovsky (2012). In his critique, *Deconstructing Habermas*, Thomassen views the rational discursive procedure of justification that Habermas proposes as unable to fulfill the radical egalitarian ethos which motivates Habermas's own theory. For Thomassen, "the notions of rational consensus, and by extension, rational discourse are marked by an aporia: the end *of* communication is simultaneously the end *to* communication" (Thomassen 2007: 41). What Thomassen wants to suggest is that the ability of rational actors to come to consensus on moral and political actions also closes off the ability of further communication to take place. While this bears some similarity to my own account in which Habermas's discourse ethics closes off the possibility of politics, I believe Thomassen, though he denies this, ends up implicating within the *end of communication* a Derridean impossibility of communicative action.

Using a similar deconstructive method, Bankovsky argues that Habermas's attempt to deliver the perfectibility of deliberative outcomes leads him to admit that the real or realisable discursive procedures may never come into effect. Bankovsky, who also draws her critical perspective from Derrida and explicitly builds on Thomassen's critique, writes: "Habermas ... makes important concessions to his theory, which in effect defer the resolution of justice's demands to a future moment" (Bankovsky 2012: 142). While this has similarities with the critique I have made of Kant, in chapter two, where the emancipatory moment is always deferred because of a supposed epistemic deficit in those who need to be emancipated, Bankovsky's own commitment to this impossibility seems to suggest that the emancipatory moment is always and forever deferred. However, if we take seriously Rancière's comment that there are good and bad conceptions of *police*, then the problem, as I see it, is not the perfectibility of justice, or the impossibility of that perfectibility, but rather what *ought* to be considered justice based on the egalitarian motivation of the Kantian principle of autonomy. To put it another way, the perfectibility of justice is already known to us through this principle of

autonomy and its inherent egalitarianism, and therefore the problem is in the proper implementation of this principle which does not, implicitly, undermine such egalitarianism. This is not then a question of the binary opposition between possibility and impossibility, but rather a question, more framed for political philosophy, about what the basic structures of society *ought* to look like if they are indeed to be premised on the egalitarian ethos at the heart of Kant's principle of autonomy. This, of course, contradicts Rancière's own position, which contends that it is not the job of the philosopher to provide an *ought* but rather to verify the words and thoughts of the Other. However, my goal here is not to reconcile a loyal reading of Rancière's problematic with normative political philosophy, but to rather to illustrate how an interpretation of Rancière's critical perspective can open up new questions regarding contemporary political philosophy.

In this chapter, I will thus reconstruct Habermas's own critical reconstruction of Kantian autonomy, with a focus on how it differs from Rawls's reconstruction. I will then show how Habermas attempts to implement this reconstructed account of autonomy within the framework of his discourse ethics on law and democracy. Finally, turning to my critical perspective - informed not only by Rancière, but also Allen and Honneth - I will show how Habermas fails at this implementation, ultimately undermining the very egalitarian ethos by which he is motivated.

## **Habermas's reconstruction of Kantian autonomy**

Much like Rawls, Jürgen Habermas attempts his own reconstruction of the Kantian categorical imperatives within a realisable and practicable empirical framework. I call this a reconstruction, rather than a replacement, as Thomas McCarthy advocates, because it reconstructs, rather than newly constructs, the procedure of justification founded on the Kantian notion of autonomy. In this way, discourse ethics is a refinement of the conditions which allow the egalitarian ethos -



i.e., that everyone as a member of humanity has the critical capacity to interact in moral and political discourses, at the heart of Kantian autonomy to flourish. As McCarthy rightly points out, Habermas shifts the procedure of justification from "Kant's solitary, reflecting moral consciousness to the community of moral subjects in dialogue" (McCarthy 1990: viii). Like Rawls, Habermas argues that norms cannot be justified within a monological decision making-procedure but only through real or realisable intersubjective deliberation. Certainly, Habermas is also critical of Rawls's theory, believing it continues the monological condition of Kant's categorical imperative. Indeed, one of the differences between Rawls and Habermas is that Habermas's own attempt to reconstruct the categorical imperative within an empirical framework relies on the ability of participants to take the perspective of each other in the deliberative practice (*MCCA*: 65). Rawls, as we saw in chapter two, designs his deliberative procedure - i.e., the original position - so that only rational egotists are able to participate. For Rawls, at least in his early work, the rational egoist is unable to take up a perspective of another, but is also unable to explicitly know their own perspective. The criterion of impartiality, which Rawls takes from Kant, is abstracted to the point in which the moral actors, in Rawls's procedure of justification, must be able to transcend the emotional, context-specific particularity of agents' everyday moral experiences. Against Rawls, Habermas argues that the egoist model still retains the monological problematic of Kant's categorical imperative. For Habermas, a deliberative procedure that occurs entirely in the mind of a singular agent does not contain the forcefulness of true intersubjective deliberation.

Despite both being motivated to develop a political theory based on the egalitarian ethos of Kant's notion of autonomy, Rawls and Habermas propose clearly distinct procedures of justification. In this section, I will reconstruct Habermas's account of autonomy and begin to analyse how he intends to implement this within the basic structures of society.

Against what he sees as the monological deliberative procedure produced by Kant's categorical imperative, Habermas reformulates the Kantian procedure of justification to one which constructs the criteria by which affected individuals are able to come to consensus on generalisable interests. Unlike Kant, who proposes a transcendental application of these procedures, Habermas reconstructs the conditions of consensus from the pragmatic presuppositions entailed in communicative discourse, thereby placing it within an empirical framework. Habermas moves away from the voluntarist associations of autonomy developed both in Kant and, as he suggests, Rawls, and provides a reading of the Kantian notion of autonomy as arising in the act of reciprocal recognition that occurs within social practices (Honneth 2014; cf Baynes 2015). The notion of autonomy - and thus on my reading the equality of speaking beings - is thus reciprocally recognised by political agents in their communicative practices (*PT*: 183-184).

Kant's monological moral theory positions the rational actor as an isolated selector who attempts to universalise the maxims of her actions through introspection. Against this, Habermas presents a "detranscendentalised" account of the use of reason embedded in historical and socially conditioned practices of intersubjectivity. The lone "knowing subject" and its singular relation to the world is replaced by an intersubjective community that shares a lifeworld. This detranscendentalised account of reason is "not reducible to the instrumental-technical or strategic calculations of an essentially monadic, individual subject" (White 1995: 6). Habermas, rather, develops a "formal-pragmatic" account of Kantian rationality which is divorced from subject-centered metaphysical presuppositions, recasting the conception of reason within a socio-historical template (McCarthy 1991). Problematically for Habermas, by relieving reason of its transcendental authority over knowledge, problems of relativism, historicism and contextualism arise (Forst 2014; Allen 2016). If Habermas is correct in asserting that world-constitution comes about through finite subjects, situated in the world, engaged in

intersubjective discursive procedures, who or what plays the final arbiter in resolving disputes or knowledge claims?

Habermas proposes the conditions that must be fulfilled in order for communication to take place. These conditions comprise a series of presuppositions: the shared presupposition of the world of independently existing objects; the reciprocal presupposition of rationality or “accountability”; the unconditionality of context-transcending validity claims such as truth and moral rightness; and the exacting presuppositions of argumentation that force participants to decenter their own interpretative perspectives (*TaJ*: 86). These presuppositions point to various components of discourse that must be equally valid for each participant if the discourse itself is going to succeed or fail. Unless all participants can reciprocally recognise that they exist in a world whose objects are constituted independently of either participant, then discourses which require reference to the “world” are doomed to be inconsequential. They can neither fail nor succeed because discourse itself cannot begin. Furthermore, participants must presuppose that they will understand one another as rational beings, that they will be truthful, and that arguments and disagreements will be geared towards reaching mutual understanding “that can bring out the unforced force of the better argument” (*TaJ*: 86). Taken at their core, these presuppositions offer a detranscendentalised account of concepts found in Kantian metaphysics. The difference, as I have articulated above, is that the Kantian transcendental subject “loses its position outside time and space and is transformed into a multitude of subjects capable of speech and action” (*TaJ*: 88). In this way, Habermas moves out of the problematic of the Kantian transcendental subject which advocates a representative who can speak for all, elaborating a more egalitarian position which allows all to speak for themselves.

While a number of epistemic questions arise over Habermas’s pragmatic theory (Aboulafia *et al.* 2002; Levine 2010), they are not my concern in this thesis. I am not specifically

interested in whether or not Habermas's theory can deliver an adequate account of truth; what I am interested in is how Habermas's pragmatic theory is implemented within the gap between universalistic moral claims and political realities. By locating the activity of reason within a historically-situated, intersubjective discursive practice, Habermas, like Rawls, implies a constructivist account of morality. As Habermas writes:

The validity of such norms consists in the universal recognition that they merit. Because moral claims to validity lack the ontological connotations that are characteristic of claims to truth, reference to the objective world is replaced by an orientation toward an expansion of the social world, that is, toward the progressive inclusion of strangers and their claims. The validity of a moral statement has the epistemic significance that it would be accepted under ideal conditions of justification. However, if the meaning of "moral rightness", unlike that of "truth", is *exhausted* by rational acceptability, then our moral convictions must ultimately rely on the critical potential of self-transcendence and decentering that - as the "restlessness" of idealizing anticipations - is built into the practice of argumentation and the self-understanding of its participants (*TaJ*: 109).

According to Habermas, moral norms are validated by the reciprocal acceptance of all those who are morally affected by such norms. The introduction of claims towards the instantiation of moral norms in the world is also an implicit attempt to develop a more inclusive world. Subjects in the world, ideally, in terms of the conditions of justification, put aside their differences and conform to the moral norm which represents the unforced force of the better argument: "Thus, in view of the idea that only those norms equally good for all merit recognition from the moral point of view, such discourse presents itself as the appropriate method of conflict resolution" (*TaJ*: 105). Habermas constructs a method by which universalistic moral claims come into existence on the basis of an egalitarian condition in which everyone ought to be involved that would be affected by the claim. At the "transcendental" level of morality, this theory has an undeniable egalitarian reach, since all those recognised as speaking beings are expected to be able to take their place within discursive practices. However, we have seen with Kant and Rawls that such in principle egalitarianism can easily lead to paradoxical, less egalitarian conclusions in its actual, political realisation. In order to verify whether or not Habermas's position succumbs

to a form of the paradox of emancipation, we must first arrive at a clearer sense of what his method of justification entails. What I attempt to do in the sections that follow is to provide a brief outline of the implicit metaphilosophical foundations of Habermas's discourse ethics as well as the political and social conclusions that follow from such a procedure. In doing so, I hope that some of the background discussion about Habermas's method can be put aside, and I can focus on what I take to be crucial for our analysis: the transfer of universalistic moral claims into political realities. In the next section, I will critically analyse Habermas's account of discourse ethics, and his account of the structures of democracy and law that follow from such an account.

### **Habermas's procedure of justification: discourse ethics**

Rather than present an account of principles which are arrived at through a procedure of justification, as in the case of Rawls's theory of justice, Habermas instead develops a discursive procedure of justification, in which moral agents can come to agreement on the norms which ought to yield the basic structure of society. For Habermas, it is up to agents within this discursive procedure themselves to test the validity of normative claims.

Habermas develops a "discourse ethics" which, building on the Kantian pragmatism discussed above, presents an idealised conception of what should be required for accepting a rule of action<sup>14</sup>. This is to say that, like Kant, Habermas considers morality to consist in universally accepted regulations that determine interactions between persons. Unlike Kant, however, Habermas does not view these "regulations" as being transcendently accepted by a reflective individual in isolation, but as coming about through the intersubjectivity of practical discourse. According to Habermas, "moral justifications are dependent on argumentation

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<sup>14</sup> For recent work on Habermas's discourse ethics see William Rehg, *Insight and Solidarity: The Discourse Ethics of Jürgen Habermas* (1994), Seyla Benhabib, *Critique, Norm and Utopia* (1986), Stephen K. White, *The Recent Work of Jürgen Habermas: Reason, Justice and Modernity* (1988), David M. Rasmussen, *Reading Habermas* (1991), Tony Smith, *The Role of Ethics in Social Theory: Essays from a Habermasian Perspective* (1991), and Kenneth Baynes, *The Normative Grounds of Social Criticism* (1992).

actually being carried out, not for pragmatic reasons of an equalising of power, but for internal reasons, namely that real argument makes moral insight possible" (*MCCA*: 57). For Habermas, moral claims can only be validated in the context of real argumentation because such argumentation allows directly for the justification of the moral claim to be laid bare. This differentiates Habermas from Kant, and indeed from Rawls. While Kant and Rawls develop justificatory procedures which are idealised or theoretical, Habermas attempts to develop justificatory procedures which may be reconstructed from real discourses that are embedded in everyday social practices.

In this section, I will seek to provide an outline of Habermas's discourse ethics with a focus on its egalitarian premises. For Habermas, discourse ethics attempts to recover an objective moral stance from the demise of metaphysical and religious worldviews. As in the previous section, my concern remains to emphasise the egalitarian content of Habermas's discourse ethics. As previously noted, the egalitarian content of Habermas's discourse ethics resides in the presuppositions of communicative action that he outlines. Communicative agents must, in discourse with one another, presuppose shared knowledge, have mutual trust in one another's speech acts and, importantly, understand what the other is saying. These mark the egalitarian content of Habermas's discourse ethics, insofar as they are founded on a presumption of the egalitarian motivation of a Kantian interpretation of autonomy: that everyone, as an equal speaking being, has the critical capacity to take part in discursive procedures. What is pertinent for our analysis is whether this egalitarian presupposition is further implicated in his moral theory, or whether his moral theory somehow betrays such egalitarian underpinnings.

Habermas's approach to moral theory as discourse ethics is similar to that of Kant's: "[H]e distinguishes the types of practical reasoning and corresponding types of 'ought' proper to questions about what is practically expedient, ethically prudent, and morally right"

(McCarthy: vii). In doing this, Habermas attempts to reconstruct the implicit foundations of moral thinking and judging, just as he does with his analysis of linguistic utterances. Where Habermas and Kant part ways is in the construction of a procedure of moral argumentation. Kant's presentation of the categorical imperative is not as a socially communicable procedure but rather as one that works within a structure of introspection. Its deployment is strictly monological. In contrast to this, Habermas develops a procedure of moral argumentation based on the real social interaction of subjects in everyday communications (*MCCA*: 197). In this way, Habermas seems *prima facie* to avoid the problem found in Kant and Rawls. For Kant, it is the lone thinker who is able to universalise his or her maxims based on their own consideration of the non-contradictory nature of those maxims for everyone else. For Rawls, it is the procedure of justice that would produce the same effects no matter who is chosen to be a representative in the original position. For these authors, social and moral claims are assumed from a theoretical discourse; however, as I showed in chapters two and three, these claims may well be complicit in the return of oppressive forms of relation between individuals and parties. In the work of Kant and Rawls, the philosopher has an almost omnipotent presence, acting not as a participant and adjudicator of moral discourse, but as a oracle who stands above all other "social actors". For Habermas, by contrast, the philosopher meets the discussants at eye level. This sensitivity to the place of the theorist in relation to the individuals about whom he is theorising, we might note, reminds us of the kinds of concerns expressed by Rancière, albeit in a different context.

From this position of cooperative argumentation, Habermas presents what "a rationally motivating exchange of reasons" might look like as the principle of Universalization (U). This principle suggests that for a moral norm to be fulfilled:

All affected can accept the consequences and side effects its *general* observance can be anticipated to have for the satisfaction of *everyone's* interests (and these consequences are preferred to those of known alternative possibilities for regulation) (*MCCA*: 65).

Once again we can counterpose this to the classical Kantian perspective, which suggests that the construction of moral norms into a foundation for judgment comes out of an individual's ability to test whether the adoption of the norm would be followed by every other individual in a similar situation. Habermas, by contrast, looks to the direct confrontation between individuals in the expression of valid moral norms in which the individual attempting to justify a moral claim submits his maxim to all the others who are affected by it, to test its claim of universality (McCarthy 1978). Habermas suggests that (U) rids itself of the monological application found in previous attempts to ground universal moral norms (Habermas 1990). For Habermas, unlike for Kant and Rawls, the justification of moral norms cannot succeed from the position of an isolated moral judge. Rather such justification comes through the intersubjective recognition of the validity claims that occur in moral argumentation. This is not merely some type of group introspection, in which every individual who is part of the process reflects, alone, on whether to agree with or disregard the validity claim made by the speaker. Rather, it is a process of argumentation in which the individuals attempt to achieve consensus through communicative action aimed at understanding. That is, it must occur in real discourse.

Habermas develops his theory of moral norm construction in relation to P. F. Strawson's "Freedom and Resentment" (1993 [1960]). According to Strawson, by examining our feelings of indignation in the face of personal insults, we can uncover the moral dimension of such a linguistic interaction. As Strawson writes:

The personal reactive attitudes rest on, and reflect, an expectation of, and demand for, the manifestation of a certain degree of goodwill or regard on the part of other human beings towards ourselves; or at least on the expectation of, and demand for, an absence of the manifestation of active ill-will or indifferent disregard (Strawson 1993).



Building on Strawson, Habermas proposes that such investigation into the everyday intuitions that people hold in respect of how others ought to recognise them must come from the perspective of “someone who participates in the communicative practice of everyday life” (MCCA: 48). William Rehg (1994) then takes this position further in relation to “feelings” that we may experience in everyday communicative practices. For Rehg, following Habermas and Strawson, the anger that we feel at finding out that someone has lied to us can be expressed in the form of a moral judgment. In confronting the liar with the utterance, “You should have told me the truth!”, there is an implicit reference to the universalisable moral norm of “one ought not to lie” (Rehg 1994). What follows from this largely depends on the reply made by the person who lied; whatever ensues, however, the normative conclusion in fact will remain the same. If the liar agrees with the utterance, “You should have told me the truth” by replying, “Yes, I should have”, both parties agree that telling the truth is a norm that should be followed. Alternatively, the liar may disagree that a lie has been told, or respond that the lie was a “noble one” to avert a more harmful outcome. In such cases, a process of argumentation is entered into wherein both participants, and indeed anyone close by, can provide justifications for their normative claim. Here, discourse and engaging in discourse are imperative for the development of the norm that is to follow from such a reconstruction. Habermas proposes a reformulation of the Kantian categorical imperative:

Rather than ascribing as valid to all others any maxim that I can will to be a universal law, I must submit my maxim to all others for purposes of discursively testing its claim to universality. The emphasis shifts from what I can will without contradiction to a general law, to what all can will in agreement to a universal norm (MCCA: 67; cf Rehg 1996: 23-27).

The principle of universalization is only one plank in Habermas’s discourse ethics. As is well known, the other key plank is the (D) principle: the principle of discourse. Before I elucidate the

relationship between (U) and (D), which is central in Habermas's attempt at developing a cognitivist moral theory, it is worth pointing out the egalitarian commitments that operate at this stage in his moral argument.

I noted previously that the theory of argumentation underpinning much of Habermas's philosophy contains within it what we might call, following Rancière's terminology, the presupposition of shared "logos". Specifically, to make sense of Habermas' philosophy, one must accept (correctly, I think) that every person is capable of speech. This is not simply the ability to make linguistically cogent utterances, but also the ability to produce the kinds of justifications that befit normative claims. For Habermas, as we saw, all communicative discourse is performed with the aim of reaching "understanding"; that is, the ability not only to comprehend what the speaker is saying, but also to agree with the claims being made. From here, what I believe we can say is that "discourse ethics", or at least the element of discourse ethics based on (U), requires the presupposition that the speaker and hearer, and whoever else is involved in the moral discourse, have equal access, in principle at least, to the "pre-theoretical" knowledge that grounds the normative claims being made. This presupposition can be made explicit with reference to the example of the liar. In the example of the liar cited by both Strawson and Habermas, two agents enter into a discourse over the moral harm caused by one agent's lying. Irrespective of the actual discourse between the two agents, what matters here is the assumption of a common "pre-theoretical" knowledge that both agents should have access to, to make such a discourse intelligible to both parties.

Such knowledge - representative of the epistemic features of identifying a "lie" - structure the way in which the actual discourse takes place. If there is no pre-discursive agreement over the types of concepts used in the discourse and what they refer to, then the discourse will either be one-sided, or, in Habermas's conceptualisation, strategic, or there will actually be no actual discourse, just two individuals performing linguistic actions past each

other. Such knowledge comes about through our interaction with the three-world structure of validity claims, outlined in Habermas's theory of communicative rationality. According to Habermas, our interactions with the world involve three different kinds of fundamental interactions. There is (1) The objective relation to the world through states of affairs and facts; (2) Our subjective experience of the world; and (3) The world of intersubjective experience. By relating our claims to each of these "worlds", we are able better to orientate ourselves in relation to validity claims made within the parameters of an intersubjective reciprocal relation. The pre-discursive knowledge of the participants involved in discourse is based on their relations to these three "worlds" of experience. The egalitarian content of moral discourse thus assumes that everyone who is capable of speech, in the basic sense already given by Aristotle, has in principle access to similar levels of experience as everyone else involved in the same discourse situation. Problematically (as will be explored in more detail in relation to Axel Honneth's critique of Habermas), this idealised description of discourse situations overlooks the power relations that arise from the "fact" that some groups or classes of people have access to different levels of experience, or indeed that social constructs interfere with the perception of in principle equal access to shared background knowledge. The problem is not necessarily that the dominated do not have full access to the three worlds of experience; however, social representations can make it look as though this were the case, when in fact it isn't. Briefly put, if our pre-theoretical knowledge is differentiated by the "theorist's" focus on a particular level of experience over other levels of experience, then how does the egalitarian assumption of our access to such knowledge hold? I will address this point in more detail later in the chapter.

As I have claimed throughout this chapter, moral claims for Habermas cannot be considered from a monological position of introspection, but require a cooperative effort in which the validity of such claims is established in the communicative practice of everyday life. As such, in order for moral claims to be accepted by a community, members of that community

must be able to engage in a process of argumentation designated by (U). For Habermas, any moral norm reached under this procedure is thus universally valid. Returning to the example of the lie, here it is claimed by the person who was lied to that lying violates a universally regarded norm; that is to say, lying is socially problematic, not only for the reason of being lied to, but in fact also for the liar. If the person who initiated the lie accepts this argument and apologises for the indiscretion, then the discourse has developed a successful valid claim over lying as a problematic behaviour within the social group in question.

Related to this, I want to return now to the other key plank in Habermas's discourse ethics. The principle of discourse (D) states that: "Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in practical discourse" (MCCA: 66). Importantly for Habermas, (U) and (D) are differentiated in that (D) "does not form a part of a logic of argumentation" (MCCA: 93). The principle of discourse rather refers to the idealised form which practical discourse ought to take. (D) thus propounds the egalitarian notion that everyone who is morally affected by a claim in practical discourse has the right to dismiss such a claim that doesn't meet their approval. This approval is based on the process of argumentation that is designated by (U). While Habermas designates (D) as an idealised discourse, this is not to be understood transcendently, but rather reconstructively. "All contents, no matter how fundamental the action norm involved may be, must be made to depend on real discourses ..." (MCCA: 94). Further, unlike the monological forms of discourse that are found in the theories of Kant and Rawls, for Habermas "the moral theorist may take part in them as one of those [affected individuals], perhaps even as an expert, but he cannot conduct such discourses by himself alone" (MCCA: 94).

While both (D) and (U) may seem similar, (U) is to be considered a rule of argumentation able to provide the necessary and sufficient conditions for moral validity (Ingram 2010). The principle of discourse concerns the activity of the participants in a discursive

procedure, while the principle of universalization concerns, specifically, the validity of the moral norm. Therefore both (D) and (U) bring to the fore different ways in which the discursive procedure is egalitarian. (D) is egalitarian in that all morally affected individuals have a right of veto against claims that they cannot accept. (U) is egalitarian in that no moral claim can be proposed that would not meet the acceptability requirement represented by (D). While (D) can tell us which norms cannot be proposed, (U) provides more substantial necessary and sufficient conditions of moral norms.

Having shown above how Habermas attempts to substantiate a theory of discourse through the implementation of an egalitarian intersubjective theory of communication, I will in the next section draw on already existing critiques of Habermas that analyse his theory of communicative action from different points of view. If Habermas's theory is in fact egalitarian in the way that his metaphilosophical foundations suggest, then we should expect it to yield a democratic procedure based on the equal capability of all to contribute to the democratic process. These critiques, however, point to tensions in the political realisation of his egalitarian intentions, which may well show that Habermas himself performs a particular kind, if only a muted one, of the emancipation paradox.

## **Rancière and Habermas on communicative understanding**

As Jean-Philippe Deranty (2016) notes, Rancière's emphasis on language as a focal point in political struggles bears a likeness to the proceduralist position developed in Habermas's theory of communication. Plausibly, on a *prima facie* reading, one could regard Rancière's conception of the pragmatic use of language as one that parallels Habermas's theories. Both present the accessibility and capability of the use of language as a universal ability (Rancière 1991, 1999; Habermas 1976, 1998). They also both view the subjectivity of philosophies of consciousness

with suspicion (Rancière 1991: 45-75; Habermas 1981a). Other similarities also can be emphasised, as Russell and Montin (2015) summarise:

At first glance there appears to be considerable common ground between the two thinkers. Both reject the pessimistic diagnosis that proclaims in the name of critical theory the ubiquity of domination and instead affirm the capacity of everyday speech and action to effect emancipatory social change. Both theorize a democratic politics that is grounded in the presupposition of the equality of humans as speaking beings and that consists in a procedure of argumentation and demonstration (Russell and Montin 2015: 543).

To take these similarities at face value is to discount the critical position that Rancière adopts in contrast to Habermas. To imply that Rancière's model of linguistic universality is on par with the model of communicative action presented by Habermas is to devalue Rancière's ongoing critique of what counts as political discourse. For Rancière, "politics" doesn't happen within an *a priori* agreed-upon logic between both interlocutors. "Politics" only occurs for Rancière when the very existence of an actual debate, or the space in which it is waged, is under dispute between the protagonists (Rancière 1999; Rancière and Panagia 2000). As I have outlined above, Habermas's communicative model assumes that, for discourse to occur, a range of presuppositions must implicitly be agreed upon by the interlocutors. These "constraints" on discourse pre-constitute the object of discussion: "by reaching an understanding about something in the objective world and adopting the same relation to the world, they enter into an interpersonal relationship" (*TaJ*: 97-98). Interlocutors must therefore agree on the "stage" upon which the debate is situated.

Debate for Habermas is simply the clarification of meaning, and it assumes that the stage on which such clarification occurs is uncontested and non-problematic. Therefore it does not concern the potential gaps between assumed universal acceptance onto the stage and potential exclusions of particular groups of individuals from it. It takes for granted the smooth articulation of the universal and the particular. For Rancière, by contrast, the gap between the

assumed or claimed universal and the actual exclusion of particular beings is precisely what is at stake in political disagreement. By ignoring this, Habermas thus presents a “closing-off” of politics because the foundational object of debate has already been agreed to. From the point of view of the “emancipation paradox”, what this suggests is that any potential claims against the parameters of discourse are pre-emptively excluded from being heard. The very model of emancipation entails a blind spot that appears to exclude those seeking emancipation via recognition of their logos. No new claims against injustice or for equality can be made that do not conform to the normative framework of the discursive procedure.

We can clarify this issue by turning to the concept of “understanding”, which has central importance for both authors. As we have seen, Habermas’s theory of communicative action is founded on the question: What are the conditions by which discursive agents reach agreement and mutual understanding? As Maeve Cooke (1997) writes, Habermas’s use of the term “understanding” has a critical double meaning. Habermas utilises this double meaning to introduce the egalitarian impulse of his theory of language. In the first place, “understanding” refers to the intelligibility of the utterance to the persons who are involved in the communication. If an utterance is not intelligible to the hearer, then the claim inherent in the utterance has no power to convey meaning. This, I suggest, is what one usually assumes to be the case when contemplating the meaning of the phrase, “understanding an utterance”. We can derive certain egalitarian implications from this first sense of understanding. In Habermas’s model, there is the presumption that each person in a discursive procedure recognises the other as an equal intellect. Each person will recognise what the other is saying, or trying to say, and be able to follow the logic of their articulations. The second meaning conveyed within Habermas’s use of the term extends past its usual denotations, presenting “understanding” as the agreement of an utterance. This agreement is not simply an agreement on what the utterance expresses, but rather an agreement on the recognised normative background on

which the utterance takes place (*IO*: 23). In terms of the egalitarian implications of this second sense of understanding, it propounds the principle that everyone is on an equal footing in regards to knowing the form of the structures that shape the normative background of the utterance. It proposes that each person involved in the discursive procedure has access to the knowledge of the historical and social sphere within which the utterance is situated. Hence the two forms of “understanding” that arise from Habermas’s conception of discourse can be separated into: the understanding of the individual; and the mutual understanding between individuals. On the one hand, we have the understanding experienced by an individual to whom a speaker directs an utterance; on the other, we have the mutual recognition that both speaker and hearer see the “understanding” of the hearer as taking place.

It is exactly this dualistic meaning of understanding which Rancière uses as the basis of his critique of Habermas. Against the conception of “understanding” presented by Habermas, Rancière describes:

... the gap between two accepted meanings of “to understand” that institutes the rationality of political interlocution and establishes the type of “success” appropriate to it - which is not agreement between partners on the optimal allocation of parts, but the optimal way this partition is staged (Rancière 1999: 44).

There appears an incommensurable gap between two forms of understanding which, if not acknowledged, closes off the possibility of politics. The individual, in order to communicate his understanding, must address the speaker in a way that submits to the validity of mutual understanding. Following Rancière, Russell and Montin (2015) have pointed out that Habermas’s theory of communication doesn’t take into account the relative positions of power that the two discursive agents may occupy. The sharing of a lifeworld by the participants in a discursive action authorises the use of particular speech acts between particular participants of discourse. For instance, an order from an employer to an employee can be regarded as a speech



act which holds a particular type of authority regulated by the normative conditions of the lifeworld. In many cases, the normative conditions of the lifeworld would be accepting of speech acts which limit the range of options of reply that are available to the employee in engaging in discursive communication with the employer. Indeed, in some cases that might not be farfetched or isolated, there may well be no recourse for the employee to “talk back” to the employer, even to signal understanding. The recognition of each other as equal participants within the ideal speech situation is not necessarily transferred to the setting of real discourse.

This problem is explored further in Rancière’s analysis of the utterance “Do you understand?”, in a passage from *Disagreement* explicitly dedicated to a critique of Habermas. According to Rancière, the utterance “Do you understand?” serves as a “false interrogative” (Rancière 1995: 44; Russell and Montin 2015). In a space wherein interlocutors occupy unequal social positions, such an utterance does not allow the hearer to respond to the question from a critical standpoint. It is not an invitation issued on behalf of the speaker for the other participants to engage in equal discourse, in contrast to a question such as, “What do you think?” Rather, it is a request for a evaluation by the hearer of their ability to follow the logic of a speaker - an evaluation that only the speaker themselves can deliver. For Rancière, either the hearer has failed to understand the speaker or the hearer understands the speaker, and thus accepts the staging of the problem that the speaker has set up. As Russell and Montin write:

Rancière’s example shows how [the precondition of rational discourse] can effectively enable certain speakers (those in positions of authority) to exclude subordinates from participating as equal communication partners if they wish, by construing disagreement as a failure of understanding (Russell and Montin: 545).

Contra Habermas, what Rancière, as well as Russell and Montin, show in relation to “understanding” is that the pre-conditions of equality between speaker and hearer are not necessarily *a priori* conditions of understanding. Understanding might just as well be reached in unequal situations. Critiques offered by Amy Allen and Axel Honneth can help us more clearly to

discern the way in which Rancière's critical perspective locates the problematic of exclusion at the heart of Habermas's project to provide a realisable and practicable account of the Kantian notion of autonomy, and the egalitarian motivation inherent within it.

## **Moral development and the exclusion of the other**

Several theorists in the tradition of critical theory have argued that Habermas, while promising to deliver on the egalitarian motivation of his theory of justice, fails to account for a number of structural anomalies with his project, thereby subverting his own egalitarian motivation.

Amy Allen, in my opinion, has provided some of the most astute critiques of Habermas. One critique developed in *The Politics of Ourselves* explore the difficulty faced by Habermas in developing an account of moral development that remains consistent with the egalitarian motivation at the heart of his Kantian-inspired theory of justice. Allen argues that Habermas does not adequately theorise the way in which moral development of autonomous individuals takes place within a socially-mediated sphere of communicative interaction. Taking up Nancy Fraser's concern that Habermas screens power out of the lifeworld, Allen develops a further critical point that Habermas's consideration of socialisation would act as a "mechanism for the maintenance and reproduction of dominance and subordination" (Allen 2008: 99; cf Fraser 1989). This is similar to the position taken up by Wendy Brown in *States of Injury*, where she argues that liberal democratic conceptions of emancipation problematically mirror the very mechanisms of oppression they are trying to escape (Brown 1995). For Habermas:

Identity is produced through socialisation, that is through the fact that the growing child first of all integrates into a specific social system by appropriating symbolic generalities; it is later secured and developed through individuation, that is, precisely through a growing independence in relation to social systems (*CES*: 74).

According to Habermas, the realisation of the individual (as an individual) occurs in their recognition of others as an individual. It is only later in life, after childhood, that their rational, autonomous powers allow them to differentiate themselves from the systems of social interaction in which they are embedded. However, as argued by Fraser and in greater detail by Allen, this procedural account of development evacuates from the lifeworld the *de facto* role that power plays in the subjection of Individual identities in systems of social interaction. Following Allen, we can see that the way in which Habermas conceives of moral development seems to condition the way in which individuals would act in the lifeworld. This in turn does not seem to allow for free and equal interactions between discursive participants, even though interactions are supposed to be the core mechanism of emancipation, since this is the mechanism by which valid claims of justice can be heard. As Allen seems to suggest, there is a tension that arises in the development of the individual's autonomy and the idea of morality as founded in everyday relations of reciprocity and mutual recognition (Allen 2008: 116). Persons who are conditioned in their development to act and interact in a certain way seem to be undermined in their autonomy. Also, I would suggest, the developmental mechanism obscures the intersubjective moral claim that will arise in discursive practice. The justification of particular moral claims will be, as a result of the subject's development within a lifeworld, already structured by a particular way of thinking about the world. As such the subject enters into intersubjective modes of discursive practice with particular presuppositions about the world that determine their relations to the unjust structures they may encounter. This seems directly to restrict individual and collective efforts to articulate and normatively denounce the very social structures that emancipation would require to have changed. The theory of discourse proposed by Habermas, aiming to support efforts and logics of emancipation, ends up undermining those efforts and logics by its indifference to the very social mechanisms that obstructed emancipation in the first place.

Axel Honneth, in his early work, provides a similar critique. Honneth places his critique within the confines of a problem that afflicted the first generation of critical theory: "the hypothesis of a deactivation of class struggle" (Deranty 2009: 99). Drawing on sociological and empirical data, the first generation of critical theory expounded considerable energy in attempting to answer why, despite growing social and economic marginalisation, any real meaningful political action had yet to issue from class antagonisms. For Habermas, the issue of "deactivation" transpired from the belief of the lower strata that institutional frameworks of distribution, welfare and collective bargaining would solve the problem of social, economic and political marginalisation (Habermas 1976; cf Honneth 1995b: 215). Against Habermas, Honneth argues that such institutional frameworks ignore the claims and demands for justice that are issued from outside any economic benefit that such frameworks may provide. This problem, identified by Honneth most clearly in *Moral Consciousness and Class Domination* (1995), revolves around the issue of "... the connection between normative theoretical intention and historically situated morality" (Honneth 1995b: 205). Honneth is concerned that the normative procedures developed by Habermas are unable to take into account those locally situated forms of morality arising from everyday practices within, specifically, the working class. According to Honneth, "Habermas must implicitly ignore all the potentialities for moral action which may not have reached the level of elaborated value judgments, but which are nonetheless persistently embodied in culturally coded acts of collective protest or even in mere silent 'moral disapproval'" (Honneth 1995b: 208).

Here we can see how Allen's and Honneth's critiques interact and overlap. For Allen, as I showed, the procedure of moral development does not seem to allow for "new" injustices to be heard or considered, given the parameters set in place by the social mechanisms of mediated communicative discourse. The subjected individual has no way of articulating their felt injustices because no social mechanism exists which allows them to do so. The procedure of justice

constructed by Habermas implicitly ignores those instances of felt injustice which issue from the lower strata of humanity, writes Honneth, simply because the conceptual and symbolic generalities, developed through socialisation, are unfit to explain the forms of injustice being felt.

Habermas's lack of attention to the actual social conditions in which claims are made and to the asymmetry of relations between different groups (or classes) of interlocutors lead him to remain blind to the exclusion of types of claims, and indeed of speakers making these claims, from communicative practice. Habermas seems to equivocate on the question of who is actually capable of articulating claims of injustice. Honneth's critique, when conjoined with my own, suggests that Habermas's social theory does not allow for those outside the institutional structure to have their claims heard. Such outsiders can thus be considered not only as "passive political agents", in the way I have described through this thesis, but also as excluded from the discourses of injustice. Not only are their claims not acknowledged as politically valid, but they themselves fall out of the purview of the politically relevant "we".

## **Discourse ethics and the closing off of politics**

Habermas's sociological outlook is perceived from a particular "macro-level" of social analysis unable to account for class- and gender-specific differences in moral norms. As Deranty (2009) summarises:

Habermas's theory of social crisis and social domination appears misguided on both the sociological-empirical and conceptual levels. Empirically, because he equates levels of normativity with degrees of formality and universality in the expression of normative claims, his theory tends to remain blind to the whole sphere of social suffering ... This empirical short-sightedness is directly related to the problematic conceptual premise according to which the economic administration of society has automatized itself in such a way that it can regulate conflict in its own terms (Deranty 2009: 101-102)

The regulation of conflict by administrative and instrumentalist procedures brings to mind my critique of Rawls (see chapter two). Like Rawls, Habermas does not intend to transfer agency of the individual to that of the institutional structures of society, but this becomes a possibility within his framework, because of his sensitivity to systemic arguments. Honneth's critique of Habermas reveals the problem of passivity and exclusion inherent in Habermas's attempt to bridge the gap between his universal moral claims and political reality. Passivity is seen in the implicit usage of a "cultural observer" in Habermas's theory, who is to decide which claims of injustice fit the purview of the moral order and which claims are regarded as politically irrelevant. I understand this under the conception of "passivity" because it takes power out of the hands of the political agent to decide for them if they are suffering from injustices. It follows from this, however, that Habermas's account is also exclusionary because it denies the potentiality of claims of injustice that fall outside the purview of the moral order from being heard, and therefore being acknowledged. Allen's and Honneth's analysis of Habermas's discourse ethics thus helps reveal the tension in Habermas's theory between, on the one hand, the putative equality of individuals and, on the other hand, the implicit prescription of who is able to take part in the intersubjective sphere of discourse. In this way, Allen and Honneth's critiques have helped us to frame the problem by which discourse ethics closes off the possibility of politics. Allen and Honneth thus show how the egalitarian motivation inherent in Habermas's Kantian interpretation and application of autonomy to the structure of just institutions undermines itself.

Rancière lays out his research project (2011) to explore "the wall that had arisen between empirical proletarians and the proletarian discourse we had lent them ..." to uncover the voice of the worker "as it was in itself" before it was covered up by the intellectual interpretation of that voice (Rancière 2011: 22). Undoubtedly, there is a void between Rancière's analysis and the question posed by us to Habermas: How does the obscure

historiographic-philosophical intrusion made by Rancière reflect on this question of who is included in Habermas's "inclusive" moral theory? The major concern for Rancière is how the "plebeians" had their voice silenced by the overarching discourse of intellectuals who interpreted such a voice as reflective of a macro-subject without taking notice of the particular individual articulations within such a "universal position". If, as I suspect, Habermas's radically inclusive communicative discourse in fact problematically undermines the equality that seems assumed by the word "all", then the establishment of universal norms must be questioned along the lines of the interpretation the master-thinker gives to the communicative discourse of the other. Two problems can be identified at this level: (1) The division between those who are capable of speaking in universalisable terms and those who aren't; and (2), the representation of the other's discourse by a master discourse. As we have seen, Rancière's contribution to political philosophy allows us to identify these problems within Habermas's work. Here I simply want to push against the void in Habermas's work that they identify, to bring out fully the paradox within it.

The core of Habermas's normative conception is expressed in the egalitarian, intersubjective space of communication action. Any speaking being is entitled in principle to enter into a discursive practice and being heard as an equal. It is further implied by Habermas that the capability to speak and act is distinctive of rational beings. "'Rationality' refers in the first instance to the disposition of speaking and acting subjects to acquire and use fallible knowledge" (*DM*, 314). The egalitarianism of this position is expressed in Habermas's contention that communication would be impossible unless certain presuppositions of understanding are reciprocally recognised in those beings seeking to enter discourse. However, Habermas's inability to perceive the space of disagreement, as articulated by Rancière, represents an inegalitarian measure introduced, implicitly, to develop the egalitarian communicative theory. This seems odd, given that for Habermas equal participation in

discourse is the ultimate foundation upon which democratic practices are constructed. And yet, as Russell and Montin have shown convincingly:

Habermas risks drawing a new and equally problematic distinction between two categories of speaking beings: between those rational speakers who engage in deliberation and those who fail to play the game of argumentation and simply get in the way, ruining it for the rest of us (Russell and Montin: 551).

Habermas introduces restrictions that presume a certain way of speaking and a certain way of articulating demands, which confines the possibility of equal participation. In fact, this is explicitly suggested by Habermas in *Moral Consciousness and Communicative Action*, when he refers to participants in a practical discourse (MCCA: 66). The designation of discourse as “practical” suggests that participants must already agree to some standard of argumentation that has been presupposed. Given that “practical discourse” is “a procedure for testing the validity of norms that are being proposed and hypothetically considered for adoption” (MCCA: 103), the question that arises, in the procedure of emancipation, is whether disagreement over the very validity of norms can actually take place. In the reciprocal recognition of the presuppositions of discourse, participants must presuppose that the object of discourse is the same for them all, that they all already agree with the rules, and that they all have the language expectations. However, in disagreement, it is often some if not all of these aspects of the discursive interactions that are the point of contention.

Let me return to the example of Black Lives Matter, first raised in chapter one, to articulate this problem in the form of the paradox that risks undermining Habermas’s position. For Habermas, protestors and anti-protestors alike must presuppose that the object of discourse is the same in order for communication to take place. Here it is the object of “lives” that is the key focal point. The point of contention is not that everyone has a “life” that is to be respected, and that this “respect” is obviously lacking in the treatment of black Americans by



law enforcement and political institutions. The point of contention is that the concept of “life” implicit in the protective services slogan of “To Protect and Serve” is both a universalistic and yet a particularistic conception. It is universalistic in its moral underpinnings, but particularistic in terms of how it is politically enforced and practised. To assume that the object of discourse is the same, or that it means the same thing in the different discursive practices, is to exclude potential groups and individuals from entering into discourse in the first place, namely those who complain precisely that these are not the same. The principle of universalisation which proposes that a moral claim is valid only if it is accepted by all those who are morally affected is turned on its head in this concrete case. What seeps in is a particularistic conception: the way in which “lives matter” is in fact concretely understood and acted upon by a section of the population, and most importantly by police forces, whose right to use power and violence is backed up by the state, all the while being passed off as the universal itself. Despite Habermas’s egalitarian intentions, the emphasis on universal-pragmatic rules in linguistic mechanisms introduces the notion that a moral claim is valid only if the moral claim already means the same thing to everyone that is morally affected by it, when in fact social struggles arise precisely when such a consensual understanding is lacking. This defines the point of contention.

### **The emancipation paradox in Habermas's discourse ethics**

As outlined above, Allen’s critique turns on the way in which Habermas approaches the question of moral development. In the first case, Allen’s critique seems to be approached from a “localised” a-historical moment in the moral development of individuals, within the parameters of an intersubjective discursive community geared towards mutual understanding. As I wrote in chapter two regarding Kant, while the idea of moral development is not intrinsically problematic, the way in which moral development is implemented has a tendency to exclude particular groups and individuals as not being able fully to “develop” and thus as not

being fully part of the course of humanity. As such they are excluded, not only from political discourse, but they are also perceived as dependents of society, rather than functional members (cf Nussbaum 2006).

That Habermas's implicit philosophy of history is connected with contentious issues of moral development and modernity can be seen throughout his work (*CES* 1979; *PDM* 1987). He argues that modern forms of rationality were only able to arise through the disenchantment of religious-metaphysical worldviews (*TCA1*; cf Weber 1905). For Habermas, then, individual development and social development are connected. As Allen writes, "moral practical development consists in part in a progressive decentration of worldviews and heightening of reflexivity" (Allen 2016: 45). However, unless Habermas properly differentiates between modes of modernity, which take into account historical, social and political differences, there is the danger that he must fall into the same problematic that affected Kant. In Kant's equivocation between two forms of "humanity" - the intrinsic characteristics of moral powers versus the extensive class of human beings - the problem of exclusion clearly looms (see chapter two). Similarly, in Habermas's work there is a tension that seems to arise between the moral development of persons and the sociological development of the species. This tension is explicit in Habermas's *Communication and the Evolution of Society*, including when he writes:

It is the personality system that is the bearer of the ontogenetic learning process; and in a certain way, only social subjects can learn. But social systems, by drawing on the learning capacities of social subjects, can form new structures in order to solve steering problems that threaten their continued existence. To this extent the evolutionary learning process of societies is dependent on the competences of the individuals that belong to them. The latter in turn acquire their competences not as isolated monads but by growing into the symbolic structures of their life-worlds (*CES*, 154).

While moral development occurs primarily in the social subject, for Habermas it is also the case that social systems can "learn" from the subjects' interactions in the lifeworld and develop structures to resolve functional problems, which subjects articulate at the normative level. That

is to say that social systems are able to develop their own form of decentering from metaphysical viewpoints, which in turn undermines the ideological formations of the subjects. However, it is unclear where this “development” actually happens first. Individuals in different social systems would be exposed to different logics of moral development. These may be developed in terms of oral traditions, or through the exposure to a “great history”, say of philosophical literature. It is unclear whether it is the social subjects themselves who lead in the moral development, or whether it is the social systems. As Allen’s critique suggests, Habermas does not seem able to account for the under-development of particular social systems in terms of the universalistic claims to moral development he makes, because he accounts for moral development in a specifically limited way. Given Habermas’s claim that the development of social systems is tied directly to what those social systems can learn from mirroring the learning process that individual subjects go through, the crux seems to lie at the level of the socialisation of individuals in the process of dialogue towards mutual understanding. This poses a problem for Habermas because, despite his egalitarian intentions, the mechanism of social and moral development seems to imply that some will be excluded exactly because forms of *de facto* exclusion cannot be accounted for in the social processes he analyses. The interaction between the social subject and the social systems, as Habermas articulates it, suggests that some new challenges to existing norms cannot arise. As such, those who do not speak will forever have to remain silent, not because they want to, but because they have no mechanism by which their speech can be identified.

## **Conclusion**

Habermas presents a radically egalitarian meta-philosophical theory which identifies all speaking beings as being capable of taking their place within the space of justificatory discourse.

In the articulation of this theory, however, Habermas seems to introduce inegalitarian measures that restrict access to such spaces. Further, the structure of Habermas's theory of language implies Habermas's blindness to the airing of grievances that take place outside the framework he develops. As is well known, Habermas develops a universal framework for discourse geared towards "understanding", in its specific Habermasian meaning. Problematically, this "universalistic" idea of discourse runs into a barrier when it encounters discourses that erupt outside of the accepted mode of discourse articulated by Habermas. Framing this point in a Rancièrian way, we can say that Habermas attempts to account for all forms of "everyday discourse" in his theory of language, but this very attempt already miscounts a number of forms of discourse not identified by his theory. This miscount occurs in two places that reveal the paradoxes of emancipation at work in Habermas's theory: first, in how Habermas relates his theory of communicative action to claims of injustice and social struggles; and second, in how he articulates this idea of communicative action within a theory of moral and social development.

In the final chapter, I will turn to the work of Rainer Forst, identified with the third generation of the Frankfurt School of Critical Theory. His work, which as I shall show constitutes a dialectical synthesis of Rawls and Habermas, also diverges from these theorists in significant respects, thereby tending to avoid the problematic tendencies I have been exploring. As I will show, however, despite Forst's meticulous approach to a "critical theory of justice", it is not clear that he is able fully to escape the paradoxes of emancipation that arise in the work of Kant, Rawls and Habermas.

# **Forst's critical theory of justice, power, and the subject of justification.**

## **Introduction**

The thesis can so far be read as one that tracks the historical progress of an idea, the Kantian notion of autonomy, and how that idea is framed by a problematic of equality occurring in the political attempt to institute autonomy within the basic structure of society. This track continues in the work of Rainer Forst, who not only attempts to synthesise Rawls with Habermas, but does so in an explicitly Kantian framework.

From out of the “family quarrel” that designated the debate between John Rawls and Jürgen Habermas, another German theorist, Rainer Forst, has been able to find new grounds for the establishment of a rapprochement between “political constructivism” and “critical theory”. This dialectically inspired contribution to political philosophy has put Forst front and centre amongst the most well regarded contemporary figures working within philosophy. Given the relation of Forst's work to that of John Rawls and Jürgen Habermas, as well as the fact that he grounds the political dimension of his work in a sophisticated reading of Kantian moral constructivism, his work presents us with an ideal study by which to press our case against Kantian political philosophy. Does Forst succumb to the same paradoxes, ellipses, inconsistencies, and anomalies that fated his predecessors in their attempts to develop a political distribution of society premised on a radically egalitarian moral ethos? As I have shown in the previous chapters, the figures of Kant, Rawls, and Habermas all presented versions of what Rancière designates as *parapolitics*: of appearing to “solve” politics by use of philosophy. Their egalitarian intentions however, molded in the basis of their moral positions, are undermined by the very institutional structures that they consider to be the mechanisms by which to implement the egalitarian moral theories in society. Given Forst's attempt to

distinguish himself from Rawls and Habermas, it does not do us any favors to repeat the arguments that Kantian political philosophy undermines its egalitarian ethos by implicitly excluding persons from political discourse. The question now becomes whether Forst's own attempt to develop a "critical theory of justice" resists the temptation of the emancipation paradox or whether he avoids the capitulation to inequality.

### **Neither "discourse ethics", nor "political constructivism"**

I mentioned above that Rainer Forst takes his philosophical starting point from the dialogue that took place between Jürgen Habermas and John Rawls. Despite being heavily influenced by both theorists, Forst has been able to forge his own conception of justice based on the egalitarian ethos inherent to the Kantian notion of autonomy. Before I turn to Forst's own position, which he calls a "critical theory of justice", it is essential to clarify the differences between his project, and those of his predecessors.

First, some similarities: Like Rawls and Habermas, Forst's project is motivated by the goal of developing a realisable and practicable account of autonomy and equality within an empirical framework. Like his predecessors, the major referent in this regard is Kant. And, like Rawls and Habermas, Forst hopes to eschew the metaphysical constraints of Kant's moral theory. As Forst rightly points out for Habermas's and Rawls's projects in a remark that I would suggest *also* defines Forst's project, the central feature:

the fact that each proposes a conception of justice that, standing in the Kantian tradition, seeks to forgo metaphysical foundations and instead relies on an intersubjective and procedural interpretation of moral autonomy and of the public use of reason as the basis for justifying principles of justice (*RJ*: 80).

What each of these projects have in common, then, is that in a Kantian constructivist fashion, they conceive of a particular idea of persons, a particular procedure of justification, and particular principles of justice, which are derived from the deliberative procedure by which persons take part as active participants within the procedure of justification. Despite these

similarities (and a number of others which I will pass over briefly during this section), Forst's process of how to theoretically render the "justification of justice" is markedly different from both Rawls's and Habermas' own attempts (*RJ*: 82). My goal here is to show how Forst differentiates his own procedure of justification from the discourse ethics of Habermas and the political constructivism of Rawls. Forst's own proposal, as we shall see, is dialectically inspired, in that it is developed out of a critical analysis of the differences between Rawls and Habermas. As Forst says himself "my aim is to forge a synthesis out of the controversy between Rawls and Habermas and to offer a theoretical alternative that goes beyond them" (*RJ*: 79).

Forst calls for an alternative version of moral and political constructivism, which is able to combine satisfactorily the co-originality thesis with an account of the justification of justice. On the one hand, Forst argues that "Rawls's conception of political autonomy falls short of what is required in a theory of political constructivism," and on the other "Habermas's conception of human rights does not adequately account for the moral-constructivist content of basic principles of justice" (*RJ*: 101). Forst therefore takes a theory of justice must be able to satisfactorily account for both a proper conception of political constructivism and a moral constructivist conception which does not reduce one into the other, nor in which the political constructivism is rigidly opposed to the moral constructivism (cf. O'Neill 1996). The cornerstone of Forst's project in attempting to navigate the deficiencies in Rawls's and Habermas' projects is thus the *right to justification*. The right to justification forms the normative core of the discourse of justice in all political and social contexts (*RJ*: vii). Forst observes that this is a Platonic ideal, in which there is a single root of justice for all our social, political and moral contexts (*CJ* 2002). I will discuss the right to justification in more detail below, for now it is sufficient enough to state that Forst sees this as his original contribution, which is able to alleviate the problems he identifies in the space between Habermas and Rawls. The problem of the political priority of rights over moral priority, which Rawls sees in Habermas, is solved if we

accept the right to justification as a moral right which is unable to be denied. "The basic right to justification grants each person a *veto right*, which sees to it that his or her morally justifiable claims are not ignored" (RJ: 112). against Habermas' interpenetration theory of the co-originality thesis of human rights and popular sovereignty, Forst's argument based on the right to justification provides a plausible justification for the undeniability of the rights and freedoms of autonomous individuals, which does not require immanence to the law. Against Rawls' "original position", Forst contends that the constructivist stance is not a thought experiment, but a social practice, and does not require the abandonment of a moral constructivism for a political constructivism (Forst 2017).

The Forstian account of Political constructivism, and the Rawlsian account may appear similar. For instance, both see political constructivism as the result of a procedure of justification. For Rawls, this procedure is that which in the original position, rational agents under the restricted reasonable parameters select the principles of justice which ought to regulate the basic structure of society. For Forst it is a procedure in which autonomous members of society, collectively and discursively develop the principles and rights that result from moral constructivism. There is little that specifies a difference between these procedures. Unlike Rawls's position however, Forst sees political constructivism as intertwined with moral constructivism. "in such a way that basic justice is discursively situated and reiterated, and thereby always appropriated and interpreted, within political contexts by the participants themselves" (RJ: 6), whereas Rawls abandons his moral constructivism in order to attempt to alleviate the criticism that his project requires a comprehensive moral doctrine in order to get off the ground.

I have attempted briefly in this section to draw some distinctions between the project that Forst presents, and those projects of Rawls and Habermas which I have previously presented. I do not contend to have exhausted all the differences between Forst, Rawls, or



Habermas. That has not been my goal. Merely, I wanted to briefly include how Forst's project cannot be considered a straightforward development of either Rawls' political constructivism, nor Habermas' "discourse ethics". In the rest of this chapter, I will present a thorough analysis of Forst's project, drawing out further the distinctions between Rawls and Habermas' projects. I will argue that Forst seems to come closest to realising the goal of establishing a practicable account of the Kantian notion of autonomy within an empirical framework that adheres to the egalitarian ethos. In the next section I will outline Forst's interpretation of Kant's notion of autonomy, that is, the right to justification

### **The interpretation of autonomy as the right to justification.**

As I stated above Rainer Forst views the right to justification as a "single root", or ideal, which founds the basic deliberative processes of our social, political and moral justificatory procedures. This right is given through our identification as "justificatory beings". Such beings

not only have the ability to justify or take responsibility for their beliefs and actions by giving reasons to others, but in certain contexts they see this as a duty and expect that others will do the same (*RJ*: 1).

The very logic of justification however requires the reverse principle as well: as justifying beings, human beings also have the ability *to demand* justifications from one another. Implicit in this is a presupposition of the equality of everyone with everyone else, the very presupposition that Rancière takes to be the founding act of any discursive procedure. What this means in Forst's case is that everyone has the capacity to question the legitimacy of the practices of others, as well as institutional structures, that affect them in some way. When it is connected to the "critical theory of justice" (which I will discuss below), the conception of the human being as a justifying being leads to the idea that "the fundamental impulse that runs counter to injustice is not primarily that of wanting to have, or have more of something" (*RJ*: 2), as in the case of forms of distributive justice. Rather, the fundamental impulse of justice is "of wanting to no

longer be oppressed, harassed, or have one's claims and the basic right to justification ignored" (RJ: 2). The right to justification arises from one's ability as a human being to respond to, and demand reasons for, actions and beliefs that one is affected by or that one may put into effect. This implies the fundamental moral principle that no action, by an individual or an institution, may be implemented that has not been properly justified to those whom it would end up affecting. Injustices arise on this account not primarily when persons are lacking certain social goods, which exclude them from being properly able to interact in society or indeed to flourish in society, but rather when reasons or demands for justification over unfair distributive measures are ignored.

Forst's basic right to justification ought to be used as the foundation upon which the basic structure of society is built. While this claim is based on the Kantian categorical imperative of the formula of humanity, it places it within an empirical framework derived from historically specific contexts. This is, as Forst writes, "[t]he conviction that the right to justification is not just a rationalistic contrivance but a historically operative idea" (RJ: 3). This is an important point to emphasise, as some criticisms of Forst's account of the basic right to justification (McNay 2016; Honneth 2011) have accused Forst of being overly abstract. These accounts fail to take the full measure of Forst's reconstructive conception of justice and instead overly rely on his constructivist account of the right to justification. They focus on Forst's idealised conception of pragmatic interaction without acknowledging the fact that he explicitly states that such a conception can be reconstructed within the framework of real-life social struggles. On the one hand, in my reading of Forst I partially disagree with critics like Kevin Olson (2014), who considers that Forst falls on the side of a constructivist procedure of justice, rather than a reconstructivist one. However, in taking a critical Rancièrian perspective towards Forst, new critical approaches to Forst arise. The Rancièrian perspective articulates the view that in egalitarian theory, those who propound such theories rely on inegalitarian mechanisms to

develop the conditions of equality. This undermines the egalitarian intentions of these theories. As I will below, Forst's reconstruction of a right to justification seems partial. This partiality, combined with his account of "noumenal power", in fact does seem to restrict the right to justification to various positions of hierarchy within society. In order to make sense of these criticisms and counter-criticisms, it is important to have an adequate understanding of the sophisticated and challenging arguments that Forst puts forward in favour of his constructivist-reconstructivist theory of justification.

According to Forst, justification doesn't pertain to the explanation of an action based on what the actor takes to be the most rational action. What is called for is rather "a form of reasoning that submits both the ends of action and the means to justification before others as those morally affected" (*RJ*: 15). Such reasoning is not based in the subject-relative criteria of a person's enlightened self-interest but rather on reasons that are available to all: "a moral person must be able to take responsibility for his or her actions before affected others and also generally" (*RJ*: 19). In proposing a moral norm that affects all persons, the speaker must present justifications for the norm that can be accepted by all those it affects. Forst follows Habermas's principle of discourse ethics here. For Habermas, "only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse" (*MCCA*: 66). In meeting certain criteria – such as: not favouring some persons over others; that persons cannot be excluded; and that no one may assume the conception of the good that anyone else holds – no good reasons can be brought forward to reject the norm being proposed. This norm ought then to be adhered to by the morally affected persons, and requires that one can demand its adherence from all others. This presents a reformulation of Kant's lone thinker who establishes universal moral laws based on a monological introspection of his or her own maxims as non-contradictory. Like Habermas, Forst turns this monological introspection into an intersubjective practice of giving and taking of

reasons. However, unlike Habermas, as we saw above, Forst grounds this intersubjective practice in the undeniable right of participants to demand justifications from the other. This intersubjective practice, which Forst calls a discursive justification procedure, requires the norm to be submitted to a criteria of justification, which states that in its justification the reasons submitted for validity have to be understood and accepted according to the two key criteria of reciprocity and generality. For a norm to be accepted as universally valid, the justifications submitted in favour of it must not claim certain privileges over others; one's own needs and interests must not be projected onto others (reciprocity); and that no objections from anyone who is affected by such a norm should be excluded (generality).

Reciprocity and generality – understood here as universality – are thus the decisive criteria of justification in the moral context; the former underscores the equal status of and imperative of concrete respect for moral persons as individuals, the latter prevents the exclusion of those possibly affected and confers the authority of the moral community on the individual...the general principle of reasonable justification is thus to be conceived as the principle of reciprocal and universal justification (*RJ*: 20)

Since these principles of justification define just interactions, they also apply in the political context. This means that the principles of justice, which underpin the basic structure of society, must also correspond to such criteria. Unlike Rawls's model, which situates the choosing of principles within a procedure of justice which only includes representational parties, Forst avoids the exclusionary assumptions implicit in such a model (as we saw in chapter 3), by stating that all affected must be involved in the discursive procedure.

The strength of Forst's account is that, while it follows the traditional constructivist model that reasons must be shared reasons (Korsgaard 1996b; Darwall 1983), he reformulates this model to emphasis reasons as "shareable", and not merely as shared. While shared reasons may be neutral and agent-subjective, no discursive procedure would need to be articulated to define such reasons. In stating that reasons must not only be shared but also shareable, Forst follows Rawls's later work in restructuring the procedure of justification in a way that "does justice"

to the openness of the procedure of justification and to underscore the (in this sense counterfactual) moment of reciprocal and general acceptability -- or better, non-rejectability -- independent of the factual acceptance or non-acceptance of reasons (RJ: 21; cf. Habermas 1996).

Against Habermas's criticisms that such shared reasons relies on *de facto* agreement rather than those which are sharable in principle, Forst argues that the sharability criteria of reasons demands that "individuals accept the reasons that speak for particular claims or norms, and through this insight -- this being convinced -- find common and shared normative beliefs" (RJ, 21). In this respect, Forst moves past Rawls in his own account of shared norms, by establishing the forceful nature of *real* discursive procedures of justification to come to agreement on shared norms.

We can see clearly then, when we focus on this principle of reciprocal and universal justification, the strong egalitarianism to which Forst is committed. Not only is everyone allowed to take part in the discursive procedure, but more importantly, everyone that is affected by proposals made in such a procedure has a veto against such claims that they find cannot be justified. For Forst, therefore, this is the proper interpretation of the Kantian categorical imperative of respect for moral persons as ends in themselves: "one recognises their right to justification and the duty to be able to give them appropriate reasons" (RJ: 21).

Having now developed an account of Forst's interpretation of Kant's notion of autonomy, I want to move to the second aspect of the constructivist agenda, which is found in Rawls, Habermas, and Forst. This pertains to the procedure of justification.

## **Forst's procedure of justification**

We saw in chapter two that Rawls's procedure of justice, which determines the "basic structure of society", ends up replacing political agency with this structure. According to Forst, "the

principles and rights that result from moral constructivism form the normative core of political constructivism" (RJ: 7). While still similar in form to the Rawlsian procedure of justice, which determines the basic structure of society, Forst avoids the above problem. Forst is able to avoid this by stipulating that the legal-political procedures "cannot fully absorb the entire content of that which is morally required..." (RJ: 113). While still retaining terminology such as *moral constructivism* and *political constructivism* that Rawls draws on, unlike the Rawlsian account then, which assimilates the moral procedure of justification into the institutional structures that are basic to society, Forst envisions that the moral procedures and political procedures remain distinct (RJ: 106-110). In this way, Forst avoids the critical Rancièrian point that it is *the citizens* in their autonomy that ought to control discursive practice, rather than the political philosopher determining the normative content to be derived from the procedure of justice.

In the following section, I will explain this relationship further and show how it helps Forst achieve a notion of deliberative democracy, which according to him, can be seen as a middle-way between the Rawlsian and Habermasian models. What is important from the standpoint of the emancipation paradox is how Forst grounds this particular political constructivism in the historical-sociological struggles of injustice. As I mentioned earlier, I am unconvinced by arguments that criticise the abstractness of Forst's argument. Forst establishes a procedure that is both justified in a constructivist sense, as well as verified by pointing towards specific historic and contemporary social struggles. My concern however lies with the way in which Forst interprets these struggles and whether, in his attempt to deliver a practical egalitarian conclusion, he does not in fact undermine the egalitarian force of his universalist moral theory.

At the end of the chapter "The Rule of Reasons" in *The Right to Justification* (RJ: 155-187), Forst writes that deliberative democracy is

a self-correcting institution, but self-correction means that the authority to question its authority always remains within the realm of reason among citizens. There is no rule of reasons apart from the self-rule of citizens by justified reasons" (*RJ*: 186).

Unlike the Rawlsian account, which in the establishment of the basic structure of society, evacuates society of actual political agents, relegating them to a form of passivity, Forst makes sure he maintains an active role for citizens as legislators in society. While Rawls seems to reduce such activity, moving it to those governing institutions that are derived from the basic principles of justice, Forst suggests that such activity must be located in the citizenry itself, and always remain an open and contested process. Citizens then are always involved in a procedure of justification about the institutions, "one that must always be reactualised and newly validated in concrete practices of justification" (*RJ*: 22). For Forst, notwithstanding the critics who accuse him of abstractness, the reciprocal and universal norms justified through the procedure of justification are at the same time standards immanent to the procedures of democratic rule. Consequently, if our basic institutional structures do not reach the standard by of justification that we ought to expect, then the rules of justification call for a renegotiation of what those structures ought to do in a procedure of intersubjective justification.

These procedures do not take place in a quasi-historical "original position",

[f]or the political question of justification is not posed in an abstract but always in a concrete way, namely, by historical agents who are no longer satisfied with the justifications for the normative order to which they are subjected. The question of political philosophy is their question (*JC*: 2).

The question that concerns us, however, from the point of view of the emancipation paradox, is "who is the subject of these struggles?", which Forst believes can be the basis of a reconstruction of our normative justifications. Before I attempt to answer this question, we should assess more clearly the criteria of political justification that Forst describes in his theory of deliberative democracy. If his assertion of the strong link between moral constructivism and political constructivism is true, then what we should find is a right to justification at the basis of

the theory of deliberative democracy. , This right is possessed by all who are affected by the institutions of democracy, and contains a demand against those institutions that ignore or dis-empower persons of this right.

This connection between morality and politics is well articulated in Forst's discussion of human rights in "The Justification of Human Rights and the Basic Right to Justification: A Reflexive Approach" (in Forst 2014b). Human right, as is well established not only in the theoretical literature but also in reconstructions of the political material such as *The Universal Declaration of Human Rights*, begins from a position of commonality amongst persons. This commonality is usually derived from the conception of persons as "moral persons". For Forst, this conception of "moral persons" should be understood (unsurprisingly) in terms of one's right to justification. "The normative basis for a conception of human rights is the right of every moral person to be respected as someone who has a moral right to justification" (JC: 63). This presupposes a criterion that normative claims must abide by. Participants can assess normative claims in their capacity to be accessible to everyone equally. Normative claims that are thus able to pass the criteria of reciprocity and generality can be then considered universalisable. This pertains to the moral constructivist side of Forst's argument. However, in the movement from this form of constructivism to the justification of legal norms, the procedure in fact must not be justified in relation to moral reasons in moral discourses, but rather must be "justifiable within appropriate legal and political structures (practices) of justification" (JC: 63). Forst continues his argument by noting that

the criteria for legal norms are those of reciprocity and generality within political structures of justification, which presupposes the possibility of free and equal participation and adherence to proper procedures of deliberation and decision-making (JC: 63).

In order to develop this point further, Forst introduces what he calls "fundamental justice," which refers to the basic structure of justification from which the basic structure of society can



be derived. While our basic human rights can be developed in the moral context of an intersubjective process, this process changes from a moral one to a political one in the codification of certain rights in a constitution:

Which morally and politically justified basic rights are codified in a constitution is a question that is itself to be decided in turn in discourses over political principles. Within these, the basic right to justification grants each person a veto right, which sees to it that his or her morally justifiable claims are not ignored. This is the deepest meaning of basic rights as reconstructed by discourse theory, it seems to me: they represent different legal concretizations of this veto right, even though it is never entirely identical with them (*RJ*: 112)

What Forst seeks to establish is a theory of procedural justice based in a moral right to justification, but whose political codification is autonomous. The construction of such a procedure, at its core, rests on the moral right to justification (i.e. there can be no institutions that violate this moral procedure). Meanwhile, the autonomous element comes in the idea that political institutions cannot simply be derived from our moral justifications, but must be accepted as part of an intersubjective discursive procedure, in which all citizens have the right of participation.

Forst's procedure of justification, therefore, seems to align with the egalitarian ethos that is inherent to the Kantian notion of autonomy. It stipulates that all social and political normative procedures must be justified, in real (or realisable) discursive procedures, by all those who are affected. This, while seeming similar to Habermas's "discourse ethics", is divorced from that procedure in that Forst grounds such procedures in the moral right of persons to demand justifications from others, rather than finding this right derived from legalistic structures. As I showed above, Forst takes both his account of autonomy, and the procedure of justification, and attempts to develop further his theory of justice, or as he calls it "the critical theory of justice". In the rest of this chapter, through a reconstruction of Forst's critical theory of justice, I argue that despite seeming to present a more robust, practicable account of the egalitarian ethos inherent to Kantian conceptions of autonomy, Forst fails to properly insure the right to

justification when claims of injustice fall outside the parameters of the basic structures of society.

### **Forst's "critical theory of justice"**

Forst proposes that a reconceptualisation of justice requires that we pay close attention to its contrasting concept, namely: arbitrariness. Similarly to Rawls, Forst presents arbitrariness and justice in a social and political, not a metaphysical sense. Though Rawls only presented it in a political sense. It is presented as a "rule of some people over others without legitimate reason" (Forst CJ: 31; Forst 2013). Forst defines arbitrary rule as a form of domination. This term "domination" is already well expressed by Iris Marion Young when she writes that it refers to "the structural and systematic phenomena which exclude people from participating in determining their actions or conditions of their actions" (Young 1990: 31). Forst clearly has this definition in mind when he juxtaposes arbitrariness with justice. Justice is opposed to rule without justification, not in terms of goods or distribution, but in terms of treatment, "of not wanting to be dominated, harassed or overruled in one's claim to a basic right to justification" (JC: 21). As we saw above, the right to justification is framed as a moral right that is attributable to all humans *qua* human being. It is, to Forst, the proper interpretation of Kant's formula of humanity. Placing this right within a "political context this suggests that no political or social relations ought to exist that cannot be adequately justified towards those involved" (JC: 22). This justificatory stance is seemingly different to that of Rawls and Habermas despite the fact that Forst is influenced by them. As Todd May has shown in reference to Rawls, and Rancière and Honneth have shown in relation to Habermas, justificatory clauses are often aimed at those who already hold some form of arbitrary rule over others. On these models, it is up to those suffering injustices to have to justify their claims to those who are not affected by such injuries. Forst turns this position on its head, not only by proclaiming that all, simply on account of their humanity, have a claim to justification, but that any claims "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” (JC: 34, my emphasis). This for Forst is the “supreme principle” of the framework of justice.

This theory of justice has as its foundational position a universalistic moral claim to justification. Simply put, anyone in virtue of being a human being has the capability to demand a rationalisation for claims that affect them. The claim to justification, which all human beings have access to, allows persons to make a claim. In the political context, as intimated above, this is articulated as a right not to be dominated. Forst introduces a moral framework, based around what he sees as the autonomy of morality, which he believes grounds this political right. By this, Forst understands morality to be free from the “traditionally prescribed content and grounds of validity” such as divine law, a secular sovereignty, or the “unquestioned value of an established form of life” (RJ: 45; cf. Habermas 1998). For Forst the autonomy of morality, is autonomous in the sense that it cannot be overruled by other values or truths other than itself, “for whoever acts from anything other than moral motives does not act morally at all...morality constitutes a unified validity-complex of motive and content” (RJ: 46).

In terms of the emancipation paradox, *prima facie*, there seems little that could be problematic with Forst's egalitarian-universal articulations. He propounds a radically egalitarian form of justice as non-domination, founded on a universalistic moral claim that demands equal respect of its constituents and that is established in the actual, intersubjective space of practical reason. However, where problems may begin to arise is in Forst's sudden movement from justification to power. In the next section, I will explore Forst's conception of noumenal power in relation to his critical theory of justice. While Forst proposes an interesting conception of power which avoids some of the problems associated with traditional conceptions, my concern is that Forst's introduction of power restricts the space of justification, negatively affecting those who require such justificatory power to stake their claims against arbitrary rule.

## Justification and noumenal power

In the paper “Noumenal Power” (2014; hereafter *NP*), Forst attempts to develop a new account of power which places it within the realm of justifications. For Forst, power is to be understood as that which motivates persons to certain beliefs or actions, based on reasons provided by another person. The *noumenal* aspect, while it retains some structural similarities with the term as it is used in Kantian metaphysics, ought to be understood in the terms that it provides a general idea of what “power” is, that can be then used to distinguish between particular forms of power that take place in social and political contexts. Power itself has no transcendental, moral, or ethical claim attached to it. It is neither good nor bad, and the exercise of power in-itself is neither right nor wrong.

The essential point about power is that in characterising 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 (*NP*: 112).

In this sense, power refers to the motivating force of justification. To be motivated by reasons, whatever those reasons may be is to accept the justification that those reasons present. Power is thus situated within the acceptance, and the carrying out, of the interests that are presented by the justifications. Most conceptions of power take it to be:

1. Synonymous with forms of domination in which one agent asserts themselves in such a way that leads others to act against their own interests (Lukes 2005);
2. The imposition of one will within a contest of wills (Weber 1978; Habermas 1981a); or,
3. As the consent of the free and equal (Arendt 1972).

Forst, on the other hand, seeks a more general definition, which divorces itself from domination. This general definition, according to Forst, does not make claims about whether

reasons provide good or bad justifications, just whether those justifications can be associated as a form of power (cf. *JC*: 9-11). While sympathetic to Arendt's account of power as a liberating force, Forst attempts to develop an account of power that has neither negative nor positive associations. Power, on Forst's interpretation, should be considered an ethically neutral concept within the space of reasons and of justifications. Power is therefore not based on physical or psychological force, nor does it define the means of institutional or military strength. Power is rather the justificatory force of reasons; what moves people to act in such a way that corresponds to the intentions of the actor giving the motivating reasons, and in such a way that the influenced person would not have done so without the intervention of another. The exercise of power can thus be, for example, a “‘powerful’ argument, a well-founded recommendation, an ideological description of the world, a seduction, an order that is accepted, or a threat that is perceived as real” (Forst et al 2014a: 12). Forst in this way seeks to define a cognitivist theory of power that is not strictly determined by social or political parameters. The use of “cognitivist” here is similar to that understood by Habermas, in which statements are correct or incorrect depending on how they are considered in reasonable discourse. The difference however is that while a cognitivist account of power occurs in discourse, such discourse does not have to be reasonable, nor does it specify whether a reason for motivating others to act is considered correct or incorrect. On Forst's account, power refers to “the capacity of A to motivate B to think or do something that B would otherwise not have thought or done” (*NP*: 115). In this instance, power is understood as a relation of influence between persons. Specifically, an influence that comes about through the acceptance of reasons as justificatory. The military officer or prison guard who exerts influence through brute force does not exert power according to Forst's account. Similarly,

[t]he kidnapper has power over the kidnapped and those who are supposed to pay the ransom only as long as his threat is taken seriously; if it is not, he can still exercise brute force but he no longer has the power to achieve his goal (*JC*: 9).

On Forst's account then it seems that one doesn't have to be in what is usually described as a position of power to exert power: "power rests on recognised, accepted justifications – some good, some bad, some in between" (NP: 116).

The distinction Forst makes in his analysis of power is that under his conception, persons are still treated as subjects, while in either the positive (i.e. Arendtian), or negative (i.e. Lukesian, Weberian) conceptions of power, there is a subject (the employer of power) and an object (that whom power is exerted upon). The distinction between Forst's account of power, and the Arendtian, Lukesian and Weberian conceptions, turns on the difference between acting and being acted upon. While power may turn to brute force when the reasons for moving a subject to act are no longer motivating, once this has happened the subject is no longer a subject in the relevant sense, they have become objectified. Implicit, therefore, in Forst's conception of power, is the recognition by the one exerting influence on the other of the ability of the other to understand and accept justifications.

If, as noted above, Forst takes everyone *qua* human being to be capable of accepting and providing justifications, then it follows that everyone should be capable of exerting power. However, it seems peculiar to propose that those persons who have now been acknowledged to have historically often been denied a seat within the space of power (women, people of colour, proletarians etc.) can be said to exert influence through the motivating force of their reasons. Power is not only located in the intersubjective sphere of communications that exist between people, power is also primarily located in the institutional structures which govern relations between people. Given the positions of certain groups of people within society, it does not seem as if those persons can be recognised as having power. According to Forst, however, even the lowliest member of society is recognised as having the capacity to exert power upon others; to provide justifications which motivate people to act in some way that they would not have otherwise acted.

While Forst's account of power is certainly comprehensive, one problem that I believe troubles it is that of the ability (or inability) to differentiate between good and bad justifications. According to Forst, an action or belief may be categorised as powerful when the justifications made for it are accepted by those affected by it, and as such, motivate those affected in a way that benefits the motivator. Acceptance of such justifications is not based on any moral or ethical judgment of whether the justifications are good or bad. "The exercise and effects of power are based on the recognition of a reason(s) ... to act differently than one would have acted without that reason" (NP: 116). However, to recognise that one would act differently given the reasons provided, and to act differently in fact, are two different things. Furthermore, why one would accept particular reasons for acting differently is not, to my mind, theorised properly by Forst. He writes that

there is a spectrum of kinds of acceptance ranging from explicit acceptance based on critical reflection and evaluation, through cases where one feels "forced" to accept a certain argument, though one would prefer not to, or cases where one is forced to accept a threat or an order by a superior as a reason for compliance, up to, finally, cases where one accepts certain justifications almost blindly without further question (NP: 116).

On Forst's cognitive account of power, in which power is what takes place in the head (Allen et al 2014), the burden of proof rests on the person upon which power is being exerted upon. Like Arendt, Forst thus conceives of power in terms of its ability to persuade persons to act in a way they would not otherwise have done (Arendt 1972). The problem that I think arises in conjunction with Forst's account of power is that it seems to place the emphasis on the persuasive "power" of the justifications. This I think is problematic because there are real social interactions of power, which do not revolve around the use of persuasion to convince others to perform actions they would not otherwise perform. In this sense then, there is a degree of tension that exists between the right to justification, and noumenal power, which is not adequately confronted in Forst's work.

Forst's theory of justice is premised on a quasi-transcendental Kantian conception of persons as justifying beings. I call this conception "quasi-transcendental" because it is at once a presupposition of humanity's discursive practices, and one that is verified in the history and sociology of political struggles. As such, the conception of persons as having a right to justification can be proposed as a prerequisite that must be reciprocally recognised in each discursive participant (similar to Habermas's preconditions of universal pragmatics), as well as recursively reconstructed in an analysis of historical-sociological conditions of struggle. This right is a moral right, which states that everyone who is morally affected by the actions or beliefs of someone else can demand justifications for that action or belief. If this is the case then, in terms of power dynamics, the acceptance of reasons, which Forst describes as noumenal power, seems to be subject to the criteria of justification. However, if such is the case, then it doesn't seem as though persons with an equal capacity to judge justifications would accept reasons for being motivated to act in a way that would be against their interests. In terms of the emancipation paradox this seems to open up the problematic consequence that those who "accept" bad justifications to act in a certain way, do so because they are unable to actually differentiate between "good" and "bad" justifications to act. By "bad" justifications, Forst means justifications that cannot be shared amongst free and equal persons. The very fact that there is power, that is, the acceptance by some to act in a way other than what they would otherwise have done, seems once again to split humanity between those who can and those who can't, between those who know and those who do not know.

Forst's analysis of power as the motivating force of reason allows for new forms of analysis of structures of power and relations of power. In its definition as "a way of blinding others through reason", power can no longer be regarded as a relation between "subject" and "object", as in forms of domination, but rather power requires "an agent of justification whose compliance rests on some form of recognition" (CP: 126). In order to exert power over



someone, there must be a reciprocal recognition of both agents as justifying beings. That is, not only as agents who can understand and accept reasons for doing things, but also who can present reasons of their own as to why they are acting as they do. Unlike democratic conditions of justification, the reasons agreed upon do not need to be to the benefit of everyone involved, they merely have to be accepted as motivating reasons. What this allows, in the internal critique of currently existing conditions of power, is the differentiation between “agreements” and “acceptance” as motivating factors to act in the intersubjective sphere of reasons. Agreement refers here to a substantial discursive practice in which the giving and taking of reasons corresponds to the procedure of justification which Forst has outlined. “Acceptance” on the other hand could refer merely to a “toleration” of the reasons that have been proposed in discourse.

One possible source of tension in Forst’s work is his conception of power as noumenal, which, as I have showed, is located in a cognitivist sphere. Forst's "cognitivism" of noumenal power is similar to that the "cognitivism" that Habermas defines in his moral theory. In both cases they are referring to the reasons and justifications that individuals draw on to justify their actions and beliefs. However where they differ is that I do not believe that Forst's account of cognitivism within the sphere of justification can be analogous to "truth claims", as Habermas asserts within his moral cognitivist theory. As specified above, by cognitivist, I think Forst has in mind simply the powers of rationality, while for Habermas there is a much more specific nuanced account of epistemic claims. On Forst's account “cognitivism”

is seen in the way that Forst considers power to be assessable by how agents choose to believe in the justifications that are offered to them. By presenting power as “something that goes on in the head” (Allen et al. 2014).

Forst not only risks ignoring the material impact of power, which does not explicitly rely on the exploitation of consciousness (Allen et al. 2014; McNay 2016), he also risks substituting an

intersubjective discourse on power for a monological conception of moral discourse. This latter criticism represents an important paradox in Forst's notion of power. If power is defined in cognitivist terms, then how is such power identified within an intersubjective sphere of discourse? To put it another way, what is the grammar within discourses of power that allows for the articulation of what goes on in the head? The problem is that Forst, in his theory of power, seems to have to articulate at some stage a formula which is able to differentiate between "good" and "bad" forms of power, but it isn't clear who or what formulates such parameters. On these grounds, the risk is that Forst must take up the kind of vantage point common in Kantian and post-Kantian philosophy: that of the lone thinker who universalises the parameters of good and bad based on what they think is the best of all outcomes. This monological state comes about because it is not clear how Forst is able to differentiate between good and bad reasons for doing something that one would not have otherwise done without recourse to universalisable normative criteria. Now, Forst does put forward a criterion in his parameters of reciprocity and generality. However, if he is correct to take everyone as a justifying being who understands that these criteria are in place, it seems problematic to argue that they would be subject to bad reasons.

The problem of the subject accepting bad reasons also arises in some places where Forst seems to revitalise the Platonic suspicion regarding political agents, of "they know not what they do". Indeed, he suggests as much when he writes, in an exchange with Amy Allen and Mark Hauggard, that "narratives of justification have the effect of colonising the mind and self-awareness of subordinated subjects" (Allen et al. 2014: 22). This is where the paradox of emancipation seems to arise. For it seems to suggest that, to acknowledge that they are under the effect of power, the only recourse for the dominated is to accept the reasons of another, namely the theorist who is able to recognise the effects of power. Here we enter again into the old Althusserian problematic, articulated by Rancière: That emancipation in effect means

leading people out of their captivity, which requires that they be educated in the correct way, by those who see through the chains of the dominated, something the latter can't do by themselves. As we have seen in chapter one by following Rancière, all this does is the substitution of one form of domination for another. In the case of Forst, the emancipatory relation merely substitutes one form of power relation for another, but does not solve the problem of how the agent themselves is supposed to recognise whether their acceptance of justifications is based on good or bad reasons.

In terms of the paradoxes of emancipation, Forst becomes stuck between a rock and a hard place in his account of noumenal power. Against his own conception of humans as beings who are able to understand the normative implications of reasons and justifications, his account of power seems to suggest that such implications are either ignored or not understood when we are the target of discourses that seek to manipulate us into acting in a certain way. Forst seems to reiterate a hierarchy of epistemic authority between those who can recognise such implications, and those who cannot. What this leads Forst to presumably have to do is return to the idea that the political philosopher has the tools that make him capable of acknowledging differing forms of power structures. As a result, this would make the philosopher capable of, indeed demand as a duty, the educating of those who are unable to differentiate between good and bad implications. In this respect, we return to the problematic that Rancière first identified in *Althusser's Lesson* and *The Ignorant Schoolmaster*, that the subordinated subject, in their release from one type of subordination, is merely enthralled in another.

The second major tension that I see within Forst's work has been excellently explicated by Kevin Olson (2014) and John McGuire (2016). In their separate contributions, they have both raised valid critical questions to Forst's account of justification as embedded in social practices. They both argue that despite his commitment to equal participation, Forst's account of political

justification has an essential elitism at its foundation, which implicitly excludes various social groups from participating.

As Olson writes, “rather than forming the core of any discursive politics, reason-giving may well be a class-specific political practice that favours elite groups over other” (Olson 2014: 88). Olson suggests that Forst over-emphasises the way in which people recognise each other as reason-giving (i.e. justifying) beings. Our ways of speaking, dressing, our tastes in foods and beverages provide for an understanding of persons who are thoroughly enculturated in specific group identities. We differentiate from each other in specific ways that are often unconscious and intuitive. “The empirical realities of social differentiation”, Olson argues, “seem to undermine the humanist orientation described by Forst” (Olson 2014: 95). As I have specified throughout this chapter, Forst theory rests on an assumption of our recognition of others as justifying beings; that is as autonomous humans capable of demanding and giving justifications for their actions and beliefs. While Olson believes this to be part of recognition, he doesn't believe, like Forst seems to, that it is the whole story. For Olson,

we recognise others as different, and we understand the social world to be structured through such differences in a way that seems both natural and intuitive to us, because it is part of the very fabric of our experience of society (Olson 2014: 95).

This isn't a “fact of pluralism” for Olson, but rather the historical-sociological fact that there are different ways to recognise others, which are often combined or dispersed. For Olson,

practices of recognition ... are polyvalent and often contradict one another...it is not clear that others have a right to justification based on our recognition of them. The multiplicity of practices through which we assign value to others throw this conclusion into doubt (Olson 2014: 96).

One of the problems that therefore arises in the understanding that recognition takes place in a multitude of ways is of the diversity of practices. If like Forst (at least on Olson's understanding), recognition only takes place at the level of justification, then practices which may be essential and implicit for one particular identity, may not be so in others, “it is important

to be aware of the implicit class character that ideas of discourse and justification can have” (Olson 2014: 96).

The critique Olson presents is that in establishing modes of equality within practices of discourse and justification, Forst implicitly gives an advantage to those groups, such as academics, politicians etc. for whom discourse and justification are everyday practices. While Olson recognises his criticism does not totally undermine Forst’s theory, it does bring up the important issue, central to the problematic of the emancipation paradox, of the gap between the idealised claim and their representation in socio-political realities. For Olson to avoid such a problematic it would require, on his view, a stronger reconstructive commitment to the practices that people actually engage in, rather than assumed practices. Now, John McGuire also makes a similar argument. According to McGuire:

Despite Forst’s assurances that the rules governing justificatory exchanges are merely formal criteria for assessing generality and reciprocity, the fact that any prospective claimant must first surmount a justificatory threshold of reasonableness suggests that Forst still relies upon the timely interventions of normative experts (McGuire 2016: 110).

McGuire’s argument is that the threshold of reasonableness that Forst implicitly includes in the sphere of reasons excludes almost all non-experts from being able to take part in a discourse, which, on the other hand, he claims all human beings as “justificatory beings” have access to. To be clear, neither McGuire, nor myself, are advocating that Forst explicitly promotes elitist discourse; this is plainly untrue. The problem, as with all the paradoxes of emancipation, is that the actual mechanisms that Forst includes in his theory suggests an exclusionary account of who may participate in discourses. This is premised on the idea that the justification of justice does not reside within the parameters of political everyday discourse, but rather is separate from it (McGuire 2016; cf. *RJ*: 320 fn.29). To be clear, unlike Olson’s argument, for McGuire it is not that persons are arbitrarily excluded from political discourses in which the right to participation is premised on the recognition of everyone as justifying beings. Rather, and perhaps more

problematically, the exclusion happens at the level of the second-order insight into the justification of justice, at the moral level. For McGuire, “[t]he priority Forst grants to the right to justification glosses over important questions about where and from whom reason receives its governing authority” (McGuire 2016: 111). McGuire’s analysis of this problem is expertly articulated through an analysis of the courtroom thought experiment that Forst introduces in an essay on transnational justice (*RJ*: 241-251). Let me briefly summarise this thought experiment.

Forst tells us to put ourselves into the body and mind of a worker in the Serra Pelada Goldmine, or a gold mine like it. You work in treacherous conditions for long shifts (12 hours per day). This work is forced on you because of conditions such as the lack of education, lack of mobility and lack of other jobs. There are no benefits aside from employment, and the salary you draw from it is barely enough to cover essential things. On top of this, the wealth that is excavated from the goldmine is distributed amongst the owners of the company, a consortium whose members are nationals as well as international investors. Imagine now, given all these conditions, that you receive a letter from the “Global Court of Distributive Justice”, a newly created court of appeals that hears demands of justice and is able to realise such demands. However, rather than you making your own case for injustice, the court subscribes to you a number of “experts” who will make the case for the demand of justice for you.

Forst suggests, quite convincingly, that in making the case for the treatment of all persons under the same rubric of justice, that “experts” often devalue the ways in which particular modes of the struggles of injustice can be articulated. As he puts it, “a good moral argument at the wrong place can turn into its opposite into a veiling of the injustice it tries to alleviate or overcome” (*RJ*: 247). It is not presumably enough just to introduce moral arguments in the space in which struggles for justice are waged. One must also pay attention to the historical-political conditions that are entailed in the account of injustice of the miner. “It is not just that poor people lack necessary means of subsistence, it is that they are deprived of such

means in situations of multiple domination” (*RJ*: 247). Not solvable through just the machine of re-distribution, what is called for, on this account, is “a structural and lasting change in the institutions of production, distribution, and political decision making” (*RJ*: 248) that first and foremost takes into account the injustices felt by those who are affected most by distributive procedures. In principle, it is not only the legal and moral expert and the Judge in the Global court who are to discuss the authority of norms of justice, but such discussion must also include the miner. At the heart of this “complex arrangement of discursive institutions and procedures” is a minimal sense of justice which elaborates a discursive procedure of justification which everyone has access to; as Forst writes “the struggle for justice”

has to take place at many fronts and can take many forms; yet, the idea of justice always remains the same and needs to be kept free from other moral considerations: to establish truly justifiable basic social structures among persons who are autonomous agents in various contexts of justice (*RJ*: 250).

McGuire makes several arguments against Forst’s thought experiment and the conclusions that he draws from it. Firstly McGuire accuses Forst of not being properly informed of the actual injustice involved in the Serra Pelada Goldmine. On McGuire’s account, a miner of the Serra Pelada Goldmine would be virtually impossible to find to hear them articulate their grievances, given that the residents of Serra Pelada, because of the toxicity of the water-source, caused by heavy deposits of mercury left over from the goldmining operation, have moved away or died. If the complex form of analysis of the injustices were focused purely on Serra Pelada, this would be a reasonable critique. But Forst acknowledges his ignorance of the actual details of Serra Pelada, and suggests that the broad and general injustices felt by those who worked in that specific mine are also felt by those working in similar conditions around the world (*RJ*: 242). I’m inclined here to agree with Forst against McGuire. Forst’s account is not, in any way, an analysis of the socio-economic-historical injustices caused by the creation and

production of the Serra Pelada Goldmine, but rather an attempt to articulate problematic issues that arise in distributive forms of justice. On this account McGuire's criticism seems nit-picky.

The second criticism that McGuire makes of Forst, is that of the identification of the exploitative injustices described by the social scientists and moral experts. According to McGuire, Forst's description of the injustices focuses on the moral and political invisibility of the miner. However, McGuire is unsure that "there is any evidence that the worker himself sees his situation this way" (McGuire 2016: 116). For McGuire, drawing on the biographical work of Sebastião Salgado, while the injustices described above may indeed be suffered by the miner, the miner also identifies with the "the hope of deliverance" that would be delivered by discovering a large gold nugget and the hope of overnight success (McGuire 2016: 116). In terms of the emancipation paradox, we may say that Forst maintains the gap between the theorist's claims and political experience by not attending to the actual existing archives of the workers.

McGuire's critique of Forst is convincing in that it shows that Forst merely assumes what injustices tend to matter most to the worker, without actually bothering to consult real worker's voices to inquire about what they might actually say themselves (which is of course precisely what Rancière did), there is a sense in which McGuire himself misses the mark. McGuire seems to assume that the miner(s) is an isolated individual within an isolated community, with no access to the world outside of the gates. Modern workers, even the most deprived, often have access to information about the world. This information would contain facts and details about other persons' lives, not only in the country where the mine is located, but internationally. In this sense the worker would have access to a whole host of information which reveals other forms of living which are not their own, and which reveal forms of justice that may not be acknowledged in their own isolated sphere. In this sense, McGuire confines the worker to an isolated sphere who does not have the recourse to understanding more complex



forms of injustice that they may suffer. Contra what McGuire seems to acknowledge the “hope of deliverance” seems implicitly tied to the idea that miners recognise their exploitation at the hands of the conglomerate that owns the mine. However the miner also recognises, given the power asymmetries that take place in the normative background of discourse, that unless they ascend to a higher level in the social chain that their demands for justice will go unheard. On this account, McGuire’s arguments can thus be turned in on themselves, exposing their own elitist assumptions.

While Forst risks violating his own criteria of reciprocity by assuming he knows exactly what the injustices that are felt by the worker are, and furthermore, that he “fails to confront the justificatory challenge of his thought experiment would otherwise have seemed to be designed for: namely, demands for justice drawn from real moral vocabularies...” (McGuire 2016:116). McGuire also seems to dismiss the reconstructive potential of Forst’s argument based on the actual injustices felt by the worker. McGuire’s counter argument seems to be based on the idea that workers would acknowledge their injustices in speech-acts that would articulate their demand for moral respect. But fails to notice the power asymmetries that are in play in real political situations which restrict the speech of workers (and other suppressed groups) from being acknowledged. Rather, contra McGuire, what we can see in the “hope of deliverance” is the acknowledgement by the worker that at their current social level, within the structures of justice that they have, in principle have access to, their demands for fair treatment as “justifying beings” would be ignored.

In terms of the emancipation paradox we are led to the same problem that is implicit in Forst’s thinking about noumenal power. Forst seems to maintain a paternalistic attitude when it comes to the moral discourse that must be adhered to if we are to establish a democratically principled conception of politics. As such, he seems to close-off politics from everyone, by establishing a framework that decides which injustices are “properly” felt, and which ones are

justifiable according to the expert of moral discourse. Forst, despite the criteria of reciprocity which states that no one may assume the values or interests of anyone else, seems to do exactly that at various stages of his analysis. Without recourse to a reconstruction of the everyday communicative practices that take place in moral disputes, Forst assumes the Kantian character of these modes of struggle, as McGuire succinctly points out in his analysis of Forst's courtroom thought experiment, even though McGuire's account turns on problematic assumptions itself. Thus, we end back in the problematic, also found in Kant, Rawls, and Habermas: individuals suffering injustice, whose values and interests do not fit the justificatory procedure, are at least ignored, and at worst excluded from taking part in the very discourses of justification that are mobilised to denounce the injustices they suffer from.

### **Rancière and Forst: A critical comparison**

In the closing section of this chapter, I want to turn to a critical comparison between the work of Jacques Rancière and Rainer Forst. I do this for several reasons. The critical component of this thesis is deeply marked by the spirit of Rancière's work. Rancière's work is founded on a deep commitment to locate the problematic gaps that arise through the equivocation between universal claims to equality and the particular concrete procedures (i.e. real politics) of how the universal claims of equality are actually implemented. As we saw above, Forst does seem to become trapped, in the end, in some form of the emancipation paradox. There is an extent to which Forst realises the problematic himself and attempts to formulate his mode of critical theory in a way that avoids it. And precisely because of this, the ideas of Forst and Rancière in fact supplement each other to a large degree. Rancière's position is astutely descriptive. He is suspicious of the way in which normative language is articulated in philosophy as it opens up a hierarchical space of authority over knowledge. While I do not think Forst fully escapes the problem of Rancière's critique of normativity, I think his reformulation benefits over the more classical articulation provided by Rawls and Habermas, because Forst does not seem to pre-

empty to the same extent the principles of justice that may arise in the sphere of public reason. As we saw in chapter three, Rawls's account of the procedure of justice makes it clear that the principles he seeks to establish as the justification for the basic structure of society are always-already chosen despite the procedure of justification not yet having actually taken place. Forst's procedure of justification by contrast, in direct relation to his dialectical approach to justice, does not presume the types of justification that would be chosen. It only presumes which principles could not be chosen, given that they would not respond adequately to the criteria of justification. As Lois McNay puts it, "...the conversation about justice can never be finished; if it is to retain emancipatory relevance, it must be ceaselessly taken up and given renewed meaning by each successive generation and constituency to whom it pertains" (McNay 2016: 6). While there are problems with Forst's account, as I outlined above, I believe that these can be remedied through a synthesis with Rancière's descriptive model.

Two recent authors have drawn momentary links between Jacques Rancière and Rainer Forst, in the context of other discussions. James Ingram, in his *Radical Cosmopolitics* (2013) argues that Nancy Fraser's all-encompassing principle of 'participatory parity' might be better understood "as an "operator" in Rancière's sense, or a demand for "minimal justice" in Rainer Forst's: a means of contesting the limits that have been drawn around the realm of politics and justice" (Ingram 2013: 219)<sup>15</sup>. In surprisingly similar terms, Jean-Philippe Deranty (Deranty and Genel eds. 2016) also draws a comparison between Rancière and Forst, stating that Rancière's conception of politics

resonates with the core-insights of post-Habermasian models like those of Nancy Fraser, who makes "participatory parity" the core norm of critical theory, or the model developed by Rainer Forst, for whom the point of justice and of struggles of injustice is the right of individuals to have their voices count as expressions of reason and is, as a result, their demand to be treated as agents to whom reasons are due (Deranty and Genel eds. 2016: 52).

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<sup>15</sup> I would like to thank Esther Neuhaus for bringing Ingram's comments on Forst and Rancière to my attention.

Deranty continues these remarks with an attached footnote to the cited passage in which he suggests that Forst's "critical model of democracy" may be read "in parallel with Rancière's conception of society as constituted around a torsion between factually existing hierarchies and their modes of self-assertion" (Genel and Deranty eds. 2016: 186 fn35). While cursory comments, I believe they point to a more in-depth relation between Rancière and Forst that has yet to be properly articulated. At the closing section to this chapter, I would like to begin establishing the foundations upon which a more detailed comparison could take place between Forst and Rancière.

Before I attempt to expand on the comments made by Ingram and Deranty, I want to first explore some additional similarities that I think are of import. The first place that we ought to begin for such a comparison is how both theorists attempt to avoid 'closing off politics' in the sense that Rancière defines it in *Dis-agreement* (1999). To close off politics is to disgorge the political body of the possibility of any new ends, in a Kantian sense of the term. As I tried to show in the work of Kant, Rawls and Habermas, each of these theorists closes off politics in different ways, but all assume that their conceptions of justice present a detailed procedure that can account for all forms of the "ends" that free and equal persons may want to achieve. This closes off politics, in the Rancièrian sense, because it assumes that all claims of injustice are known to the institutional structures that are produced by the conceptions of justice that these theorists advocate. As I showed, in the previous chapters, is that this assumption leaves out the possibility of acknowledging new forms of injustice which may arise precisely from the institutional structures that are implemented. Forst implicitly or pre-emptively attempts to avoid the closure of politics by introducing a rational universal that does not find itself hedged in by certain parameters such as a thick ethical conception of the good qua a historical anthropology. For Forst, similarly to Rancière, the mode of moral action or the ethical can only be substantiated through a constructivist modality in which all affected enter into an actual

discursive sphere of justifications in which only those moral actions that meet the criteria of reciprocity and generality can be agreed upon. However, unlike Habermas's account which also shares similarities with Forst and Rancière, Forst and Rancière's theories allow for such moral action to arise from disagreement. To avoid the abstractness that is often found in constructivist theories, Forst develops his model with recourse to reconstructivist methods grounded in social, political realities. In a similar fashion, Rancière's work may be described as reconstructivist, since he develops his formal political theory from painstaking reconstructions of proletarian struggles informed by the archival documents of the actual proletarians involved in such struggles. For Rancière, one of the goals of political theory should be to engage directly in discourses at the level of the "ordinary citizen". Such discourses must not attempt to silence the citizen by "interpreting" into academic language of what the citizen means, but rather, to add to the voices of the citizenry, as an equal in their struggle to improve society through their own discursive means. There is a way of reading Rancière which emphasises the normative dimension of his work. This is to say that we may reconstruct the moral values found in the interactions of "ordinary citizen" to be reflective of a universal moral core. This I believe brings him closer to recognition theorists and "critical Theory" in general (cf. Deranty 2003a).

Connected with this attempt to avoid closing off politics of Forst and Rancière is the notion that the project of justice is never finished. Through his concept of subjectivization, Rancière demonstrates, to paraphrase Derrida, that justice is never accomplished, is always to-come. Subjectivization unveils the multiplicity that is bound up in the collective naming of the "proletariat", or "citizenry" or "the people". Justice and politics are obscured when such names are used to pass universal claims that affect everyone, but that affect everyone unequally because the people identified by this collectivity are bound up in an identity that is not exactly their own. Police in the Rancièrian meaning of the term must always be renegotiated and reinscribed with new forms of disidentification that explode out of the multiplicity of names

given to us by the “police”. What Rancière shows is precisely that politics is a mode of disidentification in which the “count” exemplified by the articulation of a whole, in the case of the names of “proletariat”, “humanity” “citizenry” and “people”, is always a “miscount”; those that are ignored in the collective naming.

While Forst’s notion of the renegotiation of justice has less to do with the multiplicity of ignored parts that both exist in the structures of society and yet remain ignored, it is comparable to a large extent. In relation to the idea of noumenal power, Forst writes that

power must be constantly regenerated in discourse and thus must be continually renewed; if it degenerates into domination, that is rule without adequate justification, it remains effective only if these justifications are accepted, whether through ideology or through fear (*JC*: 103).

Given that power is an essential aspect of justice for Forst, we can interpret this renegotiation of the structures and justifications of justice. This may not capture the Forstian position in its specificity, but I think that by interpreting power in a way that links it more closely to the structures of justice that are proposed through the justification criteria, we can bring Forst and Rancière closer together. Having briefly introduced a number of other similarities that occur between Forst and Rancière let me now turn to expanding upon the comments of James Ingram and Jean-Philippe Deranty.

Ingram draws a parallel between Rancière’s operator and Forst’s “demand for minimal justice.” Ingram sees both as limitation devices on the sphere of politics (police in the Rancièrian sense). Rancière writes in “Ten Theses on Politics”: “A political subject is not a group of interests or of ideas, but the operator of a particular dispositive of subjectivization and litigation through which politics comes into existence” (Rancière 2010: 39). For Rancière, the operator is a political-subject mobilising of a system of linguistic and extra-linguistic elements which bring to the fore the ambiguity that exists between politics and justice. The operator does this by challenging the status quo of the “just society” in showing that the “universal” advanced by the

status quo does not properly include the subject. As we saw in chapter one in relation to the contemporary social movement Black Lives Matter, politics is exactly the claim to recognition of being a part of the universal, which they are in principle a part of, but in practice are excluded from. By contrast, what Ingram calls, in reference to Forst, the “demand for minimal justice” refers to the construction of “a contextualised structure of rights and institutions worthy of acceptance by a political community” (JC: 66). “Minimal” or “Fundamental” justice thus refers to the basic structure of justification of society. The legitimacy of such structure can only come through the acceptance of justifying reasons in accord with the criteria of justification. This is to say that ‘rights’ and ‘institutions’ that are chosen to ground a just community can only do so if they have been accepted by those who are morally affected according to the criteria of reciprocity and generality. The problem for Ingram’s account however is that the operator does not operate on the same level of Forst’s “demand for minimal justice” as is suggested by Ingram’s comment. This is because the operator does not align with the idea that it provides a limitation on what politics can offer. Rather the opposite is true. The operator mobilises the gap between the “universal” of the status quo and the “universal” of the ‘part that has no part’ to open up new possibilities of politics, which rests on a different basic structure, then is currently present. In a contrasting sense. Forst’s conception of minimal justice as he points out is the first step in developing a fuller account of justice: the basic structures of society. Minimal or fundamental justice “calls for the establishment of a basic structure of justification, that is, one in which all members has sufficient status and power to decide about the institutions they are to live under” (JC: 115). The method of legitimising such institutions in accordance with the principle of reciprocity and universality, Forst claims, puts his ‘substantive’ theory of the procedure of justice at a higher level than Rawls’s Difference principle. What is interesting to note is that Forst’s own theory doesn’t rely on the justification of inequalities from above, as can be seen in the work of Rawls. It seems that the parallel that Ingram wants to emphasise

does not hold up, or at least only in the barest sense. “Fundamental justice assures all citizens an effective status “as equals”, as citizens with opportunities to participate and wield influence”(Forst 2014: 36). A more convincing comparison suggested by Ingram is that Rancière’s operator plays the role of the citizen in Forst’s account of “fundamental justice”. By pursuing such comparison, we draw Forst away from the implications linked to his continued references to Rawls. The “operator” in the Rancièrian sense avoids the problem of moving to a structuralist account of justice by subjecting the Forstian account of justice at each stage to recognising the possibility of new, as yet unrecognised parts of society. Such a move cannot happen under the Rawlsian account of justice given the inegalitarian mechanisms that Rawls constructs to produce egalitarianism.

Finally let me attempt to expand Deranty’s comments. For Deranty the similarities posed by Rancière and Forst can be explicated in their concern over the question of ‘who counts’ in politics and society. This presents a better comparative opportunity, and a space for integration than Ingram’s comments. While Ingram’s comments opened up a place in which Rancière and Forst may be integrated in a way that would improve upon Forst’s own conception of justice, by establishing the question of ‘who counts’ in both Rancière and Forst, we can begin to lay the groundwork for an integration at the beginnings of their theories.

The question which ought to dominate every political community, Forst suggests, is how is it determined who has a claim on what and how the participants, understood democratically in their role as authors and addressees of justification stand in relation to one another (*RJ*: 2).

As we have seen above, one of Forst’s major concerns in the development of his conception of justice is the equal participation of everyone in political and social matters. This differs from the Rawlsian and Habermasian methods which substitute a form of ‘representation’ in their egalitarian theories. For Forst, “everyone” really means *every one*.



In concluding this chapter let me bring the threads of the final section into a brief summary. I want to suggest that it is these notions of justification and equality that allow both theorists to cast reflexive questions at the structures and institutions of the current social order, and also of the concept of justice itself. The question, that is inherent to both Forst's and Rancière's conception of politics is not "what is justice" but rather "who gets to decide what justice is?" These questions are able to be revealed through the articulation of the presupposition of equality which Rancière and Forst rely on. While Rancière is explicit that the notion of equality is both the act of politics and presupposition that allows politics to occur, Forst remains quiet, but I think, must rely, implicitly, on such a presupposition for the reflective question to make sense. This is because one has to find within the hierarchy of the social order a common denominator that can be drawn between the higher and lower strata in order to question the "arbitrary" nature of the higher strata's power. Secondly both the concept of equality and the right to justification can be considered "empty" in the sense that their meanings are renegotiated in each new political moment. Finally both the concept of equality and the right to justification open up ways of thinking about justice which reveals the conditions and procedures by which the feeling of injustice can be articulated. Neither concept relies on a transcendental moral lone chooser that sets the level by which claims to injustice can be made explicit. That is to say that the concept of equality and its companion in the 'right to justification' expunge the division between those who are capable of speaking in universalisable terms and those who aren't. While Forst's work still contains problematic assertions, particularly in those instances where he attempts to tie differing theories or conceptions together, his work, I propose, can be brought into conjunction with Rancière's in a way that may be used to avoid some of the problematic assertions<sup>16</sup>. Though I have not carried out this

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<sup>16</sup> This may also be able to be said of Habermas's work. However, I think given the reliance that Habermas's work has on the notion of "mutual understanding", which Rancière explicitly dismisses, the

project here and certain tensions regarding the social ontologies of the authors need to be explored, the groundwork for a deeper analysis has been laid down in all of the above.

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avenues towards a reapproachment could take place are significantly narrower (cf Russell and Montin 2012)

## Conclusion

This thesis has argued that Kantian political philosophy – specifically theories of justice premised on a Kantian notion of autonomy problematically succumb to the *emancipation paradox*. This paradox is understood as the following: Egalitarian political philosophers hold the view that all people are equal and as such deserve equal rights and equal access to opportunities. This view is based on transcendental or quasi-transcendental arguments about the moral powers of persons and the capabilities which are derived from those powers. Given this view it is the intention of political philosophers to develop a theory, or theories which intact this universal claim in our concrete political procedures. To be more specific the philosophies of Immanuel Kant, John Rawls, Jürgen Habermas and Rainer Forst, motivated by a desire to implement the moral conditions of equality and autonomy in the institutional structures of society, problematically undermine the moral power of individuals by given the authority of their distribution to the institutional structures themselves. This is to say that the political agent is stripped of their ability to participate in the legislation of social and political norms that govern social bodies.

Furthermore I argued that this was an aspect of what Jacques Rancière calls *parapolitics*. For Rancière, politics is a disruptive force which verifies the equality of anybody with everybody through the practice of their autonomy in asserting themselves as equal within the parameters of a social body who has no tool for identifying them as such. To be clear, *politics*, for Rancière is the constitution of an identity which couldn't be realised before, but it doesn't lay claim to the particularism of the identity as such, the constitution of the identity comes in its claim to be equal like all the rest.

In order to show this dilemma I turned to the work of French philosopher Jacques Rancière. Jacques Rancière's work, as I outlined in chapter one, allowed me to express the problem that is articulated by the emancipation paradox. That the very idea of equality gives way to inequality in the attempt to bridge the gap between transcendental claims of universal-egalitarianism and the practical concrete procedures that define our contemporary understanding of justice. Through an analysis of Rancière's political philosophy what I have been able to do is define a methodology which when applied to egalitarian political philosophy is able to key in on the tensions that underpin their seemingly egalitarian political theories. This method, thus not only has its application as shown in this thesis, but can also be utilised against any philosophers claiming to have procedure an egalitarian theory of justice which avoids arbitrary forms of domination and exclusion.

In the specific application of this methodology to the thinkers –Kant, Rawls, Habermas and Forst –attended to in this thesis, I was able to determine a number of forms of the emancipation paradox.

Through an analysis of the concepts of 'humanity', 'culture' and the idea of an 'innate right to freedom' in the moral and anthro-political works of Immanuel Kant, I was able to illustrate a tension between two particular meanings of 'humanity'. The 'extensive' which referred to 'humanity' as the whole class of persons known as Human Being, and 'exclusive' which referred to 'humanity' as a set of characteristics that were imbued by Human beings. The equivocation between these two notions of 'humanity' led to the identity of three forms of the paradox in Kant, which I called, the Historical, the Pedagogical and the Institutional.

In the *Historical form of the paradox* I was able to discern that despite declaration of a universal conception of equality, Kant's theory of history, problematically articulates the view

that only some members of “humanity” have the ability to properly use their moral powers, despite the transcendental position that, in principle, everyone has access to such powers.

The *Pedagogical form of the paradox* was able to identify within Kant’s pedagogical literature an ambiguity, once again, between the two meanings of “humanity” that Kant employs. On the one hand Kant suggests that everyone has the capacity for rationality and moral autonomy, but he also suggests that there is only a particular way in which these capacities can be developed (which for Kant was based in European conceptions of education). As I wrote in Chapter two this presents a problematic in which while all persons are considered to be transcendently free only some of those may ever become practically free. The social and political forms of domination that thus pertain to Kant’s political philosophy are therefore mark an inconsistency, an emancipatory paradox, with Kant’s overall universalistic moral framework

Finally, in Kant, I was able to identify a third form of the paradox which I called the *Institutional form*. Through an analysis of secondary literature regarding Kant’s concept of citizenry and other “institutional” forms of politics, I was able to discern that there, again, was a tension between the universal moral claims to equality that found Kant’s moral theory and the practical concrete procedures that he was trying to develop.

Turning to the contemporary political theories of John Rawls, Jürgen Habermas and Rainer Forst, I proceeded to apply the same methodological principles articulated in chapters one and two, to the particular concepts and mechanisms in their own work: Justice (Rawls), Discourse Ethics (Habermas) and Justification (Forst).

In Chapter three, I turned to Rawls’s work. In analysing pre-existing criticisms by Todd May, Susan Moller Okin and Miriam Bankovsky, I was able to identify a form of the *institutional form* of the paradox found in Kant, which I named the *agent-institution form of the paradox*. What this form articulates is that despite Rawls’s intentions to develop an egalitarian procedure of

justice which all can take part in, the foundations of his procedure actually, in fact, gives the agency normally attributed to political subjects to the basic structure of subject, thereby stripping political subjects of any active role in the concrete political procedures, conferring on them the role of an object of justice rather than the subject of justice.

In Chapter four, I analysed Habermas's account of discourse ethics. I was able to detail two forms of the emancipation paradox. The former refers to the tension found in Habermas's discourse ethics that the universal egalitarian claim emphasised in Habermas's linguistic pragmatism ignores moral claims (claims of injustice, claims to equality) that do not, or cannot arise within the criteria set out by Habermas's discursive procedure. The latter form – the *developmental-pedagogical form* – unveils the tensions in Habermas's developmental theory – derived from Amy Allen's critiques of Habermas's view on moral and historical development – which Habermas is unable to properly differentiate between the primacy of social subjects and social systems. What this means, I proposed, in terms of the "learning" that subjects and systems undergo, is that the limitations imposed by the lifeworld are always-already defined in its pedagogical procedures. As such, claims that are new to the lifeworld are at the least ignored, or at worse not even able to be articulated as claims against injustices.

Finally, in chapter five, I turned to the recent work of Rainer Forst. While I believe Forst's work to be exemplary of attempts to avoid the arbitrary forms of domination and exclusion that Kant, Habermas and Rawls implicitly fall into, I also suggested that he too falls into problematic assumptions that lead to a paradox of emancipation: This is what I called the *justificatory-power form of the emancipation paradox*. While Forst is very careful in his own articulations to avoid any implicit forms of arbitrary exclusion and passivity that may arise in his work, the cognitivist form of power that he proposes as noumenal power seems to, at the very least, exclude forms of material domination which do not rely on the explicit exploitation of consciousness. Furthermore Forst's conception of noumenal power seems to problematise his

own explicit idea that everyone is capable of assessing the justifications that others make in terms of moral, political and ethical claims. Forst, seems, at some stage, to return to the monological positions of Kant because he seems unable to state that “ordinary people” are able to differentiate between ‘good’ and ‘bad’ forms of justification, and therefore rely on a transcendental observer to do it for them.

What I have done in this thesis is identify problems in the transcendental and quasi-transcendental view of equality that egalitarians hold as fundamental and the attempt to implement such views within practical concrete procedures. While my aim has not been to propose a way out of the emancipation paradox which afflicts egalitarian political theory, as seen in the work of Kant, Rawls, Habermas and Forst, I have suggested, at the end of chapter five, a potential means by which may hold some promise. I see a synthesis between the work of Rancière and Forst as avoiding the implicit forms of domination, passivity, and exclusion that may arise in the bridging of the gap between universal moral claims of egalitarianism. By focusing on the reconstructive aspects that both Rancière and Forst attend to; that is in paying attention to the articulation of moral values within the work of minority groups that may be otherwise ignore, we can I believe, pay more attention to those claims of injustice and inequality which may often be ignored by our contemporary understandings of justice. While the possible contributions that a synthesis between Forst and Rancière have not been exhausted within this thesis, I believe that what I have done is open up new avenues to explore.

Furthermore, as I mentioned in the introduction and in chapter one , there is, to my mind, an implicit Kantian nature within Rancière's own agonist considerations of political philosophy. Further work in this area may explore the extent to which a Kantian framework may alleviate some of the criticisms that a Rancièrian perspective has garnered.

This thesis has, in developing the powerful critical perspective in Rancière's work, has pointed out the discrepancies that lie within the claims of equality within political theory, and the realisation of these claims through the principles and methodologies employed by John Rawls, Jürgen Habermas and Rainer Forst. It is important for political philosophy to be able to clarify these differences, so that in the future, in the development of an egalitarian political philosophy, we may rightly claim that the equality of anybody with everybody is realised.



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