Pursuing the Universal: Formalism, Pragmatism and the Project of Modernity in Contemporary Critical Democratic Theory



Benedict Coleridge

St Edmund Hall

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For my parents, to whom I owe more than I can say.

Abstract

This thesis critically evaluates the role of form and formalism in contemporary Frankfurt School critical democratic theory's treatment of ethical pluralism. It examines how three contemporary theorists, Jurgen Habermas, Rainer Forst and Alessandro Ferrara, deploy methodological formalism, and a certain ideal of aesthetic or theoretical 'form', in support of the Kantian 'project of modernity'. The thesis has two related aims: the first is to diagnose and critically evaluate the role of form and formalism as an instrument of mediation between ethical identity, value pluralism and the 'project of modernity.' In the course of identifying and assessing the intellectual resources that underpin the role of form and formalism in the relevant critical theories of democracy, this thesis argues that the strategies for normative and constitutional integration pursued by Habermas, Forst and Ferrara suffer from a hermeneutical deficit. Consequently, while they set out to develop an ethically non-impositional framework for negotiating between normative universality and ethical particularity, these three theorists also continue several of the weaknesses of Kantianism, including its dichotomous separation of normative 'form' from the texture of ethical life and its resident meanings. While Habermas, Forst and Ferrara all seek creatively to integrate the insights of philosophical pragmatism by developing immanently grounded 'inter-subjective' theories of normativity, their deployment of form as an ethically diminutive binding agent displays a limited reflexivity regarding the ideological specificity of aesthetic and methodological formalism.

The second aim, in light of these criticisms, is to suggest an alternative method by which to theorise a deliberatively developed normative commonality amidst ethical pluralism - one that draws upon the philosophical pragmatism of John Dewey, Hans Joas, James Bohman and others. I argue, in conversation with these thinkers of a pragmatist bent, and with reference to recent contributions to the sociology of religion, for an account of value generalisation as a form of 'world-building' deliberative action oriented towards what Hannah Arendt calls 'a common world.' In so doing, I question the role of the 'comprehensive social theory' of normative integration amidst value pluralism, and instead look to theoretically enunciate and develop deliberative practices that plausibly effect 'practical transformations' of existing social challenges.

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Introduction

In the course of a recent interview undertaken with Habermas by the Spanish newspaper *El Pais*, the visiting journalists noted that Habermas' residence, decorated with modern art, presented 'a juxtaposition of Bauhaus modernism and Bavaria's staunch conservatism.'[1] While the shelves were lined with the German Romantics, the walls were adorned with icons of aesthetic modernism, fitting the style of the house itself. In an autobiographical preface to his essays on *Naturalism and Religion*, Habermas gives an account of the confluence of his decorative and intellectual tastes, highlighting the distinctive experiences and hopes to which they testify. He writes of the post-war revelations that disclosed a civilisational rupture after 1945, along with the sense of cultural release brought about by the doors being opened 'to Expressionist art, to Kafka, Thomas Mann, and Hermann Hesse, to world literature written in English, to the contemporary philosophy of Sartre and the French left-wing Catholics, to Freud and Marx, as well as to the pragmatism of John Dewey…'[2] He goes on to suggest that 'contemporary cinema also conveyed exciting messages. The liberating, revolutionary spirit of Modernism found compelling visual expression in Mondrian's constructivism, in the cool geometric lines of Bauhaus architecture, and in uncompromising industrial design.'[3] Together, these aesthetic movements espoused what Virginia Rembert calls a determination to develop an artistic practice that conveyed a 'new world image'.[4] According to Habermas, the 'cultural opening' instigated by these aesthetic pursuits 'went hand in hand with a political opening', which primarily took the form of 'the political constructions of social contract theory…combined with the pioneering spirit and the emancipatory promise of Modernism.'[5]

Habermas' interest in the aesthetic and pedagogical ideas of Weimar Germany and his formation within the distinctive moment in which post-war Germany became 'open to the West' casts light upon his intellectual 'project of modernity', making visible an important array of influences, including aesthetic and political forms proffered by specific European

[1] Borja Hermoso, 'Philosophy: Jürgen Habermas: "For God's Sake, Spare Us Governing Philosophers!"', El País Semanal, 25 May 2018, https://elpais.com/elpais/2018/05/07/inenglish/1525683618_145760.html.
[2] Jürgen Habermas, *Between Naturalism and Religion: Philosophical Essays*, trans. Ciaran Cronin (Cambridge, UK: Polity Press, 2008), 19.
[3] Habermas, *Between Naturalism and Religion: Philosophical Essays*, 19.
[4] Virginia Rembert, *Piet Mondrian* (New York: Parkstone Press, 2015), 40.
[5] Habermas, *Between Naturalism and Religion: Philosophical Essays*, 19.

modernisms with their self-consciously critical disturbance of 'conventional' practice. Given the intellectual and aesthetic movement from which they stem, the visions of Bauhaus modernism that adorn Habermas' walls presumably convey notions of unity, abstraction, anti-historicism and world creation, all of which are recognisable features of his moral and political project – a project that responds to the chaos and violent atavism of World War Two with the re-assertion of progressive social order, which unifies through the assertion of moral and procedural formality. Indeed, in their reliance upon 'autonomous' aesthetic form (think Bauhaus) and procedural formalism (think social contract theory), each of the social theories of deliberation discussed in this thesis arguably presents a notable strain of ideological high modernism, which, although it eschews utopianism of the more eschatological variety, nevertheless asserts the unique suitability of secular formalism to organise and adjudicate the conditions of a "post-metaphysical" modernity.

Yet unlike the Bauhaus and its drive towards an aesthetically and politically cleansed future, the Habermasians refuse Walter Gropius' mantra of "starting from zero".[6] At a philosophical level, the goal shared by the theorists considered in this thesis is to advance the 'project of modernity' by sustaining the critical power of Kantian normativity in light of the Linguistic Turn. This thesis examines a specific theoretical strain stemming from the reformulation of Frankfurt School critical theory effected by Jurgen Habermas, with his integration of Kantianism, American pragmatism and Weberian social theory. As William Rehg and James Bohman point out, the post-war reformulation of Frankfurt School critical theory undertaken by Habermas and Karl-Otto Apel was more heavily indebted to Kant than to Marx, moved in the direction of disciplinary pluralism and sought ways to be 'increasingly attuned to the challenges of social complexity and cultural pluralism.'[7] One of the ways in which these theories seek to continue this project, of sustaining Kantian universalism while attending to social practices, is by developing normative universalisations out of 'immanently' resourced social practices. For Habermas, this means the rational presuppositions entailed in communicative action, whereas for Forst and Ferrara it takes the form of a 'basic right' to justification and the cross-contextually available nature of Kantian aesthetic judgment. In what

[6] Steffen de Rudder, 'The Bauhaus and the City as a White Spot: How Gropius Lost His Reputation on the Streets of New York', in *Bauhaus and the City: A Contested Heritage for a Challenging Future*, ed. Laura Colini and Frank Eckardt (Wurzburg: Königshausen & Neumann, 2011), 80–87, 82. Tom Wolfe, *From Bauhaus to Our House* (London: Abacus, 1986), 14.

[7] William Rehg and James Bohman, "Introduction," in *Pluralism and the Pragmatic Turn*, ed. William Rehg and James Bohman (Cambridge, MA: MIT Press, 2001), 1.

follows, I aim to engage in a critical examination of the 'project of modernity' as developed in both Habermas' work and in the work of his intellectual descendants, whose contemporary social theories of democracy marshal new theoretical resources as they seek to extend and continue Habermas' inter-subjective neo-Kantianism.

To echo Habermas' own terms, the key dual influence upon his broader social and political theory is the confluence of aesthetic and political modernism with social contract theory, which together forge the 'project of modernity' to which his critical social theory of democracy is oriented. What follows in this chapter is a critical exegesis of Habermas' theory, which, as I outline, represents an attempt to sustain the universal validity of immanently located normative presuppositions while tying this normativity and the consequent principles of constitutional integration to motivationally strong sources drawn from the ethically multifarious 'lifeworld'. The nature of this relationship, between form, formalism and the social world with its ethical traditions, is the focus of the thesis that follows. The Habermasian position, which gives rise to descendant theories of deliberation in the work of Rainer Forst and Alessandro Ferrara, establishes the primacy of form and formalism as instruments of mediation and adjudication between different ethical traditions and the values they espouse. Ultimately, it demands that deliberative action be indexed to a conception of formalism as an authorising methodology by which the non-rational commitments and affective ties present within the social world are channeled into learning processes oriented towards guaranteeing a 'universal' moral subjectivity and a derivative legal personhood. I mean to identify, here, an appeal to forms and capacities that supersede culturally specific practices and that are characterised as spatio-temporally constant. Their normative import, the argument goes, can be 'read' and comprehended from any perspectival location and any historically produced set of circumstances, even while their claim to universality draws upon the grammar of quotidian practices. Form so conceived is a distinctly modernist concept insofar as it effects critical breakages with customary practice without foregrounding the inheritance upon which its own legibility depends.[8] Form shapes deliberative and decision-making practices—such as justification at the level of semantic generality—that can be stabilised and hence universalised,

[8] '"Erst die vollendete geistige Revolution kann uns frei Machen", only the fully accomplished spiritual revolution, said Gropius, can make us free.' de Rudder, 'The Bauhaus and the City as a White Spot: How Gropius Lost His Reputation on the Streets of New York', 82. The spirit creates for itself a new life other than the life of nature.' Walter Gropius, 'The Theory and Organization of the Bauhaus', in *Bauhaus, 1919-1928*, ed. Herbert Bayer, Walter Gropius, and Ise Gropius (New York: Museum of Modern Art, 1938), 22–31, 29.

with these practices then being taken to establish formal spaces for the democratisation of otherwise arbitrarily ordered social relations.

My aim in this thesis extends beyond repeating a plainly Foucauldian critique of Kantianism and its continuation in Habermasian thought; it is, rather, to begin to develop the argument that from the perspective of theorists concerned to pursue the pragmatist turn in critical theory the over-prioritisation of form and formalism depletes our resources, conceptually and practically, for advancing the development of ethical renewal and social transformation in contexts of value pluralism. Moreover, the formalist strain of critical democratic theory valorises a conception of 'critique' as dependent upon unassailable theoretical foundations, rather than a 'voice amongst voices' that enters into critical, hermeneutically shaped, engagement. At a conceptual level critique comes to be associated, amongst the theorists engaged here, with the establishment of a Kantian command morality, so that it depends upon formally 'universal' grounds in order to advance the project of modernity with categorical, rationally non-rejectable authority. The wider implication of these critical arguments is not, however, resignation to political thought and practice in a Schmittian vein; it is not, either, to make the claim that democratic political action in the context of value pluralism are condemned to antagonism without orienting principles or commonly held and legibly articulated values in sight. Instead, I seek, particularly in the final chapter of this thesis, to emphasise the constitutive relation between public principles and ethical value articulations, as a means of developing a closer theoretical connection between the two and, additionally, so as to develop an alternative, less formalistic, view of the relationship between deliberation and the development of common values. I argue that Habermas' theory certainly offers an account of how a procedural normativity and the *public* principles it produces relates to the social world and its resident ethical values. But this account is one that insists upon upholding a series of dichotomies, despite Habermas' insistence that his theory of inter-subjectivity overcomes the dichotomous conceptual architecture of Kantianism, with its metaphysically strict distinction between immanence and transcendence. Habermas transports similarly strict dichotomies into the terrain of social and legal theory, so that the 'ethical' is contrasted with a formal 'moral' domain, and the 'informal' public sphere, wherein ethical values are articulated, is separated from the 'formal' deliberative apparatus in which laws are developed out of 'rational argumentation'. Both Forst and Ferrara follow similar strategies so as to preserve a formal morality unimpaired by marks of ethnocentrism or by substantive ethical value attachments.

What kind of commonality across ethical difference does this formalism produce? If Habermas and his heirs are right, then the procedural formalism of their neo-Kantian theories

of normative justification finds roots also in particular moral and aesthetic *forms* present within the lifeworld, which allow for convergence from a range of perspectives upon something akin to a constitutional 'overlapping consensus' (although they also develop important departures from the Rawlsian view of consensus). Put differently, they produce a view of formal commonality that in turn underpins a Kantian conception of reciprocal duties between moral equals. By 'pre-cultural', I mean a form of commonality that does not depend upon, and in an ontological sense 'precedes', the contingencies of language and context. In light of these forms and the *formal* commonality they produce, the practice of deliberation is transformed into a teleological movement out of ethical parochialism towards a more generalised register at which rationally generated consensus may be reached. The only sustainable and legitimate universalism available to us, say the Habermasians, is that supplied by our apprehension of ethically non-substantial 'forms' – our ability to apprehend formal and culturally autonomous dimensions of human experience that, in turn, undergird legitimately ordered constitutional systems.

The *practical* aim of this convergence upon a formally 'universal' register of engagement is different for each theorist under examination in this thesis; for Habermas it relates to the need for social integration on terms of moral equality; for Forst it establishes the normative constancy essential to speech about human rights and commonly held dignity; for Ferrara it allows for a commitment to political liberalism out of plural ethical sources. All of these projects, however, assemble around the *normative* goal of sustaining a spatio-temporally constant normativity in the philosophical environment developed out of the Linguistic Turn, and in the political and social environment of 'modernity', with the ethical pluralism and social proximity this is taken to present. They produce a range of devices—all marked by a philosophical commitment to the authority of methodological formalism—that develop a means of integrating contemporary religious and ethical pluralism within the procedural 'universality' of democratically authorised constitutional structures. This, I will argue, reflects the intellectual high modernism of the Habermasian school of critical democratic theory, particularly as it grapples with the febrile ethnographic detail of religious and ethical pluralism. Yet unlike more radical forms of aesthetic and utopian modernism, the ongoing effort of the Habermasians to reconcile Frankfurt school critical theory with the constitutional inclinations of political liberalism shies away from ideals of rupture and the radical displacement of ethical life; the 'project of modernity' is instead presented in terms of a synthetic ordering of constitutional form and ethical life such that the latter plays a highly specific role within a constitutionally and post-metaphysically ordered polity.

The diagnostic and exegetical part of my argument is not simply that Habermasian theory rests upon an obstructive or ethnocentric penchant for philosophical abstraction, which in and of itself is not inevitably deleterious. After all, as Habermas rightly suggests, even theories that insist upon the primacy of the socio-ethical standpoint, such as Gadamer's, engage in a degree of generalisation and theoretical valorisation. To develop insight into *how* the social world colours our epistemic and ethical presuppositions, we may rely upon the conversation between theory, history and phenomenology, for example. Instead I suggest that, seen morphologically, the Habermasians' *immanent abstraction* of the everyday—their development of social detail into an auxiliary to the rationalising action of formal critical reason—underpins a movement in critical democratic theory that seeks to dilute accusations of ethnocentric rationality while securing and upholding a politics of progressive liberal constitutionalism and emancipation. In this respect, and under the guise of immanent rationality, their normative thought transposes the ideologically particular and historically traceable ideology of modernist 'formalism' onto the social world, to insist that an emancipatory 'project of modernity' should proceed through the agency of the procedurally superior and functionally rationalised state. Thus, it is not merely 'abstraction' to which Habermas' theory of reason falls prey, but *a certain kind* of abstraction in thrall to a distinctly narrowed conception of reason and of democratic political action within the social world.

The more positive or constructive part of my argument entails an exploration of how, by integrating the insights of the 'pragmatic turn' in critical social theory with the ontological commitments of Gadamerian hermeneutics, we can pursue a methodologically pluralistic account of democratic action that involves the critical disclosure of ethical identities (such that critique may be refined by encounter with detail), and the construction of a 'common world' of shared values. I return throughout this thesis to the need for a hermeneutically rich account of deliberative practice amidst value pluralism, which, I argue, need not necessarily be tied to a traditionalism that seeks to defend received practices, or what Wittgenstein calls 'forms of life', from critical destabilisation or transformation. Instead, I present an account of our situation as linguistically constituted beings that, though coloured by its own methodological commitments, eschews formalism and the universal validity it is supposedly capable of generating. My argument suggests that both criticism and transformation may occur with reference to ethical values that call for a specific kind of contextually sensitive understanding and, with it, a more provisional, less finalist, form of politically developed commonality. In agreement with Hans Joas, I take this to be more committedly 'pragmatist' in instinct, in that it ties the normative possibilities of deliberative practice closely to an ethnographic account of

'values' as they operate in practice, rather than to the abstractions of "grammatical unavoidability" or "autonomous morality." And yet, insofar as it proffers a view of political action as capable of generating ethical commonality through a process of value generalisation, my theorisation of critical dialogue suggests that ethnographic attentiveness and methodological contextualism do not unseat the possibility of establishing values as persuasive or principles as cross-contextually 'valid'. Rather, as I will set out in the final chapter of this thesis, critical dialogue across ethical traditions and the value articulations encompass allows for the renewal and re-development of values across traditions, and the discernment of generalisable principles for common action.

This thesis makes three key interventions. The first is to advance a critically diagnostic reading of an influential strand of contemporary critical social theory, drawing out its interaction with aesthetic modernism, and clarifying the role of ideological resources, such as aesthetic formalism, that have hitherto been under-examined. While this strain of contemporary theory advances a model of normativity, and of democratic life, shaped by the de-transcendentalising influence of philosophical pragmatism, it nevertheless continues many of the dichotomous structures of Kantianism, resulting in ongoing shades of ethnocentrism and a tethering of democratic practice to an ideal of rational argumentation overly inflected by Kantian priorities. In its turn to the detail of the 'everyday', it carries with it a drive towards methodological abstraction that preserves its own foundational premises from discursive destabilisation. The second intervention is to proffer an alternative route for a 'pragmatist' democratic theory, one attuned to ethnographic detail, not as a means of supplanting the 'comprehensive social theory' developed by Habermas and adapted by his heirs, but as a way of showing that the 'pragmatic turn' in critical social and democratic theory can offer practically and normatively important insights when staged at a greater distance from the priorities of formalism. The third intervention made by this thesis is its engagement with the ethnographic theory of scholars of religion such as Shahab Ahmed, and its examination, in the final chapter, of a methodologically hermeneutical process of value generalisation as evinced in the *A Common Word* project.

Here I will outline the structure of the thesis to follow, which is developed over four chapters. The first three chapters consider three different strategies by which the Habermasians under consideration seek to achieve an immanently resourced continuation of Kantianism. ***Chapter One*** **(1)** sets out to highlight the formative confluence in Habermas' thought of social contract theory with an aesthetic and political modernism, which as he acknowledges were brought together in a widely circulated project of post-war intellectual reconstruction; this

confluence, as my broader thesis will highlight, comes to shape the later iterations of Frankfurt school thought that work within a Habermasian mould. These include the theories developed by Forst and Ferrara, both of whom supply theoretically rich and innovative accounts of the relation between law, morality and democratic deliberation amidst value pluralism. They do so by developing and deploying *form* as a philosophical idealisation that works to reorder democratic political practice by establishing *merely formal* normative principles and, with them, 'universally valid' methods for negotiating ethical difference. The point of this chapter, then, is to present Habermas' thought as it lays the foundations for the extensions and reconsiderations undertaken by his intellectual heirs, indicating the pivotal role of form and formalism in the political economies they elaborate. Broadly, this chapter will examine the role of form and formalism in Habermas' 'philosophical reconstruction of the conceptual linkage of law, democracy, and justice'.[9] As a means of supplying a background to this deployment of 'form' as the instrument *par excellence* of 'modern' moral and political constructivism, the chapter offers a critical appraisal of Habermas' integration of intellectual and aesthetic modernism with social contractarianism. Part of my aim here is to draw out the specificity of the Habermasian project, which seeks to continue in the tradition of Western social theory so as to further the course of the 'project of modernity'. This project is organised around a set of commitments that, though social in empirical character, are made universally normative by Habermas by means of theoretically formal instruments, most obviously his account of the universal pragmatics of language. These social, and therefore historically rooted, commitments include, for example, an attachment to anthropological individuation, a consequent individual moral freedom (or cognitive reflexivity), the state as the instrument of social integration, and a belief in the authority of 'philosophical reason' as a process of cognition emptied of affective or 'non-rational' ballast.

In ***Chapter Two*** **(2)** I move to a consideration of the theory of justification proposed by Rainer Forst, advancing a close reading of both Forst's analytical argument and the intellectual genealogy upon which it depends. As with Habermas, I argue that Forst's theory attempts to forge a reconciliation across a supposedly dichotomous normative domain split by 'ethical particularism' and formally autonomous 'moral universalism'. I suggest that while Forst's theory fruitfully engages in historical genealogy and sets out to develop a socially attuned

[9] Ingram, David. "Reconciling Positivism and Realism: Kelsen and Habermas on Democracy and Human Rights," in *Philosophy and Social Criticism*, 14(3), 242.

account of 'normative complexity', it ultimately establishes a conception of 'practical reason' as a rule-bound form of agency, teleologically beholden to a formally autonomous morality that derives authority from its detachment from social detail. Only those aspects of the quotidian that are considered pre-cultural and 'constant'—in this case the fact of human vulnerability—are taken to offer grounds for cross-contextual principles able to command assent. And, as Forst finds, such principles are first and foremost procedural, working to demarcate a 'reasonable' register of semantic generality, and discursive reciprocity, within which moral argumentation moves. The values that 'bind', then, are formal, procedural values that are absent of substantive content beyond the deliberative register that they establish. Moreover, because of their 'higher-level internalism', they are rendered largely immune to challenge or revision. The argument advanced in this chapter, then, is that Forst's theory, though concerned to de-transcendentalise the sources of normativity and to better accommodate the sociological complexity of ethical life, is tied to the same bifurcated and formalistic view of normativity as Habermas, sacrificing a more capacious view of democratic agency that might be located apart from the ideal of rational justification.

Following from my engagement with Forst's theory I turn in ***Chapter Three*** **(3)** to the work of Alessandro Ferrara, also a student of Habermas, who, like Forst, attempts to pluralise the deliberative possibilities of political liberalism, while retaining a *formal* basis for normative commonality across ethical difference. In Ferrara's case, such commonality is established through the structure of Kantian aesthetic judgment, through the aesthetic 'form' of 'exemplary self-congruence' and through the notion of 'sensus communis', or a sensibility shared in common. I examine and illustrate here how Ferrara's transposition of Kantian aesthetic judgment onto the social world and its ethical and religious traditions rests upon formalist dichotomies familiar, once again, from Habermas' own aesthetic and methodological commitments. Once we take a more critical view of the claim to separate 'form' from 'content', however, Ferrara's attempt to deploy aesthetic judgment as a unifying faculty that generates a rationally non-rejectable normativity, suffers from a practically important hermeneutical deficit. With reference to Gadamer's critique of Kant's aesthetic thought in *Truth and Method*, and again with reference to Ahmed's ethnographically based hermeneutical theory of Islam, I argue that aesthetic judgment cannot escape the task of critical hermeneutical encounter with ethical meanings.

In staging my critical exegesis of the theories of Habermas, Forst and Ferrara from the perspective of a methodological pragmatism that is inductive in its theoretical tendency, I highlight the need for a hermeneutical theory of deliberation that generates an ethically

resourced form of normative commitment between consociates, which avoids the spectre of ethnocentrism and which cultivates a critical sensitivity to the meanings borne by ethical 'forms of life'. This facilitates a mode of deliberatively enabled critique that works in immanent contact with ethical detail, rather than from the heights of formalist 'autonomy,' or in contact only with an equally formal "depth grammar." In so doing, I follow the methodological priorities of the pragmatist turn in critical theory, which suggests that critical social theories of democracy should take an approach that is interpretive all the way down, operating in close methodological proximity to actual practices to discern their implicit norms and the meanings that bear them.[10]

Critical deliberation across traditions, I argue in ***Chapter Four*** **(4),** demands a form of reasoning that encourages stronger genealogical reflexivity, in terms used by Hans Joas, along with efforts at vernacularisation. I use the latter term to refer to an exchange that descends from the register of universality and excavates the resources within particular traditions or sites of tradition-resourced subjectivity. Drawing insights from Hans Joas, a theorist of a less Kantian, and more committedly pragmatist bent, from the sociological literature on the 'Axial Age', from Hannah Arendt, and again from Shahab Ahmed's hermeneutical theory of Islam, I set out an account of value generalisation as a critical activity oriented towards 'world-creation': a deliberative enterprise oriented toward sustaining what Arendt calls 'a common world'. To give flesh to this theoretical discussion, I discuss, as an enterprise in value generalisation, the *A Common Word'* project, which from 2006 has involved a dialogical exchange between Islamic and Christian scholars to allay outstanding tensions. In contrast with Habermas and his adherents, for whom 'the only hope of universalization…lies in the spheres of law and of normative morality', I develop an argument for a form of value generalisation detached from methodological formalism and embedded in critical inter-ethical dialogue.[11]

Chapter 1 – Habermas, formalism and the inter-subjective continuation of Kantianism

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[10] Kevin Olson, "Complexities of Political Discourse: Class, Power and the Linguistic Turn" in *Justice, Democracy and the Right to Justification: Rainer Forst in Dialogue* (London: Bloomsbury, 2014), 100.

[11] Hans Joas, *The Sacredness of the Person: A New Genealogy of Human Rights* (Washington, D.C: Georgetown University Press., 2013), 176.

Introduction

This chapter argues that Habermas' broader theory of normative and legal integration might plausibly be characterised as interweaving two key strands of historical and philosophical thought: modernism (with its aesthetic preference for abstract forms) and social contract theory (with its inclination to position associational life in service to a generalised legal subjectivity). The chapter suggests that in his effort of constitutional construction and normative integration Habermas' intellectual high modernism is emphatic, displaying the influence of the aesthetic avant-garde (with its emphasis upon abstract form that stands apart from 'content') and placing it in service of the generalised subjectivity to which social contractarianism tends. With this 'constructive' orientation in view, the chapter also sets out to examine Habermas' 'project of modernity' as an inter-subjective continuation of Kantianism, probing particularly at his claim to have de-transcendentalised reason by making it immanent to language as a species endowment. This, I argue, is where the influence of aesthetic and political modernism is apparent – in Habermas' conviction that an authoritative formalism may at once be composed out of the fabric of social experience (communication) while nevertheless avoiding compromising entanglement with substantive 'content' or the sediment of customary practices.

The argument that I develop here explores the political economy established by Habermas (and adapted by his intellectual followers), to make the claim that the 'immanent order' so established depends upon a set of theoretical devices that, while impressively innovative, are less culturally autonomous and less practically efficacious than their progenitors suggest. Firstly, I argue that the use of form and formalism as mechanisms of moral and constitutional settlement through which we might regulate and reorder social life brings into being a political economy in which deliberation is auxiliary to both an ideal of 'philosophical reason' and to a view of 'rationally authored' law as cleared of the contingencies and limitations of politics. I do so by way of charting the resources upon which Habermas draws to envision his 'project of modernity'. Secondly, I suggest that although Habermas' project aims towards an *inter-subjective* continuation of Kantianism by means of a procedural and post-metaphysical morality, it sustains elements of a methodologically atomistic conception of individual cognition, which downplays the interdependence of 'reason' and 'languages in use'. My argument is not that Habermas abides by a crude or dismissive form of modernism, although his early work does display a heavy dependence upon a less developed

form of modernisation theory. Rather, I wish to demonstrate that the resources he draws upon work as 'fragments' that come together into an ideological position that continues to sustain an array of distortive dichotomies, and that constrains our ability to deal with the plurality of ethical meanings that constitute the social world. In this sense, I am arguing that Habermas' commitment to pragmatism is framed by his commitment to formalism, and that formalism, whether linguistic or aesthetic, entails an ideologically particular program before which the pragmatist should hesitate.

I begin this chapter by exploring the resources from which Habermas constructs his 'project of modernity' **(Ss. 1)**. I then consider the formative role played in this characterisation by aesthetic and methodological formalism, with reference to the early twentieth-century avant-garde to which Habermas alludes as a key influence upon his early work **(Ss. 2.)**. This leads to a discussion of the confluence in Habermas' approach to social integration of aesthetic modernism with social contract theory **(Ss. 3)**. Following from this, I develop a critical reading of Habermas' de-transcendentalised Kantianism, which, I argue, incorporates methodological fixations that reflect the influence of modernism, particularly its distinction between form and substance **(Ss. 4-5)**. The discussion then moves to examine the implications of these methodological fixations for the relation between reason and the lifeworld **(Ss. 6)**. Here I reconstruct the philosophical differences between Habermas and Gadamer so as to suggest that Gadamer's hermeneutical ontology supplies a basis for a conception of critique that openly acknowledges its dependence upon the resources of culture. Finally **(Ss. 7)**, I examine the role of formalism in Habermas' theory of law, along with Habermas' argument that the legal form ensures a political system 'open to the lifeworld,' rather than auto-poetically separate from it.

Ss. 1. *Characterising the project of modernity*

Habermas' moral, political and legal theories are constructed in pursuit of what he calls the 'project of modernity', which amounts to the pursuit of individual moral freedom through the realisation of a Kantian republican constitutional settlement. The latter is geared towards the achievement of a democratically authorised popular sovereignty established through a procedurally rendered form of Kantian ethics, taking this to be the means by which individual emancipation is plausibly realised and defended. The 'project of modernity' represents an effort to effect social and normative integration, and individual emancipation from authority, by means of a continuation of Enlightenment universalism. To this end it entails theories of morality, of law and of 'modern' society, which are woven together to form a wider political

economy that, in the ideals it instills and the social dynamics it claims to instigate, drives the emancipatory project to which the Frankfurt School tends.

The political economy arranged by Habermas bears the marks of its own historical genesis, being constituted by the imperatives of a post-war project of intellectual regeneration, the protagonists of which looked out upon a political and philosophical landscape that, on the one hand, reverberated with the collapse of Weimar and the extreme violence of wartime totalitarianism, and on the other found new energy in the project of moral redress and constitutional renovation. The 'project of modernity' launched against this backdrop featured a revived interest in the political, aesthetic and methodological instincts of Weimar and the Bauhaus, paired with a newly urgent need for an account of democratically legitimated law. With these resources and aspirations in sight, it aimed at once to critique national totalitarianism and communitarian traditionalism with their neglect of the moral status of the individual subject, and to resist the vein of constitutional thought—epitomised by Schmitt—that characterised politics in terms of collective self-assertion and the material fact of state power. This strain of political thought, for Habermas, exemplified the 'oppressive political heritage that persisted even in German Philosophy', which 'elevated silence above conversation, and command and obedience above equality and self-determination'.[12] With the political urgency of this backdrop in mind, the Habermasian project of modernity at its earliest appearance amounted to an enterprise that sought to reground law upon a morality capable of overcoming the violent nativism evinced in the aftermath of the collapse of Weimar's constitutional liberalism and, at a philosophical level, the contingencies introduced by the Linguistic Turn. In light of the diagnosis originally developed by G.E.M. Anscombe, which posits the alienation of moral language from the sources of its cognitive and metaphysically grounded power, we are left with the need to replace the unity of prior ethical consensus with a post-metaphysical unity supplied by adherence to axiomatic rules.[13] Thus, as Habermas tells it, 'the only unifying context that the sons and daughters of "homeless" modernity still share is the practice of moral argumentation, now conducted with inadequate reasons. Thus, the store of commonalities has shrunk to the formal features of these discourses.'[14] In the face of an intensified social complexity and ethical pluralism that leaves us morally and metaphysically 'homeless', the task set by the project of modernity is to establish a normative order by which

[12] Habermas, *Between Naturalism and Religion: Philosophical Essays*, 20-21.
[13] See G.E.M., Anscombe, "Modern Moral Philosophy," *Philosophy* 33, no. 124, 1958.
[14] Habermas, *Between Naturalism and Religion: Philosophical Essays*, 87.

society may be unified, without this unity depending upon the forms of authority to which, on Habermas' view, German political thought too readily attached itself – those of force, tradition, and institutional impregnability. Hence, he envisions the project of modernity with reference to the notion that 'complex societies can be normatively held together solely by civic solidarity, that is, the abstract, legally mediated form of solidarity among citizens.'[15]

The intellectual pursuit of the 'project of modernity' begins, in Habermas' work, with an historical diagnosis upon which the structure of his moral and legal theory subsequently depends. Habermas' historical story traces a breakage between the social imaginary, moral psychology and institutional configuration. He warns that morality 'withdrawn into the cultural system maintains only a virtual relation to action as long as it is not actualized by motivated actors *themselves*.'[16] Habermas takes a 'culturally withdrawn' morality to be motivationally weak and therefore deficient as an integrative force, relying as it does upon subjective will rather than an all-encompassing cosmological imagination and tacit social consensus of the kind that understands the well-ordered political community to incarnate the divine *oikonomia* or economy of grace).[17] He wants instead to develop a moral framework that asserts universal validity while at the same time being immanent to quotidian practices and social imaginaries so as to retain motivational strength. Hence, for Habermas, a principled morality 'depends on socialisation processes that meet it halfway by engendering the corresponding agencies of conscience, namely the correlative superego formations.'[18] Our conceptions of the good, replete with their claims to 'truth', are to be directed towards this ever more inclusive 'principled morality' through which post-metaphysical 'agencies of conscience' are cultivated at the level of the individual subject. By so doing, we in turn revise our conceptions of the good, ensuring their partial refashioning in contact with the epistemological and communicative presuppositions of a post-metaphysical normative culture. To do so is to expand the boundaries of moral consideration by means of non-customary, non-traditional, norms which, though cognizant of their genesis in antecedent traditions, escape their

[15] Ibid., 22.

[16] Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge: Polity Press, 1996), 113.

[17] Giorgio Agamben, *The Kingdom and the Glory: For a Theological Genealogy of Economy and Government*, trans. Lorenzo Chiesa and Matteo Mandarini, Meridian (Stanford, Calif: Stanford University Press, 2011).

[18] Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, 113.

constraints through re-articulation along semantically generalised and ontologically non-committal lines.

Habermas' political economy—and its constituent theory of deliberation amidst value pluralism—relies, therefore, upon an historical account of the development of 'post-conventional' morality and the progressive diminishment of metaphysically laden worldviews as bases for philosophical and deliberative justification. According to the historical story Habermas tells, natural law as articulated by Aristotle and his interpreter Aquinas once offered an all-encompassing societal ethos such that 'cultural value patterns and institutions sufficiently overlapped with the action orientations and motives fixed in personality structures.'[19] In a pre-modern context marked by metaphysically thick worldviews, European societies were characterised by a tightly integrated normative, institutional and motivational web, the elements of which reinforced each other and militated against the critical relativisation of tradition by the individual. This integrated 'lifeworld' met with fragmentation with the emergence of early modern movements of theological reform and Enlightenment thought, through which religious and ethical practices were assessed, the argument goes, with reference to an ever more highly developed idea of reflexive reason. Action orientations were thus separated from the strong motivational complex of religious belief and the once wholesale imbrication of ethical value patterns and institutional life teased apart. The unravelling of this matrix of belief and ethical consensus constitutes a diachronic process understood by Habermas in terms of 'the rationalization of the lifeworld', where the imbrication of culture, politics and law is undone and 'cultural traditions and processes of socialisation came under the pressure of reflection, so that actors themselves gradually made them into topics of discussion.'[20] (F and N p 95) In other words, actors become capable of objectifying their own commitments in the course of conversation, rather than inhabiting them in the pre-reflective sense that Habermas ascribes to tradition-based practices. Consequently, the commitments and practices inherited via the medium of tradition are 'reduced to mere conventions and differentiated from conscientious decisions that passed through the filter of reflection and independent judgment.'[21] We therefore have a crucial distinction on Habermas' part—with obvious descent from the Kantian ideal of freedom as individual self-direction—between "received" convention and the exercise of 'independent' and 'conscientious' judgment in public discourse, the latter

[19] Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, 95.
[20] Ibid., 95.
[21] Ibid., 95.

guaranteeing the autonomy of the moral agent by effecting a critical relativisation of ethical traditions. Freedom requires reflective agency that "gets behind language", so to speak, enabling us to bring our commitments and our received values into view, so as to be rationally endorsed or discarded.

With this historical account, particularly as Habermas presents it in his earlier work, goes the Weberian view of modernity as a 'subtraction narrative' characterised by the dissolution of the cognitive power of ethical traditions and the progressive disenchantment of the natural and social worlds.[22] Accordingly, in a context in which "pre-modern" normative integration forged out of shared ethical tradition is dissolved by historical processes of intensifying hyperpluralism and secularisation, commonly-held normative premises and assumptions are ruptured, leaving us with normatively bare systems integration generated by markets or by positive law. These systems, along with the manifold 'private spheres' accommodated by a culturally splintered modernity, develop their own esoteric languages that make them into self-contained and auto-poetic spheres resistant to any kind of cross-translation. And, at the same time, the language of the market, in its esotericism and opacity, might act to dominate and coercively shape spheres of life outside of economic activity. It is thus urgent, according to Habermas, that we re-establish some means of 'rational' normative integration so as to develop a framework across the various spheres that allows for an articulation of regulative principles – principles that order our discourse and decision-making in line with the goals of moral and civic equality and 'rational' moral autonomy.

Recalling the Weberian distinction between the ideal types of rational, traditional and charismatic rule, the Habermasian 'project of modernity' represents an attempt to establish the 'legitimacy' of rational rule, with reference to the pragmatic presuppositions of 'rational discourse'. Weber, in *Economy and Society*, argues that the "legitimacy" of political rule 'can be viewed as the *chance* of being regarded with a relevant degree of respect.'[23] What enables the legitimacy of political rule in light of the historical process that Habermas, and behind him Weber, traces? For Weber, compliance with political rule can occur out of a plurality of beliefs and for a variety of reasons, some entailing wholehearted belief in the rule's legitimacy, others

[22] Amy Allen, *The End of Progress: Decolonizing the Normative Foundations of Critical Theory* (New York: Columbia University Press, 2015). See Charles Taylor, *A Secular Age* (Cambridge, MA: Belknap Press of Harvard University Press, 2007), on 'subtraction narrative'. This is closely linked to an account of history as linear progress towards a politically or social 'progressive' telos.

[23] Max Weber, *Economy and Society. I: A New Translation*, trans. Keith Tribe (Cambridge, MA: Harvard University Press, 2019), 340.

involving strategic calculations. What is of vital importance, says Weber, is that 'the *form* [italics mine] of its own claim to legitimacy is "valid" to a relevant degree, supporting its existence and defining the kinds of means of rule selected.'[24] As Weber outlines, *form* encompasses and incorporates a range of motivational orientations on the part of the ruled, but retains the ability to establish validity by virtue of its own internal logic—that is, by self-referential principles relevant to its own composition and operation. 'Rational' rule must be validated in accordance with the premises of rationality, rather than with reference to a traditional inheritance or out of the customarily bestowed charisma of the dynastic ruler. If the pursuit of modernity entails extracting the reflective consciousness from the grasp of authority-bound tradition and customary commitments, the means of doing so must be valid on terms that are themselves independent of this inheritance, at least in a cognitive, if not always semantic, manner. 'Rational' rule becomes valid by virtue of its rationality, which itself is a variable independent of specific veins of cultural inheritance or customary practice and reflection, rather than a quality internal to specific traditions or practices, as neo-Aristotelians such as Alasdair Macintyre argue. Whether such independence is possible I will continue to explore throughout the thesis—for now I wish only to note that the Habermasian project of modernity entails the search for an 'abstract' solidarity capable of instantiating and upholding 'rational' rule in complex societies. Weberian 'rationality', in this case, gives us an ideal of formalism that is validity-generating in virtue of the form it takes (abstract, formal, generalisable), rather than in connection to substantive value patterns.

Ss. 2. ***Aesthetic formalism***

This interest in placing abstraction and formalism in service of the development of 'rational' rule is demonstrably inflected by aesthetic modernism, which, although under-acknowledged by Habermas in his more formal prose, exercises a visible influence upon the political economy he constructs and the work it allots to 'reason', 'rationality' and methodological abstraction. Recall Habermas' affirmation of the 'revolutionary spirit of Modernism' as a fueling influence upon his student politics, and upon the political and social environment in which his intellectual project developed.[25] Modernism, to repeat Habermas' words cited in the introduction to this thesis, 'found compelling visual expression in Mondrian's constructivism, in the cool

[24] Weber, *Economy and Society. I: A New Translation*, 340.
[25] Habermas, *Between Naturalism and Religion,* 19.

geometric lines of Bauhaus architecture, and in uncompromising industrial design.'[26] Contemporaneous with Habermas' own career, prominent American art critics like Clement Greenberg elucidated and developed the aesthetic instincts to which Habermas was drawn, their ideas about artistic modernism (including Mondrian) offering insight into Habermas' own preoccupations. Consider, for example, Greenberg's influential, and controversial, articulation of the raison d'etre of the avant-garde in twentieth century art, by which painters such as Mondrian and Kandinsky produced work the excitement of which lay 'in its pure preoccupation with the invention and arrangement of spaces, surfaces, shapes, colours etc., to the exclusion of whatever is not necessarily implicated in these factors.'[27] What marks modernism, writes Greenberg, is a turn away from the 'the subject matter of common experience' towards the 'medium' of one's own craft, meaning that the 'nonrepresentational or "abstract"' must 'stem from obedience to some worthy constraint or original'.[28] This 'constraint', which might once have been located in 'the world of common, extroverted experience', has collapsed and can now 'only be found in the everyday processes or disciplines by which art and literature have already imitated the former.'[29] Note here the manner in which Greenberg associates modernism with a fixation upon the power of the medium to generate its own principles of rational construction; hence, the artist may produce and deploy colour or form in a manner that isolates them from antecedent aesthetic traditions and the cultural narratives towards which they gesture. One may thereby mobilise colour in a manner that makes the colour itself the subject of the work, rather than an element involved in the culturally defined 'subject matter of common experience' from which modernism, on Greenberg's reading, turns. The implication here is that such an act of 'pure' aesthetic formalism is, firstly, possible and, secondly, emancipatory in its liberation of the elements that together constitute the work of art to establish their aesthetic relevance upon medium-specific principles – that is, as elements autochthonous to the work itself rather than bearers of cultural sediment.

There is, then, a division that emerges between medium and content, which establishes the validity of form upon internalist principles of construction, rather than upon exogenous ideals, political, religious or social. To think of this in more concrete terms we might attend to one of Greenberg's critics (and Habermas' contemporary), Rosalind Krauss, who presents an analysis of 'the grid' as 'a structure that has remained emblematic of the modernist ambition

[26] Ibid.,19.
[27] Clement Greenberg, *Art and Culture* (Boston, MA: Beacon Press, 1965), 7.
[28] Ibid., 6.
[29] Ibid., 6.

within the visual arts.'[30] For Krauss the grid, employed and developed by Mondrian, in whom Habermas takes express interest, 'announces, among other things, modern art's will to silence, its hostility to literature, to narrative, to discourse.'[31] If we follow Krauss' argument, the will to silence performed by abstract forms amounts to a rejection of antecedence and postcedence, as well as any relationship of dependence upon ethically or socially embedded forms and traditions, thereby enacting the 'emancipatory promise of Modernism' to which Habermas' project cleaves.[32] In so doing, an abstraction such as the grid performs a function that is ultimately *non-discursive*, working visually to declare its autonomy from the social or natural worlds from which aesthetic creativity might conventionally draw form. It does so, argues Krauss, through enacting a regularising and levelling function upon the artwork, 'crowding out the dimensions of the real and replacing them with the lateral spread of a single surface.'[33] By means of its organised regularity the grid enacts an 'aesthetic decree' rather than a mimetic movement marking an entry into discourse and evoking objects external to the artwork in its technical dimension.

This is not to say that all modernist departures from aesthetic realism or naturalism amount to a fixation upon formalism at the expense of culturally configured restatements of identity. Kobena Mercer points, for example to the 'modernist strategies of formal experimentation' present in mid-century 'Afro-Modernism', which destabilised an established image of 'Africa' available in Western societies and 'opened a space for new understandings of black cultural influences as a core feature of global modernity.'[34] Afro-Modernism, suggests Mercer, was capable of establishing 'multi-perspectival viewpoints' by integrating the miniature and the monumental, thereby asserting their mutual dependence. Moreover, Afro-Modernists such as Jacob Lawrence developed formal innovations so as to produce a 'pictorial narrative' that 'addressed the past genealogically' so as to discern its political relevance.[35] The key point here is that aesthetic modernism per se does not necessitate a disjuncture between culture and critique. Rather, when experimenting with form in open contact with genealogy,

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[30] Rosalind E. Krauss, "The Grid, the True Cross, the Abstract Structure," *Studies in the History of Art* 48 (1995), 50.

[31] Ibid., 50.

[32] Habermas, *Between Naturalism and Religion: Philosophical Essays*, 19.

[33] Krauss, "The Grid, The True Cross, The Abstract Structure," 50.

[34] Kobena Mercer, 'Cosmopolitan Contact Zones,' in Barson, Tanya and Görschluter, Peter (eds.) *Afro Modern: Journeys Through the Black Atlantic* (exh. cat., Tate Liverpool, 2010): 43.

[35] Ibid., 43.

history and experiential specificity, it enables the emergence of new claims to recognition through the re-conceptualisation of modernity as ambiguous, locally determined and hermeneutically challenging. Notably, however, this enculturated modernism is the outcome of a political claim to recognition, and an assertion against a hegemonic uniformity of perspective that asserts the equivalence of modernity with an assertive and abstract form of universality. This form of modernism moves within the contingency of a particular identity, making its emancipatory effort one of hermeneutical 'amalgamation', rather than displacement.[36] In this sense, it differs from the more canonically modernist instinct to crowd out the dimensions of the real, the provisional, or the genealogically dependent, arguably refusing the program that, in Greenberg's terms, 'rejects the subject matter of common experience' to pursue aesthetic and social transformation through the development of 'autonomous' form and abstract solidarity.

Without a testing stretch of the imagination a modernist form such as the grid may be posited as an aesthetic paradigm that corresponds to the broader high-modernist ambition for a designed social order. James Scott's examination of high modernism and state planning alerts us to the optical dimensions involved in establishing a 'rationally' ordered relation between the social and natural worlds, and over social life through the centrally enacted visions involved in urban-planning and design.[37] But the key point of relevance to our assessment of the place of form and formalism in Habermas' political economy is the centrality of the notion that form, disassociated from the 'dimensions of the real' or from 'the world of common experience', is possessed of an immanent logic that validates its own enterprise. The grid operates organisationally but independently of any specific content, working to order the artwork by marginalising or altogether excluding the hinterland of cultural discourse that gives it its political and social intelligibility. Of course, intelligibility still relies upon an audience with some understanding of what is being enacted through the refusal of narrative and the rejection of precedent, but the claim that is made by the abstract self-reliance of the grid is nevertheless one of control and self-authorisation. In its avoidance of any mimetic relation to the natural or social worlds, the grid sets out to establish itself as the product of 'pure relationship', so 'abrogating the claims of natural objects to have an order particular to them.'[38]

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[36] Ibid., 42.

[37] James C. Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998).

[38] Krauss, "The Grid, The True Cross, The Abstract Structure," 50.

Here we find some indication of the disparate and even contradictory quality of the resources that the Habermasian project of modernity marshals, given its commitment to a *discursively* forged critical public as the engine of political renewal and emancipation from the 'cultural prejudices' that Habermas, particularly in the German context, took to impede a 'revolution of political mindset.'[39] Habermas' political economy, it needs no repeating, is premised upon a commitment to an ideal of critical inter-subjectivity, which from his earliest work to his most recent, occupies pride of place in its assigned capacity 'to unite disparate elements without eliminating the differences between them.'[40] If, however, the emancipatory promise of modernism relies upon a denial of discourse, the avoidance of the real and the enactment of aesthetic decree, then it is hard to reconcile its organisational premises with Habermas' ambition for a discursively generated unity amidst difference. To this, one might offer the rejoinder that, although it offers resources with which to give visual articulation to the project of modernity, aesthetic modernism simply opens important questions into the cultural authority of tradition by demonstrating the conceptual independence of form; it does not necessarily spell out an institutional or social agenda within which the real is displaced or reduced. Yet this misses the confluence, forged in Habermas' work, of aesthetic modernism and the enterprise of state construction and normative integration upon the basis of formalist moral universalism. Aesthetic modernism's account of form as autonomous from the 'world of common experience' discernibly shapes the role of methodological formalism in Habermas' political economy, particularly in its account of inter-subjectivity. In denying the mutual dependence between 'form' and 'content', or between methodology and values, modernism establishes formalism and abstraction as means by which to organise space (the canvas, the city, the state), upon principles that, firstly, declare their independence from antecedent frameworks and, secondly, support their own existence 'to a relevant degree', to return to Weber. The 'pure relationship' upon which the authority and self-validation of modernist form depends declares itself to be characterised by non-contingency (think of the regularity and stability of the grid), supplying at a visual level an allegory of twentieth-century political high modernism, which, in Scott's terms, depended for its veneer of emancipatory 'power and precision' upon 'bracketing contingency' and 'standardising the subjects of development'.[41]

[39] Habermas, *Between Naturalism and Religion: Philosophical Essay, 19.*
[40] Ibid., 21.
[41] James C Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998), 345.

Ss. 3. ***Modernism meets social contract theory***

Along with an interest in the emancipatory promise of aesthetic Modernism, Habermas' early views on social integration were developed under the influence of an initial, and on his own view somewhat rudimentary, reading of social contract theory. If the political and aesthetic modernism of Mondrian, the Bauhaus and the artistic avant-garde amounts to an endeavour towards social and imaginative 're-design' that implied the transformation of social relations and, with them, of the individual subject, social contract theory makes this project into an enterprise of constitutional delineation. The relationship between Habermas' political economy and canonical statements of social contractarianism is equivocal. The theories of freedom and the state presented by Rousseau and Kant are resources from which Habermas draws, while also being frameworks that he seeks to renovate and surpass. Notably, neither Rousseau nor Kant are themselves deeply committed to the *deliberative* ideal (although Kant urges the public exercise of critical faculties) but rather to republicanism as an institutional dispensation. How, then, does the social contractarian tradition, along with the Kantian view of the state, make itself present in Habermas' thought? Primarily, I now suggest, by making individual emancipation into a project of state construction that interacts consequentially with the high-modernist interest in curtailing the presence of 'the real' and in 'standardizing the subjects of development' in conformity with the ideal of the rationally ordered political community.[42]

At the heart of Habermas' 'project of modernity' we find a pairing of the Frankfurt School renovation of Kantian critique with the project of republican constitutionalism, which aims at the institutional realisation of individual moral freedom. Instantiating moral freedom, argue Habermas and his heirs, is to make critique into a political program of practically realised emancipation, which entails developing an institutional framework that supplies procedural parameters for the exercise of rational 'agencies of conscience'. Thus, Seyla Benhabib, one of Habermas' most committed intellectual followers, writes in a popularly distributed essay that 'where Habermas's theory differs from Foucaultian or Derridean critical theories is in its insistence that contemporary emancipatory struggles must build upon the conflicted and incomplete legacy of constitutional democracies.'[43] The critical relativisation of customary

[42] Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed*, 345.

[43] Seyla Benhabib, 'Below the Asphalt Lies the Beach', Text, Boston Review, 9 October 2018, http://bostonreview.net/philosophy-religion/seyla-benhabib-below-asphalt-lies-beach.

commitments to which Habermasian modernity strives is a project that stands upon the construction of a social totality within which individual autonomy may be institutionalised. Habermasian 'project of modernity' is therefore one of political and moral *constructivism*; it is concerned not only with the critical relativisation of 'parochial' commitments, but also with the institutional construction of an arena—the state, the confederation, the global cosmopolis—for an emancipatory social and political life. Hence, the crucial dimension of Habermasian thought that sets it apart from other forms of Frankfurt School social theory is its attachment to the project of liberal constitutionalism, which includes a concern with transnational constitutionalism and international law. In this the contemporary critical social theory tradition from which Habermas draws inspiration intersects with the Enlightenment tradition of ideology critique and state construction, concerning itself not only with the emancipation of the individual subject from the shackles of arbitrary authority, but also with the formation of a totality that systematically reproduces social relations congenial to the 'super-ego formation' of rationally reflexive autonomy. In other words, it aims to ensure individual freedom, with its cognitive and reflective dimensions, through the collective agency institutionalised in the political system and through the '*abstract*, legally mediated form of solidarity among citizens.' [italics mine]

Just as modernist aesthetics interact with the high-modernist ideology of rational planning discussed by Scott, so too does Habermas' view of discursive rationality interact with the social contractarian interest in reforming social mores in service of a generalised civic identity. In tracing the interaction within Habermas' political economy of aesthetic modernism and social contractarianism, we can look to the logic articulated in Rousseau's *Social Contract*, by which individual subjects alienate their particular and ethically inflected judgment and place themselves under the aegis of the General Will. In turn, the General Will constitutes the political unit—the Sovereign republics—and eclipses associational interests that might interrupt or disfigure the unity achieved by the subsumption of 'pre-social' personality beneath the collective social personality inaugurated through the standardising agency of the republican state. Notably, Rawls, in his lectures on Rousseau's political thought, commits himself to reading Rousseau along these lines, as proposing the alienation of the particular will, which comes to be subsumed under the general will as a means of producing expanded civic, other-regarding, obligations. While such a reading of Rousseau is clearly tendentious in its reinforcement of the Rawlsian commitment to public reason, it also supports important criticisms of Rousseau's thought from an anti-Rawlsian perspective, as levelled by Bryan Garsten who highlights what might plausibly be construed as a troubling suppression of the

particular will and the associational life it supports beneath the level of the state.[44] But it is not Rawls' intention, at least in his lectures, to be critical along these lines: rather, he approves of the movement from particular will to the generalised identity of the citizen, and of the compartmentalisation of associational life and particular judgment that this brings about.[45] On one level, Habermas follows the same trajectory by supporting the development of a generalised morality of obligation that insists upon the conduct of discourse between individual subjects committed to making and answering rationally delivered validity claims. There are clearly important points of divergence, however, particularly in relation to Rousseau's and Habermas' respective treatment of the associational life-forms and traditionally shaped cultural practices that occupy social life. Rousseau's suspicion of associational life and 'corrupted' social mores acts as the basis for his argument that the contractarian state performs not only a formal unifying role, but also one of constraining and reforming distorted social practices and corrupted forms of subjectivity. Hence Rousseau's argument in *Emile* that false appetites and identities cultivated in society—by the pernicious influence of the theatre, for example—shackle the individual subject to a distortive *amour propre*, which can be overcome only through obedience to law that one's reason has dictated.[46] For Rousseau, the shift from the distorted social identity engendered by *amour propre* to a reason-guided subjectivity occurs through the contractarian political project, whereby the will referred to the demands of the collective in such a way as to diminish particularity of judgment and bring the individual subject into a social union oriented toward the 'general will'. Yet, as Michael Rosen traces in his treatment of false consciousness and the theory of ideology, Rousseau is himself a committed anti-rationalist and, in a vein at odds with Habermas' faith in the essential importance of the liberal 'public sphere', fears the insidious influence of the social and the affiliations therein. Indeed, for Rousseau the notion that an affectively cleansed form of deliberation offers an effective means of resisting *amour propre* and realising moral rationality and 'self-command' is deeply misguided, as it denies the importance of cultivated moral emotions to proper reasoning. This is not to say that Rousseau departs altogether from the commonplace understanding of rational cognition as besieged by the non-rational passions or

[44] Bryan Garsten, *Saving Persuasion: A Defense of Rhetoric and Judgment* (Cambridge, MA: Harvard University Press, 2006).
[45] John Rawls, *Lectures on the History of Political Philosophy* (Cambridge, MA: Belknap Press of Harvard University Press, 2007).
[46] Jean-Jacques Rousseau, *Emile*, trans. Barbara Foxley, Reprint of 1911 London edition (Project Gutenberg, 2018). doi:10.3931/E-RARA-72835

emotive attachments, which suppress the capacity for critical reason and moral freedom. However, as Rosen points out, Rousseau insists on reason being 'completed by feeling', so as to produce in the agent a capacity for good moral – that is, an expansion of one's view of self-interest through the cultivation of 'social' emotions such as *pitie,* such that we come to an individuality that binds itself to a common identity and to a political common-wealth.[47] The collective personality of the state therefore promotes a shared formal subjectivity that contains a polity's otherwise unreformed social life (beset with anti-social vices), cultivating in its place favourable social instincts or superego formations (in Habermas' terms).

Though divergent in the import they allot to informal social discourse and the validity generating potential of argumentative rationality, Habermas' theory of social integration nevertheless depends upon theoretical antecedents established by Rousseauian contractarianism, wherein the tension between 'universalism' and 'particularism' is resolved through the agency of the state and the 'public' identity and generalised 'personality structure' to which it gives rise. The key point of convergence with Rousseau in Habermas' thought is the common philosophical commitment to the public, non-particular identity—in Habermas' case that of the legal subject and rational discursive agent—upon which ideology critique, and hence moral freedom, depends. Rousseauian republicanism bears a commitment to the generalisation of the will and to a conception of the political entity, the collective Sovereign, as a shared identity within which the moral imagination is expanded to press at the boundaries of particular interests and to draw other selves, co-citizens, into the purview of one's self-interest. As Charles Taylor characterises it, 'the aspiration to universal and total participation' appears to be the formula in Rousseau's social contract, 'where the aim is to find a form of association which man can enter, and yet in obeying only himself remain as free as before.'[48] This is ostensibly the aim also of Habermas' theorisation of the normative validity of law and the liberal constitutional order, by which 'the civic exercise of political autonomy is incorporated in the state.'[49]

For critics of Rousseau's contractarian ideal, such as Taylor, it is clear that 'the aspiration to absolute freedom cannot consort with any articulated differentiation of the

[47] Michael Rosen, *On Voluntary Servitude: False Consciousness and the Theory of Ideology* (Cambridge, UK: Polity Press, 1996), 87.
[48] Charles Taylor, *Hegel and Modern Society* (Cambridge, UK: Cambridge University Press, 1979), 106.
[49] Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, 135.

society.'[50] The integration of the individual subject into the general sovereignty of the republican polity acts to provincialise and institutionally contain particular associational interests, judgments and forms of subjectivity; it does so, according to Garsten, by curtailing modes of deliberation (such as acts of rhetorical persuasion) that depend upon such publicly articulated difference.[51] Habermas, on the other hand, wants to eschew the homogenising inclinations of Rousseauian republicanism, aiming to avoid a suppression of associational life by basing his normatively integrated society upon principles that, he suggests, are universally implicit in ordinary communicative action. The task before Habermas, in which his commitment to and faith in the ethical independence of methodological formalism becomes paramount, is to sustain associational freedom while tying it to an ideal of political autonomy and 'abstract' solidarity that prioritises the generalised identity and formalistic agency of the state.

Ss. 4. ***Kantian universalism and modernity***

Habermas makes his theory of the liberal constitutional polity into one that not only imagines the creation of a discursively formal 'public' identity, but that prioritises the development of a critical individual subjectivity made 'autonomous' through the application of reflexive—which is to say 'philosophical'—reason. In so doing, Habermas' theory of socio-normative integration moves in concert with Kant's account of the individual subject rising out of moral immaturity through the progressive application of 'reason' to the critical dissection of dogmatic commitments. Kant's view of historical 'progress' is one that foregrounds the emergence of natural predispositions from the artificial bonds of false consciousness forged under the authority of tradition. Thus, Kant depicts 'enlightenment' at both the individual and social levels in terms of an emergence out of 'self-incurred' immaturity, a release from the 'shackles' of 'dogmas and formulas'.[52] Enlightenment of this kind rests upon the actualisation of autonomy, which on Kant's view amounts to the capacity to 'make public use of one's reason

[50] Taylor, *Hegel and Modern Society*, 106.

[51] See Garsten, *Saving Persuasion: A Defense of Rhetoric and Judgment* (Cambridge, Massachusetts: Harvard University Press, 2009).

[52] Immanuel Kant, "An Answer to the Question: What is Enlightenment?" *in* Immanuel Kant, Jeremy Waldron, Michael Doyle, and Allen Wood. *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*. Edited by Pauline Kleingeld. Translated by David L. Colclasure (New Haven: Yale University Press, 2006), 18.

in all matters.'[53] In a vein suggestive of his concern with the strictures of the Prussian state, 'reason', Kant argues, by its very nature resists a conception of civic life that insists upon the fulfilment of pre-ordained duty. In the public realm, the vehicle of reason is argument and its outcome tends to be the dissolution of prejudices and the individual subject's liberation from that immaturity derived from subjection to dogma. Kant takes a gradualist approach to the historical enlightenment of individuals and polities, rather than placing faith in moments of revolutionary rupture, which, he emphasises, only replace old 'prejudices' with new ones that equally place people under the tutelage of arbitrary authority. In this respect, his account of 'progress' diverges from the visual enactment of rupture presented by aesthetic modernism and from the prophetic or eschatological tones of twentieth century secular political modernisms (Soviet communism foremost among them), with their continuation of religious millenarianism and commitment to the 'revolutionary transformation of the world'.[54] For Kant, enlightenment constitutes the individual capacity to exercise reason unhindered and uninstructed – it is a state of rational autonomy wherein the individual makes judgments and possesses the 'courage' to use their own understanding.[55] Such autonomy is brought about through the incremental process of trans-epochal improvement, a process which is inherently social insofar as it is propelled along by the process of argumentation and criticism that arises under conditions of argumentative freedom—the liberty to use one's public reason on all matters. Hence Kant places faith in the critical propensities of individuals unconstrained by the tutelage of tradition or by doctrinal commitments that assert temporal constancy (like the 'unchanging', 'eternal' or proudly 'continuous' dogma of certain religious traditions). Thus, **'**to agree to a permanent religious constitution that is to be publicly called into question by no one, even within the space of a person's lifetime, and to thereby destroy, as it were, and render vain a span of time in humankind's progress towards improvement.'[56] For Kant, enlightenment occurs through providential rationalism, which places faith in the gradual conquest of prejudice by discursive criticism, leading to the moral maturity of the individual subject and, as a political achievement, the realisation of the 'sacred rights of man'.[57] While this intra-mundane *eschaton* is yet to be realised, the sovereign is tasked with the relatively minimalist objective of ensuring the

[53] Ibid., 18.
[54] Yuri Slezkine, *The House of Government: A Saga of the Russian Revolution* (Princeton: Princeton University Press, 2017), 87.
[55] Kant, "What is Enlightenment," 18.
[56] Kant, "What is Enlightenment," 21.
[57] Ibid., 21.

conditions of freedom that uphold the critical enterprise: 'salvation…does not concern him, but it is his concern to prevent one from hindering another, by forceful means, from working to determine and promote his own salvation.'[58] We can therefore observe that, for Kant, the key threat to the realisation of moral autonomy is the influence of 'tradition', its foundational 'dogma' and the authority these wield over individual wills. This includes the authority of the traditionalist state with its dependence upon social hierarchy and the 'charismatic' authority of dynasticism. The establishment of social conditions that allow for freedom of thought and conscience—that is, the non-perfectionist, constitutionally secular, polity—in turn allows rationally reflexive subjects to do the work of interrogating and relativising their own lifeworlds. Hence the project of social integration on certain terms—namely those of rationally authorised moral freedom defended by the enlightened —is ultimately directed towards the formation of enlightened subjectivity and the 'corresponding superego formations' to which this gives rise.

However, the Kantian program of developing the moral freedom of individual subjects is nevertheless a statist enterprise, positing the equitably organised state as the instrument by which the conditions of enlightenment are secured. Under the Kantian scheme, the freedom of individuals, achieved through rational (that is, cognitively unimpeded) reflection upon inherited custom, can only take place properly within a constitutional framework that regulates individual autonomy, balancing it against the rights and interests of other individuals. This does not amount to a democratic commitment, however. Like Rousseau, Kant is committed to the notion that a republican organisational model represents the optimal institutional dispensation to which social contractarianism directs us. Hence Kant writes that 'the only constitution which derives from the idea of the original compact, and on which all juridical legislation of a people must be based, is the republican.'[59] On the other hand, 'that of democracy is, properly speaking, necessarily a despotism' that distorts the otherwise complementary relation between general will and freedom.[60] In this case, individual moral freedom, which depends upon the appropriate alignment of autonomy with rights and duties, is menaced by the disorganised interaction of ethical identities within democratic deliberation, which threatens the despotism of traditional authority and impedes the emancipatory work of reason. 'Freedom', in its cognitive dimension and in the emancipatory social shifts this stimulates, consequently depends upon specification

[58] Ibid., 21.
[59] Ibid., 21.
[60] Ibid.

and regulation. Kant's view of emancipation therefore entails both a solipsistic and a social ideal; it reflects a moral anthropology that prioritises the individual, but that ties such anthropologically atomised selves to each other through formal frameworks and the philosophically envisioned subjectivities they enshrine. The Kantian scheme introduces a program that strives towards individual moral autonomy through the regulation of relations between moral and legal personalities with claims to 'freedom', which are in turn defined and delimited by their setting within 'society' as an abstract totality.

Ss. 5. *Deflating Kantianism*

While seeking to continue the Kantian project of pursuing a rationally constructed, and thereby 'modern', social condition, Habermas accepts that 'the ideas of pure reason cannot be translated seamlessly from the idiom of transcendental philosophy into that of formal pragmatics.'[61] Rather, formal pragmatics have to be made into the source of an integrational power once supplied by transcendental philosophy. With these claims in mind, the next element of Habermas' political economy that I wish to emphasise is the formalistic conception of reason he derives from a 'pragmatic deflation' of Kantianism. Habermas argues that his project of de-transcendentalisation undoes several of Kant's foundational dichotomies, such as the transcendental vs. empirical or the immanent vs. transcendent, effecting a 'profound intervention into the architecture of his basic assumptions.'[62] Yet given his interest in transposing Kant's idealising anticipations onto the social world, Habermas' deflation of Kantianism continues to depend upon forms that are politically and culturally contingent, their methodological abstraction itself being a particular idealisation that evinces the formative influence of European aesthetic modernism paired with the methodological formalism of the Western social theory tradition.

We can begin tracing the confluence of Kantian ethics and Habermasian moral constructivism by looking to the manner in which Habermas' own strategy converges with contemporary readings of Kant that deploy his practical philosophy in the cause of establishing a plausible basis for a *non-transcendental* moral universalism. Where Habermas claims to disturb the architecture of Kantian reason, Onora O'Neill argues that Kant's thought itself supplies grounds for a deflationary and de-transcendentalising reading. In developing her

[61] Habermas, *Between Naturalism and Religion: Philosophical Essays*, 29.
[62] Ibid., 29.

reading of Kant as moral constructivist O'Neill sets out an interpretive agenda that resists working through a transcendental-immanent dichotomy, rather exploring the manner in which putatively objective categories such as 'fact' can be universally recognised without depending upon a theory of the transcendental ego. In so doing, she detaches 'universalism' from a structural dependence upon transcendental idealism. O'Neill offers an interpretation of Kant as a moral constructivist: Kantian reason and morality are not traceable to natural foundations because in light of the Copernican turn we 'cannot expect any such foundations to be available.'[63] Instead, O'Neill reads Kant's practical philosophy as establishing the authority of reason according to the 'supreme principle' or strategy of excluding action or thought that cannot be adopted by (and hence valid for) all agents irrespective of their 'variable characteristics'.[64] Kantian reason, and the morality to which it gives birth, generates validity claims across and despite the variable characteristics of ethical traditions, social life and the myriad individual subjectivities to which these give form. Yet it is not the product of a foundationalist moral realism – rather it is derived from perceived ethical qualities of the individual subject and, as O'Neill presents it, is usefully deployed to enhance a form of agency that we have reason to value on the basis of its unifying critical possibilities. O'Neill's argument follows a line that attempts to move Kant away from an identification with the transcendental 'fact' of reason as the basis for moral action, at least where 'fact' refers to an a priori to which pure practical reason accommodates itself. While Kant's argument in the Second Critique does designate morality and freedom as 'facts' of reason, O'Neill insists that we do not have to equate 'fact' with 'transcendent fact'.[65] Rather than being a given or posited a priori, we can take the 'facts' that attend reason—morality and freedom—to be outcomes of an immanent process of construction, rather than reflections of metaphysical ideas, thus warding off criticisms of transcendentalism or foundationalism.[66]

Without pursuing a detailed argument about the correct categorisation of Kantian ethics, we can observe the manner in which O'Neill's interpretation of Kant is designed to reconcile his 'categorical' ethics with pragmatist commitments (to non-transcendentalism, first and foremost). Such reconciliation represents a 'strategy', to use O'Neill's own language,

[63] Onora O'Neill, *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge, UK: Cambridge University Press, 1989), 64.
[64] O'Neill, *Constructions of Reason*, 18.
[65] Ibid., 65.
[66] O'Neill, *Constructions of Reason*, 65. An argument that, as O'Neill notes, relies upon significant textual exegesis to establish.

pursued also by Rawls, Habermas and other contemporary neo-Kantians (Korsgaard, for instance), to develop a constructivist normative theory to support the tradition of liberal constitutionalism and its attendant conception of deliberation as public argumentation that generates rational validity claims. Such a strategy cleaves to Kant in its dependence upon ethical maxims like the test of universalisability and upon a conception of the emancipated subject as an agent possessed of freedom through the exercise of reason in accordance with the ethical maxim of universalisation.[67] Of course, O'Neill's deflationary thesis may be characterised as a tendentious reading of Kant, as argued by Allan Wood, for example, who regards the depiction of Kant as moral constructivist to be fundamentally oxymoronic and interpretively questionable.[68] Wood insists that such a reading misrepresents Kant's views on ethics as well as his understanding of both 'autonomy' and 'freedom', both concepts of central importance to the constructivist reading proffered by O'Neill and, differently, by Rawls.[69]

The deflationary Kantianism presented in O'Neill's exegesis depends upon re-characterising 'facts' of reason as authoritative in light of a process of construction and public argumentation, during which *reasons* are proffered that may either be followed—and hence take on '*lawlike'* character—or dismissed as arbitrary by others. That process of public argumentation underpins the authority of reason by reflecting the universalisation maxim, which schematically positions 'variable characteristics' as social material to be organised by the 'supreme principle' of universal validity. The characteristics that demarcate our ethical and social identities are incapable of attracting the following that would supply a lawlike character, precisely because of their dependence upon particular kinds of experience (social, spiritual, subaltern, post-colonial) and the perspectival specificity that attends it. 'Lawlike' character, therefore, refers to ideals or 'facts' with sufficiently minimalist characteristics to avoid perspectival obscurity and to attract assent in the course of argumentation. This process of construction and public argumentation rests upon a reading of Kantian reason that characterises it according to a 'minimal, modal requirement that reasons be followable by others, without being derivative from other standards'.[70] Reason therefore takes its authority from its 'lawlikeness', such that 'if reason has *any* authority, it must be *its* own, rather than *derivative*.'[71]

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[67] Korsgaard, *The Sources of Normativity*, 220.
[68] Allen W Wood, *Kantian Ethics* (Cambridge, UK: Cambridge University Press, 2008), 46.
[69] Wood, *Kantian Ethic*, 46.
[70] Onora O'Neill, 'Kant on Reason and Religion II: Reason and Interpretation', in *Constructing Authorities: Reason, Politics and Interpretation in Kant's Philosophy* (Cambridge, UK: Cambridge University Press, 2015), 234–48.
[71] O'Neill, 'Kant on Reason and Religion II', 276.

Further to this reading of the authority of Kantian reason, O'Neill, citing Kant's *Transcendental Doctrine of Method,* understands him to develop an account of reason as (i) imposing *negative* restraints upon how we think and act (rather than driving speculatively at metaphysical theses), (ii) developing a sui generis rather than derivative authority, and (iii), as *necessarily* exercising authority so as to facilitate the distinction between reasoned and unreasoned thought and action.[72] Kantian reason, therefore, is necessarily concerned with adjudicating between claims to reason via the test imposed by the universalisation maxim, resting at a practical level upon a process of public argumentation that determines which reasons (and the reasoning they reflect) are universal and therefore 'lawlike' in character (meeting the test of the universalisation maxim). Kantian reason, on O'Neill's reading, imposes 'meagre' and markedly *formal* requirements—namely that reason be *negative, nonderivative*, and *lawlike*.[73] It is minimalist in performing a merely disciplinary function and formal in depending upon the universalisation maxim (presented as a substantively empty rule) rather than the realisation of any particular conception of the good located in the ethical or religious traditions that constitute the social world. The noteworthy point here, then, is that the 'deflationary' Kantian strategy for the continuation of categorically 'necessary' universality depends heavily upon formalism—the *nonderivative* and *lawlike*—evoking once again the methodological and stylistic commitments of aesthetic modernism.

The aim of Habermas' political economy is to integrate ethically disparate subjects via an *immanent* form of reason possessed of closely aligned features – of negative *minimalism*, lawlike *universality* and rational *necessity.* Like the Kant of O'Neill's account, Habermas understands morality to be the product of construction, which nevertheless engages a conception of 'philosophical' reason that operates effectively across particular contexts. Habermas argues for the de-transcendentalisation of Kantian idealisations so as to ensure that his own political economy avoids dependence upon Kantian idealism, the realm of noumena and its accompanying metaphysics. Thus, 'to the extent that we transform the "ideas of reason" into idealisations performed by speaking and acting subjects, the ideal no longer pends on the assumption of a noumenal sphere' but rather upon the assumptions present in the 'everyday practices' of communicative action and rational discourse.[74] In a break with the strategy pursued by neo-Kantians like O'Neill, however, Habermas makes this depend upon the formal

[72] Ibid.,, 276.
[73] Ibid., 276.
[74] Habermas, "Reflections on the De-Transcendentalised Use of Reason," in *Public Deliberation: Pluralism, Complexity, and Democracy* (Cambridge, Massachusetts: MIT Press, 2001), 36-37.

features of language or 'communicative action', understood to establish a definitive claim to acquiescence by means of a Wittgensteinian grammatical 'unavoidability', rather than the necessity established by Kantian maxims. Thus, Habermas' 'inter-subjective continuation of Kantianism' (Joas) and the trans-contextually valid form of 'philosophical' reason it claims to supply, rests upon the 'pragmatic presuppositions' implicit in rational communicative conduct (conduct oriented toward understanding). It establishes these presuppositions and their derivative principles of communication as 'necessary' points of procedural observance for the rational communicative agent to acknowledge and enact in order to be received as the author of acceptable validity claims. In so doing, it reflects and echoes the 'aesthetic decree' of artistic modernism and the visual uniformity of twentieth-century high modernism, displaying a closely aligned methodological commitment to abstraction and invoking ostensibly aesthetic principles to which citizens might assign validity in virtue of their self-dependence, 'meagerness' and generality. Like the grid of Krauss' discussion, Habermas' deflationary Kantian normativity lays claim to being non-derivative and lawlike, eschewing dependence upon a delimited horizon of social experience and discarding the provisionality this otherwise imposes upon the range and organisational power of the rational validity claim.

Crucially, Habermas' inter-subjective continuation of Kantianism brings into play an explanatory account of language 'as a species endowment' open to assessment in terms of formal (and hence universal) grammatical functions. This is central to Habermas' '*pragmatic* deflation of the Kantian approach [italics mine]', which locates foundational presuppositions in 'practices for which we cannot find functional equivalents', which includes language itself considered as a 'species endowment' rather than 'natural languages' in use.[75] Habermas' theory of communicative action is of course well traversed and my intention is not to develop a lengthy exegesis of it here, although I do explore more detailed aspects of it later in the thesis. For now, I wish to highlight the manner in which Habermas' 'pragmatic' deflation aims to establish a form of Kantian *necessity* upon the generation of a formal and austere theory of language, in such a way as to marginalise the linguistic dimension of *meaning*, along with the plurality of functions performed by competent language users beyond those of argumentative rationality. Habermas proposes an account of human language competence as reducible to a core of axiomatic presuppositions—his effort to develop an immanent (or empirically grounded) Kantianism of his own depends upon the thesis that we can locate "grammatical" structures from which to derive norms that organisationally enclose, but do not set out to re-order, ethical

[75] Habermas, *Between Naturalism and Religion,* 27.

values. As it features in Habermas' theory, a systemic and formal account of language supplies the means of grounding of Kantianism within the texture of social experience, yet it makes this texture into a field of detail the most salient element of which is the universally stable grammatical conventions (pragmatics) that stand as presuppositions of linguistic inter-subjectivity. The Habermasian theory of formal pragmatics 'holds that the rational structure of action oriented toward reaching understanding is reflected in the presuppositions that actors *must* make if they are to engage in this practice at all.'[76] For Habermas, this 'must' is inflected by a Wittgensteinian rather than strictly Kantian sensibility, which is to say that it does not 'have the transcendental meaning of universal, necessary, and noumenal' but rather 'the grammatical meaning of "unavoidability"' within a 'system of learned—but for us inescapable—rule governed behaviour'.[77] In other words, humans, as linguistically constituted subjects whose capacity for self-consciousness depends upon inter-subjectivity, learn to recognise and cleave to rational presuppositions in order to proceed as rational users of language: that is, as language users seeking understanding.

Rather than setting out to establish definitive truth conditions, Habermas is concerned with determining patterns of communicative behaviour that sustain the possibility of making a universal validity claim with the power of rational 'unavoidability'. To this end, Habermas' deployment of ordinary language philosophy dwells upon Wittgenstein as a proponent of grammatical systematicity, as a means of "de-transcendentalising" his Kantian conceptualisation of morality as universal and lawlike. Stanley Cavell, assessing Wittgenstein's treatment of grammar, highlights the foundational conviction 'that language is shared, that the forms I rely upon in making sense are human forms'.[78] This is the proposition that Habermas wants to posit as essential to the conduct of human inter-subjectivity – the 'human' rather than parochial form of language. In converting Kantian necessity into Wittgensteinian 'unavoidability', Habermas prioritises the background systematicity of language over and above the context-specificity of language games, positing 'grammar' as a taxonomic frame by which particular languages-in-use may be universally schematised with reference to a core of formal features and rational modes of linguistic performance. The claim at work here is that an empirical assessment of 'language-as-a-species-endowment' offers a supply of 'unavoidable' presuppositions that ground an account of communicative rationality.

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[76] Habermas, *Between Naturalism and Religion: Philosophical Essays*, 27.
[77] Ibid., 27.
[78] Stanley Cavell, *The Claim of Reason: Wittgenstein, Skepticism, Morality, and Tragedy*, New ed. (New York: Oxford University Press, 1999), 31.

Thus, the validity of certain forms of linguistic performance is determined by the rule-oriented pattern that they follow. 'Moral argumentation', as Habermas calls it, engages forms of linguistic competence that best approximate the rational presuppositions drawn from the depth grammar of language. Thus, for example, the exchange of reasons, guided by the 'fundamental intuition' that 'moral argumentation' is oriented towards a universal audience, in turn reflects the presupposition that rational language use pursues understanding and so must be addressed to interlocutors in such that it may be valid for them, as much as for the individual subject. The only resource upon which the participants can draw is 'the normative content of the presuppositions of argumentation that they have already accepted once they engage in moral arguments.'[79] If we are to engage in moral argumentation, then we must adhere to its presuppositions in order for our arguments to continue to attract interest as "rational", that is, developed at a universally available register and open to similarly formulated criticism.

Why associate the Habermasian approach to language with the ideological formalism discussed earlier? Because of its isolation of assertoric form, a particular 'pattern' of linguistic competence, from the wider terrain of meanings and competencies that shapes language use. Habermas' account of rational language use—the kind of communication appropriate for a unifying form of 'moral argumentation'—proffers a foundational language game premised upon making and responding to assertions. Isolating and prioritising the assertoric dimension of language, however, diminishes the practical imbrication of argumentation with non-assertoric features of language. In practice, argumentation—the process of staking validity claims, or of seeking to persuade an interlocutor—negotiates the terrain of ordinary language use. As Charles Taylor writes, 'a theory of meaning, in the intended sense of an account of the competence which a speaker of language possesses, cannot simply consist of an account of how to derive truth conditions of depictive combinations from axioms defining arbitrary, "unmotivated" meanings.'[80] Rather, an empirically sensitive theory of meaning ought to grapple with both the stylistic variations with which meanings are constituted, along with the reality that argumentation is in practice inextricably tied to motivations beyond the "purely" illocutionary form valorised by Habermas. In this vein, Taylor, mobilising an approach to language more obviously inflected by philosophical hermeneutics, offers a critical appraisal of theories of 'well-regimented language use' that bracket the features of everyday

[79] Habermas, *Between Naturalism and Religion: Philosophical Essays*, 63.
[80] Charles Taylor, *The Language Animal: The Full Shape of Human Linguistic Capacity*. (Cambridge, MA: Harvard University Press, 2016), 171.

communicative practice, or that reduce our account of them to a model of semantically logical relations. For Taylor, 'regimented' theories of language competence fail at an explanatory level, which for the pragmatist impairs their normative potential. They fall short at an *explanatory* level insofar as they cannot offer a satisfactory account of our learning of linguistic meanings (social and cultural meanings) and because they are unable to cope with 'the inventivity of real human language'.[81] While a methodologically formal language of assertion and explanation (argumentation) may offer the prospect of an exchange stripped of "compromising" rhetorical elements such as metaphor, narrative or symbolism, the practical possibility of such formal purity is minimal in the course of ordinary speech. Methodologically 'formal' registers of speech have of course proven essential within specific fields of activity such as the natural sciences. Indeed, what Taylor calls a 'truly objectivist semantics' that supplies a means of mapping the natural, or social, worlds, continues to exercise appeal, proffering the possibility of 'truth conditions' by which the referential integrity of linguistic meanings might be ascertained. However, as Taylor puts it, 'the attempt to liberate a unified territory…grouping natural science, common sense and logical inference, must founder' when faced with the recognition that 'ordinary common-sense speech is irremediably addicted to tropes, metaphors, symbols and templates.'[82] Being a competent language user means exercising competencies beyond the assertoric development of propositions; the capacity to "move forward" in an intelligible exchange with interlocutors requires receptivity to the dynamics of ordinary speech.

Of course, we might reduce our account of competent language use to the requirement of ensuring that one's interlocutor understands the objects to which words refer. However, as both Taylor and Rowan Williams (two interpreters of Wittgenstein) are keen to point out, this merely 'designative' view of language, which reflects the search for an objectivist semantics, expels its constitutive dimension from our purview, along with many of the stylistic and structuring features that frame linguistic communication. Consider, for example, the role of what Taylor calls 'framing metaphors' and their place in most recognisable forms of moral or ethical discourse. An instance of the imbrication of metaphor and ethical language relates to the spatial allusions commonly employed to depict moral character or moral wrong. We frequently define moral character and forms of morally relevant action as either "high" or "low", just as we evoke the image of "depth" and of "internal" reflective movements to

[81] Ibid., 172.
[82] Taylor, *The Language Animal: The Full Shape of Human Linguistic Capacity*, 172.

describe processes of reflection. These framing metaphors are not, of course, "universal" – quite the opposite, they depend upon traceable intellectual lineages and moral anthropologies. But, in agreement with Taylor, their role in structuring the discursive possibilities within certain cultures is hard to overstate. The notion of reflection as a movement towards "interiority" is particularly present across Western ethical traditions, not to mention interwoven strains of philosophical thought, Cartesian, Romantic and Kantian, in which "reflection" is posited as involving introspection or an individualised moment of cognitive autonomy. In concert with the semantic resources that tie the expression of moral personality and reflective judgment to spatial metaphor, we move within what Taylor calls 'structural templates', which are embedded deeply within particular cultural imaginations. Thus, for example, the understanding of temporality invoked in ordinary speech is heavily structured by notions of linearity and movement—of "years flowing by like a river"—that, though they are philosophically questionable, provide a model by which speech configures time in relation to human experience.[83] At an empirical level, therefore, we find the pervasiveness of metaphor, spatial imagination and poetics, synecdoche and other devices, all of which are constitutive of the meanings words bear and of the language games it is possible to play with them. In the field of ordinary language, such structuring templates are central to the enactment of linguistic competence. This bears implications even for the process of argumentation at a 'moral' register that seeks to take interlocutors into account as moral contemporaries; it suggests, in Williams' words, that 'there are "normative" dimensions to sentences which go well beyond a simple true-or-false polarity: the same words may be spoken as literal, as metaphor, as trite metaphor or fresh metaphor, as significant or banal, as appropriate or inappropriate.'[84] Gauging the normative bearing of a sentence engages multiple competencies, therefore, and with them meanings that require sensitivity to the contextual (rather than formal) pragmatics of the specific 'language game' being played.

This is particularly the case when it comes to the traditions of meaning-making that we call 'ethical' or 'religious', which are deeply interwoven with 'culture', to the extent that, contra Nikolas Kompridis, the categorical boundaries are difficult to determine.[85] As Shahab Ahmed suggests in relation to Islam and 'Islamicate' culture, the composition of its constitutive

[83] Taylor, *The Language Animal: The Full Shape of Human Linguistic Capacity*, 159.
[84] Rowan Williams, *The Edge of Words: God and the Habits of Language* (London: Bloomsbury, 2014), 123.
[85] See Nicholas Kompridis, "Normitivizing hybridity/Neutralizing Culture", *Political Theory*, 33(3): 318–343.

meanings works in large part through 'meaning-making' linguistic practices that communicate a manner more multi-layered than a 'correspondence' account of meaning would allow (an account by which 'meanings' correspond to objects that they represent). Metaphor stands out here as an example of the multifaceted mode of 'meaning-making' by which adherents to religious and ethical traditions develop self-understanding and relate this self-understanding to their developing cosmological and political imaginations. As Ahmed puts it, the:

> capacity of metaphor to create complex meaning beyond and behind the plain meaning which is visible at the surface is precisely what renders metaphor so crucial to the process of meaning-making and communication amongst people for whom Truth is multi-dimensional and multi-valent—as meaning-making and communication necessarily is for Muslims engaging with the spatiality of Revelation. In the structural hierarchy and internality-externality of Revelation, metaphor thus functions as a means by which Muslims reach upwards, inwards, and outwards beyond the form of the word. It allows precisely for the multi-dimensional exploration of meaning(s).[86]

Ahmed signals the centrality of metaphor to the Islamic and Islamicate imagination, positing it as one of the key conditions of meaning-making within the hermeneutical matrix of Islam. Not only is 'truth' multidimensional, layered by different modes of communication and registers of speech, downright contradictory commitments and practices, and an ongoing subjection to interpretive tradition, it evades categorisation in terms of "thick" propositional commitments from which Muslims might move to the "secular" side of an "ethical-moral" discursive dichotomy. Rather, communication within this space of cultural meaning-making is necessarily interlaced, even if only implicitly, with a spatiality of revelation that, like the breach in mundane chronology effected by ritually enacted notions of 'kairotic' time, opens a dimension of meaning that surpasses the 'rationally communicative' model delivered by Habermas. Moreover, its structuring of the space within which meanings are made legible, and from which new meanings are articulated, suggests that such complex and multi-valent meaning-making will be intimately involved even in the "secular" project of developing "discursively rational" traditions of Islamic disputation.[87] The degree to which structuring

[86] Shahab Ahmed, *What Is Islam?: The Importance of Being Islamic* (Princeton, NJ: Princeton University Press, 2016), 391.

[87] Such traditions, of course, already exist prior to the efforts of scholars like Abdullahi An-Naim, who are deeply influenced by the Rawlsian model. Interestingly mirror certain Rawlsian procedural

metaphor and the spatialities either of revelation or of the secularised language of moral 'interiority' cited by Taylor, encircle and shape our efforts at normative communication at the very least checks the claim made by Habermas that, considered universally, ethical subjects 'with their intuitive understanding of argumentation in general', might by engaging in cognitively rational moral disputation 'force one another into de-centring their interpretive perspectives'.[88] Their interpretive perspectives are, after all, metaphorically structured to a degree that resists the notion of an 'intuitive' movement towards a discursive space defined by supposedly "secularised" claims and counter-claims, free of metaphor or the 'revelatory' spatiality of truth and meaning. While for Habermas, the 'intuitive understanding of argumentation in general,' means that 'Kant's idealizing anticipation of the whole is carried over from the *objective* to the *social* world,' the social world and the conditions that obtain there, in which ethical subjects move as language users, shows serious resistance.[89]

At a philosophical level, and in relation to linguistic cultures either "secular" or "sacred," the defining plurality of language is emphasised by Wittgenstein, who reminds us in the *Philosophical Investigations* of the multiple competencies that co-constitute a language game.[90] In unpacking the analogy between language and game, we find that the rules amongst participants in a shared activity like language are far from formalistically defined, or unified around a singular communicative ideal. Hence, in Ss. 83 of the *Investigations,* Wittgenstein develops a portrait of the multiplicity of rules involved in any one 'game' – 'we can easily imagine people amusing themselves in a field by playing with a ball like this: starting various existing games, but playing several without finishing them, and in between throwing the ball aimlessly into the air, chasing one another with the ball, throwing it at one another for a joke, and so on. And now someone says: The whole time they are playing a ball-game and therefore are following definite rules at every throw.'[91] The empirical reality illustrated here resists the application of ideal or 'definite' rules in the manner of natural science, evincing instead the interaction of various tacit rules by which linguistic actions become intelligible as components of a multifaceted 'game'. Thus, understanding the function of a rule is to understand the mode

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commitments, but do so out of Islamic and eastern Christian traditions of disputation – see, for example, Abdullahi An-Naim, *Islam and the Secular State: Negotiating the Future of Sharia* (Cambridge, Massachusetts: Harvard University Press).

[88] Habermas, "Reflections on the Detranscendentalised 'Use of Reason,'" 29.

[89] Ibid., 29.

[90] Ludwig Wittgenstein, *Wittgenstein's Philosophical Investigations: Text and Context*, ed. Hans-Johann Glock and Robert L. Arrington (London: Routledge, 1991), 15.

[91] Wittgenstein, *Wittgenstein's Philosophical Investigations: Text and Context*, 43.

of its deployment, rather than its purely logical properties. Linguistic competence appears to entail the development of sensitivity to the various deployments of language being made and the tacit rules that stand behind them – 'one learns the game by watching how others play it.'[92] Of course, it is much easier, suggests Wittgenstein, 'to imagine a language consisting only of orders and reports in battle. Or a language consisting only of questions and expressions for answering.'[93] However, to develop ideally 'clear and simple language games' as 'preliminary studies for the future regimentation of language' would be to exempt ourselves from the study of linguistic competency as it plays out in ordinary speech. Instead, ideal language games may offer us at most 'objects of comparison' by which we may throw light on the *various* features of language.[94]

Of course, Habermas is not seeking to establish moral argumentation upon the model of the natural sciences by identifying a 'simple true-or-false polarity', but rather as a *pattern* of communicative behaviour that produces universal validity claims. Hence, 'though truth claims cannot be definitively redeemed in discourses, it is through arguments alone that we let ourselves be *convinced* of the truth.'[95] A procedure in which we make 'arguments alone', along purely cognitive and non-strategic lines, enacts an "open-ended" pattern that, it its methodological formality avoids the compromising terrain of ordinary language, even while claiming immanence in its connection with the 'pragmatic presuppositions' of 'language as a species endowment'. This pattern of universality located immanently within the 'grammatical unavoidability' of formal presuppositions underpins Habermas' claim that 'Kant's idealizing anticipation of the whole is carried over from the *objective* to the *social* world.'[96] Yet this very move, made under the banner of a de-transcendentalising pragmatism, drives Habermas towards a form of immanent abstraction that avoids the contingency and irregularity of social detail. As with aesthetic modernism's commitment to 'forms' independent of discursively developed truth claims, Habermas seeks out a methodological form that, depending on how one reads it, either claims independence from a specific lineage of traditionally developed meanings, or remains capable of transcending its parochial lineage *by virtue of its formalism*. That is, its authority is premised upon insulation from the non-assertoric traits of ordinary discourse – narrative, metaphor, analogy and affect. Habermas is explicit in his commitment

[92] Ibid., 31.
[93] Ibid., 11.
[94] Ibid., 56.
[95] Habermas, "Reflections on the Detranscendentalised Use of Reason,"29.
[96] Ibid., 29.

to a form of moral argumentation that, in composing itself 'rationally' and 'universally', excludes both 'motivational and emotional' aspects of moral reasoning. Accordingly, 'the theory of discourse need not concern itself with feelings and attitudes that may accompany the cognitive operations.'[97] For Habermas, 'moral attitudes and feelings certainly have a propositional content' and yet, where a process of argumentation is concerned they are irrelevant; all that 'counts in practical discourses is the cognitive task, as is generally the case when it comes to solving problems.'[98] With this, Habermas stands ready to accept the adoption of emotions such as 'empathy' for cognitive reasons, but resists their expression out of non-cognitive 'irrationality' or a collapse in impartial judgment and the 'concessions' to one's interlocutor that follow.[99] Irrational concessions and partial judgment would erode the basis for rational argumentation and, hence, the robustness and validity generating power of a deliberative process. Indeed, such concessions would compromise the critical distinction between 'heteronomous' and 'autonomous' actions, a distinction which, in his words, has 'revolutionized our normative consciousness' by producing a need for justification that, 'under conditions of postmetaphysical thinking', can be satisfied 'only by *moral discourses*'. '[100] It is, on this view, at the level of cognitively rational justificatory discourse that citizens of liberal-democracies are to develop social relations underpinned by rational-reflective autonomy. Such discourse is, as discussed above, presented as the product of procedural rationality that is stylistically formal and semantically generalised, exemplifying what Michael Warner calls 'a tendency in the liberal tradition to identify critical reason with something that cannot be given content, that is not a cultural form in itself, but that is conceived as mere negative potential, a kind of perpetual openness to further criticism.'[101]

Ss. 6. *Reason, reflection and objectivity*

So far, I have argued that aesthetic modernism and the separation it presents between form (or medium) and content, rules and meanings, acts as something like a 'structural template' through which Habermas thinks about the integrational role of formalism. In what follows I

[97] Jürgen Habermas, *Postmetaphysical Thinking* (Cambridge, UK: Polity Press, 1992), 194.
[98] Habermas, *Postmetaphysical Thinking*, 194.
[99] Ibid., 194.
[100] Habermas, *Between Facts and Norms,*97.
[101] M. Warner, 'Uncritical Reading', in *Polemic: Critical or Uncritical*, ed. Jane Gallop (United Kingdom: Routledge, 2004), 13–38, 35.

suggest that, just as aesthetic modernism relies for its power upon the juxtaposition of formal abstraction and traditionalist 'forms', so too does Habermas' conception of reason depend upon counter-posing 'substantiality' (synonymous with historical and social particularity) to cognitive autonomy and the critical integrity it underpins. I want, now, to draw out how his conception of reason differs from the conception implied by the hermeneutical ontology that, I think, might suitably underpin a pragmatic strategy defined by a methodological pluralism unpinned from the formalism of 'comprehensive social theory.'

For Habermas, the philosophical accomplishment of a 'principled' morality precedes and facilitates the creation of the emancipated political collective composed of rationally autonomous individuals. Habermas shifts the underpinnings of moral universalism from natural law and 'archaic' metaphysics to the terrain of language assessed formalistically as a 'species endowment' structured by pragmatic presuppositions. In Habermas' view, 'reason, which is always bound up with language, is also always beyond its languages.'[102] Thus, 'languages themselves contain the potential for a rationality that, expressing itself in the particularity of a specific grammar, reflects the limits of that grammar and at the same time negates them in their specificity.'[103] Reason is 'always beyond its languages' in light of its capacity for objectification, which occurs through the act of reflection. Habermas' theorisation of 'reflection' presents the process by which a socially embedded 'self-presence' comes to objectify itself, or understand itself under a conceptual lens.[104] In the specific sense intended by Habermas the individual subject develops a self-understanding defined by the moral concept of 'autonomy', which in turn makes the subject's relation to inherited language one to be excavated and potentially overturned.

In developing a conception of reason as an emancipatory force that is at once cognitive *and* dialogical, Habermas aims to overcome the deconstructionist critique of subject-centered reason, which highlights its exclusionary implications. This is a common critique of

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[102] Jürgen Habermas, *On the Logic of the Social Sciences*, trans. Shierry Weber Nicholsen and Jerry A Stark (Cambridge, UK: Polity Press, 1988), 144.

[103] Habermas, *On the Logic of the Social Sciences*, 144.

[104] Karl Rahner, *Foundations of Christian Faith: An Introduction to the Idea of Christianity* (New York: Crossroad, 1989), 16. Writing in the 1970s, the Jesuit theologian Karl Rahner points to a self-constituting tension between original (self) knowledge and its concept—'the original self-presence of the subject in the actual realisation of his existence strives to translate itself more and more into the conceptual, into the objectified, into language, into communication with the other.' Thus Habermas' theologically inclined contemporaries come, through a philosophically conversant theological discourse, to contemplate closely aligned issues.

Kantianism and of Rawlsian public reason, entailing the claim that it excludes those for whom the methodical exchange undertaken through 'rational argumentation' is foreign or whose experiences and values are enunciated by means other than argumentative justification, including through expression of 'moral emotions' (outrage or affective fervor for justice). Moreover, subject-centered reason depends heavily upon the Kantian attempt to free reason from empirical entanglement, so making it into a 'pure practical reason' that objectifies and controls external objects. Habermas expressly sets out to retrieve a conception of reason less beholden to historically fraught assumptions about the nature of rational agency and its dichotomous opposition to the 'immanent' field of social phenomena. Yet, as much as his moral theory professes to take the social world seriously through its analytical prioritisation of discourse, Habermas' 'principled morality' insists upon a form of reason formally conversant with, but practically unfettered by, social particularity or by the forms of specificity that make practical judgment provisional and context-specific.

The primary assumption here is that procedural rationality's claim is diminutive (and hence non-intrusive) given that, in this scheme, it rests upon grammatical necessity rather than Kantian noumena or a more assertive metaphysics. As Bernstein suggests, Habermas' primary claim is that amongst the plurality of forms of life rooted in their 'unique traditions', 'we can detect a gentle but obstinate…claim to reason', a 'claim to reason that points to the possibility of the argumentative redemption of validity claims through mutual dialogue and discourse.'[105] This is the 'basic intuition' of Habermas' communicative theory as enunciated and amended over his wide-ranging corpus, its 'moral-political' intention being to demonstrate that across various communicative action-contexts there are 'unifying' presuppositions that orient us to the development of mutual understanding and autonomy. By extension these presuppositions may be converted into procedures that draw us to eliminate elements that distort our communication so that we better realise an ideal of *reciprocal* dialogue that generates autonomy and solidarity.[106] Bernstein correctly presents Habermas as attempting to develop a philosophical synthesis that reconciles the poles of objectivism and relativism by tracing the 'stubborn' but 'quiet' claim of reason within and across various action-contexts. Once again, this 'quiet claim' of reason is not of the transcendental variety in the sense of being a process of empirically unimpeded cognition by which transcendental forms are perceived to be latent in quotidian practices of communication.

[105] Richard J Bernstein, *Habermas and Modernity* (Cambridge, UK: Polity, 1985), 192.
[106] Bernstein, *Habermas and Modernity*, 195.

Note here the manner in which the 'quietude' of reason, based on its lawlike and non-derivative character, enacts a function similar to that of 'form' within the ideological terrain of aesthetic modernism. It establishes itself as an organisational principle that is all-encompassing, that draws materially from the terrain of social reality while remaining independent of its perspectival constraints. Thus, Habermas writes: 'specialized for questions of justice, a principled morality views *everything* through the powerful but narrow lens of universalisability. Its telos consists in the impartial judgment of morally relevant action conflicts, and hence it facilitates a knowledge that is meant to orient one's action but does not thereby *dispose* one to act rightly.'[107] Principled morality therefore carries out a clarifying function, rather than a motivational one, requiring the 'semantic' (but not cognitive) resources of lingering ethical or religious traditions to add motivational depth to the individual's adherence to principle. The emphasis here upon impartiality foreshadows Habermas' commitment to the revisionist power of a certain kind of autonomous reason—instantiated through processes of reflection—that works to reorder the 'inherited' contents of 'substantial' traditions and consequently to shift the adherent's relationship with their tradition to one of reflective appropriation rather than unreflective inhabitation. Habermas gives further characterisation of this understanding of critical reason in his critique of Gadamer's ontological prioritisation of hermeneutical understanding (*Verstehen*):

> Gadamer fails to recognize the power of reflection that unfolds in *Verstehen*. There reflection is no longer blinded by the illusion of an absolute, self-grounded autonomy, and it does not detach itself from the ground of the contingent on which it finds itself. But when reflection understands the genesis of the tradition from which it proceeds and to which it returns, the dogmatism of life-praxis is shaken.[108]

As this passage illustrates, Habermas' deflationary Kantianism undergirds a conception of reason as non-transcendental but nevertheless capable of overcoming what Gadamer calls the hermeneutical situation, within which the subject's reflective understanding is circumscribed by a finite epistemic horizon. While it may not descend from noumena in the Kantian sense, reflection takes up the Durkheimian perspective, operating to objectify ethical life and thus to

[107] Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, 113.
[108] Habermas, *On the Logic of the Social Sciences*, 168.

reshape the premises upon which traditions operate; it preserves a cognitive space beyond language from which philosophical reason may reflect back upon the commitments expressed by languages-in-use without being bound to the resources that they make available. That is, without what Gadamer calls the 'prejudgments' involved in reflection out of the hermeneutical situation, within which all understanding begins amidst the prejudices inherent in one's perspectival situation.

Recall once more that Habermas' project of modernity aims to supply a de-transcendentalised form of Kantian normativity by which the constitutional state—the arena for individual autonomy—might be legitimately established. The moral part of this project is that of undoing Kant's dichotomies, while nevertheless supplying norms of 'lawlike' necessity by means of a commitment to methodological formalism. The key point there is that the principled morality constructed by Habermas by means of a deflationary account of normativity, depends nevertheless upon a dichotomous relation between reason and substantiality. As it relates to 'substantial' traditions Habermas' principled morality acts to subject the 'dogmatism' of life praxis to the disruptive assessments of reflection that 'makes transparent' the customary arrangements at hand. The essential movement here is from a set of prejudgments—or nascent assessments of the phenomenal world—that are underpinned by received tradition, to a set of reflective judgments the epistemic and ethical validity of which is confirmed through autonomous reflection that escapes the clasp of tradition. Herein lies the crux of Habermas' finely tuned disagreement with Gadamer, that:

> Gadamer's prejudice in favour of the legitimacy of prejudices (or prejudgments) validated by tradition is in conflict with the power of reflection, which proves itself in its ability to reject the claim of traditions. Substantiality disintegrates in reflection, because the latter not only confirms but also breaks dogmatic forces. Authority and knowledge do not converge. Certainly, knowledge is rooted in actual tradition; it remains bound to contingent conditions. But reflection does not wear itself out on the facticity of traditional norms without leaving a trace.[109]

The aim here is the separation of knowledge from authority, where authority is cast as hierarchical and arbitrary rather than heterarchical and rationally attained. The charge levelled against Gadamer is that his hermeneutical ontology prioritises ethics over morality, such that

[109] Habermas, *On the Logic of the Social Sciences*, 170.

he views 'all modern approaches to validity as expansions of scientific method' and therefore is unable to distinguish between the rational and irrational dimensions of tradition.[110] Habermas takes Gadamer to posit the legitimacy of 'prejudices' that are 'validated' by tradition, notably applying his own concern with normative validity to Gadamer's hermeneutical ontology. Whereas Gadamer sets out to depict the ontological conditions of understanding, Habermas interprets Gadamer as attempting the validation of convention and precedent over and against efforts at preserving critical autonomy. As Zerilli reads him, Habermas is 'deeply critical of the idea that there is no form of discourse that would be free of prejudices, preunderstandings and prejudgments'.[111] For Habermas, this presents us with what Zerilli calls the 'validity problematic', which relates to the Kantian concern with avoiding a state in which what is taken as 'true' or 'right' is indexed to a particular form of life.

Here we are alerted us once again to the preoccupation that overshadows Habermas' theoretical construction and that ultimately makes formalism indispensable to him – the prospect of a critically disabling level of intimacy between moral judgment and contextual experience. For Habermas, the threat of contextualism haunts Gadamer's theory, which, he thinks, leaves us facing multifarious ethical claims to truth without a commitment to the epistemic validity of moral claims to rightness.[112] Alternatively, Habermas is concerned to preserve a way of 'distinguishing between ideological and nonideological uses of language or between illusory and nonillusory forms of belief'.[113] While ethically derived truth claims are taken to rely upon thick ontological commitments, moral claims of the kind envisioned by Habermas make unconditional validity assertions upon primarily *epistemic* grounds, which is to say that they make no claim to 'truth', but are 'truth-analogous' in the unconditional validity that they claim.[114] Such a resolution of the 'validity problematic' relies upon an understanding of reflection as capable of standing outside the hermeneutical situation defined by Gadamer, or as being unbound by this situation when it comes to recognising the unconditional validity of 'truth-analogous' normative claims.

All knowledge is rooted in tradition, accepts Habermas, but 'reflection' nevertheless performs a function the power of which derives from the cognitive (which is to say non-

[110] Linda M. G. Zerilli, '"We Feel Our Freedom": Imagination and Judgment in the Thought of Hannah Arendt', *Political Theory* 33, no. 2 (April 2005): 158–88, 132. https://doi.org/10.1177/0090591704272958.
[111] Ibid., 132.
[112] Ibid., 133.
[113] Ibid., 132.
[114] Ibid., 133.

affective) exercise of 'philosophical reason'. The 'power of reflection' lies in its capacity to distance the subject from affective, and therefore imperfectly reflexive, ties to certain lifeforms, practices or commitments; it acts upon those commitments in virtue of its cognitive autonomy from empirical entanglements, rather than its imbrication with value articulations and the affective attachments, memories and future hopes that they incorporate. Indeed, on Habermas' rendering, the latter, in the guise of 'conventional' commitments, make the spectre of emotivism, decisionism, and irrationalism loom large, and certainly fail to generate validity claims of sufficient justificatory strength to effect normative integration of a lifeworld composed from multiple ethical traditions. Once we introduce affective or value-laden ties to our conception of reason, or once 'reason' is tied into 'tradition' in such a way as to suggest tradition's lexical priority to 'reflection', we run the risk of arbitrary and unjustified validity claims remaining unaccountable to reflexive cognition (understood in the 'philosophical' sense). Against this prospect, Habermas allots an arbitrating role to reason and the knowledge it produces, confident in their power to drive 'substantiality' to disintegration under the lens of reflection. While reflective knowledge may be rooted semantically in antecedent practices and vocabularies, it strives in its post-metaphysical state towards a 'principled' or autonomous basis and is therefore bluntly at odds with 'authority' of the sort that stifles 'autonomy'. 'Knowledge' thus comes to be a kind of perception that guarantees autonomy—it facilitates the appropriation of substantial sources on terms that fit with a conception of individual subjectivity as fulfiled through the establishment of rational autonomy. This fits closely with Habermas' historical narrative of post-metaphysical modernity, suggesting that, on either reading of Habermas' envisioned relation between knowledge and authority, we are faced with a process of progressive historical completion. As Habermas establishes it, the dialectic between these two elements is arguably, with all its intermediate nuances, an interaction by which 'dogmatic' authority is brought to convergence with the demands of universalisability. This is cast in terms that suggest the expansion of individual agency vis-à-vis their own ethical material, rather than the enforcement of a particular view of tradition. Hence 'the reflective appropriation of tradition breaks the quasi-natural substance of tradition and alters the positions of subjects within it.'[115]

In this sense, the Habermasian conception of critical reflection performs the same function as the Durkheimian sociological perspective—it objectifies the 'substance' of social life from a perspectival distance, without referring to transcendental sources. Durkheim argues

[115] Habermas, *On the Logic of the Social Sciences*, 168.

that concepts, when taken to find their basis in the social world, are capable of reconciling the insights of pragmatism with the objectifying perspective of modern sociology. The criticism that Durkheim attaches to methodological pragmatism is that it makes sensibility the equal of reason, so denying reason's specific role in proposing 'truth' and in tying symbols to their referents. As Durkheim understands the role of the 'sociological point of view', however, it 'leaves the reason its specific power, but it accounts for it and does so without departing from the world of observable phenomena. It affirms the duality of intellectual life, but it explains it, and in terms of natural causes.'[116] The Durkheimian view therefore demotes the categories, or 'truth', from the authority consecrated by the 'primitive' religious consciousness; it acts to 'soften truth' so as to make it 'something that can be analyzed and explained' in accordance with 'the pragmatist enterprise'[117] Durkheim's sociological point of view resists the levelling of reason and sensibility supposedly enacted by the pragmatists, sustaining instead a belief that 'men have always recognized in truth something that in certain respects imposes itself on us, something that is independent of the facts of sensibility and individual impulse.'[118] It is clear, then, that 'such a universally held conception of truth must correspond to something real.'[119] Even while we may hesitate over correspondence accounts of truth, by which truth is equated with the accurate representation of objects, it is, says Durkheim, another thing to reject the *object* of truth *along with* the representation. As cultural productions, the symbol and its range of functions must be rendered in historical context, but the underlying 'truth' to which it corresponds can equally be sustained through historical narration that makes visible its *operation as truth* – as trans-contextually and temporally constant.

While being detranscendentalised and confined to natural causes, the Durkheimian view delivers a view of 'truth' as corresponding with properties autonomous from sensibility and perceptual finitude, and hence from culture. This dichotomy sustained by Durkheim between 'truth' and 'sensibility' is mirrored in his account of the social world and its traditions: 'religions are the primitive ways in which societies become conscious of themselves and their history. They are to social order what sensation is to the individual.'[120] It is, for Durkheim, 'the task of science to correct these illusions', which in turn designates an intellectual strategy for the development of free, and therefore critical, thought: 'if thought is to be freed, it must

[116] Émile Durkheim, *Selected Writings* (Cambridge, UK: Cambridge University Press, 1972), 254.
[117] Durkheim, *Selected Writings*, 251.
[118] Durkheim, *Selected Writings*, 252.
[119] Ibid., 252.
[120] Ibid., 250.

become the creator of its own object', so that 'thought has as its aim not the reproduction of a given reality, but the construction of a future reality.'[121] If the future social settlement envisaged is one in which individual subjects relate to each other as moral contemporaries, as mutually implicated in resolving the challenge of shared social and civic space, then this demands the eventual correction or curtailment of illusion.

Important parts of the Durkheimian schema are also reflected in Habermas' theory, signalling his adherence to a dichotomous conceptual arrangement that, from a more thoroughgoing pragmatist perspective, is insufficiently affected by his interest in avoiding ethnocentrism and accommodating 'forms of life.' For Habermas, non-secular metaphysical or ethical traditions may contain internally consistent rationalities, which meet the demands of their particular field of intelligibility (the tradition in question) but fall short before the tribunal of *philosophical* reason (cognition stripped of affect or unreflexively received commitments). Non-secular, and therefore only conditionally 'modern', rationality is marked by an entanglement with 'tradition' and 'authority' that militates against the development of reflexivity; in its 'quasi-natural' condition, the 'substance' of tradition envelops the individual subject to the extent that their life within that tradition amounts to unreflexive *habitus,* of a kind that draws close to the functioning of physical practices necessary in the everyday: the instinctual capacity to move into position so as to maximise perspective, for example. To say that there are pre-reflective or "primordial" forms of perception and knowledge at work and that they are immediate and therefore unperceived by the agent is hardly controversial; Taylor and Dreyfus, for example, insist upon the anthropological and epistemological importance of our pre-reflective functioning. They do so, however, in the course of critiquing what they, along with Rorty in his treatment of the same theme, call a mediational epistemology, which upholds a dualist picture of 'mind-in-the-world', according to which "knowledge" amounts to the accurate representation of mind-independent objects. We come to 'know' something, on this account, through our mind developing a representation of an object that stands apart from us – to cognise an object is therefore to draw it under a representative concept that makes it legible. This mediational fallacy carves out a space for critique as the product of a binary form of cognition, which asserts rationality over and against non-rational engagements and practices. In an important sense Habermas' moral theory clearly diverges from the 'paradigmatically monological', 'mind-in-world' ontology of Cartesian mediational epistemologies, whereby critical reflexivity is a solipsistic pursuit carried out primarily in individual minds, so assuming

[121] Ibid., 251.

the atomised individual as the agent of critique.[122] Habermas' prioritisation of discourse powerfully suggests the centrality of dialogical experience in establishing *what good method is*—that is, post-metaphysical discursive rationality. But it does so only through a discourse that is itself already rationalised by the exclusion of affect from rational cognition and by calling upon a latent moral anthropology rooted in an historical narrative concerning the progressively formal communicative presuppositions embedded in the practices of the human 'language animal'. Indeed, Habermas' distinction between unreflexive cognition and 'reflective' knowledge suggests his attachment to a mind-in-world ontology moderated by the Linguistic Turn—an ontology that, when developed into a practical philosophy produces the association of 'reason' with the application of formal method (which relies upon medium-internal principles). Habermas' moral theory, particularly as articulated in his later essays on postmetaphysical thought, comes to evince a conception of "good critical method", according to which 'rational reflexivity' entails a cognitive enterprise that sets out, in Taylor and Dreyfus' words, to 'make what is merely taken as granted explicit'.[123] Making things 'explicit', it should be noted, requires certain further distinctions, between 'facts' and 'values' and between 'our take on things' and 'the way they really are'.[124]

As part of the drive towards 'making things explicit' in his own theory, Habermas demarcates the social as a realm defined by distinctive epistemic limitations and by unreflexive habitus. Thus, he writes that 'as we engage in communicative action, the lifeworld embraces us as an unmediated certainty, out of whose immediate proximity we live and speak.'[125] The lifeworld is an 'all-penetrating, yet latent and unnoticed presence of the background of communicative action' which Habermas describes as 'a more intense yet deficient form of knowledge and ability.'[126] It offers a form of knowledge that we make use of 'involuntarily, without reflectively knowing *that* we possess it at all.'[127] Background knowledge, on this account, is laced with affectively driven certainty and resists reflexivity, being employed

[122] Taylor and Dreyfus, *Retrieving Realism*, pp 106-7.
[123] Charles Taylor, 'Retrieving Realism', in *Mind, Reason, and Being-in-the-World: The McDowell-Dreyfus Debate*, ed. Joseph K. Schear (UK: Taylor & Francis, 2013), 61–90, 102.
[124] Taylor, 'Retrieving Realism', 102.
[125] Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, 22.
[126] Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, 22.
[127] Ibid., 22.

without the awareness that it *could* be false.[128] It is therefore neither made 'explicit' nor subject to challenge by the operation of method; indeed, 'what lends it its peculiar stability and first immunizes it against the pressure of contingency-generating experiences is its unique *levelling of the tension between facticity and validity.*'[129] The 'facticity' of the social world—its details, practices, normative languages and commitments—is inhabited in a manner that eschews the requirement of rational justification (by means of cognitive processes that approximate the ideal of philosophical reason). On Habermas' view, the objectifying action of critical method is impaired or constrained in the sphere of the lifeworld, which offers 'intensity' and, with it, affectively strong normative motivation but proves incapable of resourcing principles of law-like consistency and cross-contextual intelligibility.

Once again, this stance may plausibly be said to accord with the non-discursive instincts of aesthetic modernism, behind which stand a conception of the formal as a methodological mode that, in its minimalism, escapes a relationship of dependence upon antecedent practices or conventional forms, thereby also supplying intelligibility without need for interpretation of meanings and the language competencies that generate them. If this is true, then one might, in the same pragmatist spirit as Hans Joas and Nikolas Kompridis, suggest that Habermas' declared turn to a philosophically pragmatic appreciation of quotidian social detail is itself ultimately an act coloured significantly by a specific tradition of formalist abstraction. Reflecting the move made by artistic modernism, it bifurcates form and content, making the latter into the vehicle of universally available normativity. This is to make the social world beholden to the imperatives of rational validity and justification, which it may support through the motivational intensity of its resident ethical traditions, but never transgress or re-envision. This, in turn, leads Kompridis to suggest that Habermas' appeal to the social world is in fact one of abstraction that distorts the pragmatist tradition it proclaims to advance. While the tradition of philosophical pragmatism aims to resist philosophy's historical evasion of the social world and its phenomena, Habermas, despite his claims upon that tradition, appeals to the philosophical 'category' of the quotidian, rather than to its details, which are kept extraneous to the work of rational integration. Such an appeal is, in Kompridis' words, one that 'selectively abstracts from, rather than (re)turns to, the everyday'.[130]

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[128] Ibid., 22.
[129] Ibid., 23.
[130] Nikolas Kompridis, *Critique and Disclosure: Critical Theory between Past and Future* (Cambridge, MA: MIT Press, 2011), 113.

To call such a stance into question by presenting it as the outcome of a traceable ideological commitment to formalism is not to neglect the importance of critique within democratic life shared by moral equals. It is, rather, to suggest that, despite overcoming the stricter *Kantian* dichotomies ("immanence vs transcendence"), Habermas' procedural theory, even with its later amendments, insists upon a formalism characterised by dichotomous counter-positions ("formal" vs. "substantive", "rationality" vs. "affect", "form" vs. "substance"). This is, in turn, to recognise that the practical deficiencies of formalism—its aversion to narrative, affect and ethical identity—enter into this account, along with its structuring commitments and the model of deliberative life it proposes. The point here is *not* that critical self-assessment and ideology critique are unimportant – on the contrary they are essential as a language by which we unsettle our sense that the world simply is as we see it, and gauge whether our ethical commitments are adequately responsive to experience. We can maintain that reflexively developed critical sensibilities are a great achievement while also asserting, in the vein of Gadamer, Taylor and Dreyfus, that it depends upon our receiving 'the tools of our own critical work from our culture'.[131] Critique, on this more hermeneutically situated line of argument, is rooted in the resources of culture—including both tradition and narrative—rather than traits identified by a secular formalism, even while we still require the means by which to differentiate between the components of culture that might be amended through new usage, rather than jettisoned. Consequently, the tools of critique are themselves subject to interrogation, including where their formalism asserts its independence from genealogy, from the history of stylistic convention, from the ideological specificity of methodological values and the particular aesthetic ideals that they espouse.

Ss. 7. *Formalism, law and the lifeworld*

We have traced some of the key theoretical and ideological sources of Habermas' 'project of modernity', sources that enable the constitution of a program that is self-consciously 'modern'. My argument so far has been concerned with identifying and elaborating the interplay in Habermas' thought of the ideological commitments of modernist formalism. The methodological and political ideals of modernist formalism, I argue, are resources that sustain Habermas' depiction of a "grammatical" rationality empty of "content". Habermas is commonly construed as taking a practical and pluralistic approach to the challenge of

[131] Taylor, 'Retrieving Realism', 104.

sustaining critique without the transcendental account of reason associated with Kantianism. In the preceding sections I argued, however, that Habermas continues to rely upon a formalist principle of separation between rationality and its "others," whether "non-rational" linguistic competencies, narrative, or affect. This, in turn, interplays with, and I think draws from, the theoretical bifurcation between form and substance present in aesthetic modernism and the avant-garde.

I want now, briefly to examine how this methodological, and ideological, orientation of Habermas' delivers a formalistic social theory of law, which posits the 'legal form' as a-political and autonomous. I argue that this rendering of society and law affords little space for the insights of critical histories of legal formalism, which draw us to recognise law's imbrication with an historically specific, and ostensibly ethnocentric, modernity discourse. The point here is to highlight that, while we might develop a comprehensive social theory that, through discursive differentiation works to theoretically insulate law, normative discourse and deliberation from disruption by historical experience or ethnographic detail, a pragmatist of hermeneutical bent will want to highlight the dependence of forms—including the 'legal form'—upon social, ethical and historical fields of detail. It will want consideration of these details to play a salient role in historicising and holding to critical account the organisational forms around which social integration occurs.

One potential challenge to a reading of Habermas' "project of modernity" that draws out its dependence upon a dichotomous formalism is his stated commitment to a political system that remains 'open' to the lifeworld and its ethical resources. Habermas insists that his conception of deliberative procedure, however formalised and ethically non-substantive, remains open to revision by subjects grounded in the resources of ethical or religious traditions. Thus, he urges us to distinguish between 'procedural constraints' on public discourses and constraints on the 'range of topics open to public discourse'.[132] Because of the unconstrained nature of the general public sphere, citizens are able to engage in the 'struggle over needs', which involves the contest of competing interpretations of 'self and world', through which initially 'private' matters 'acquire the status of recognized political issues'.[133] Having acquired this status through a long process of re-articulation, the contested interest positions taken during the 'struggle for recognition' can be taken up by political authorities and channeled into a

[132] Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, 313.
[133] Ibid., 352.

formal parliamentary agenda through which legislative proposals are generated. The 'social power' accrued in the struggle for recognition is thus, at a certain point, transmuted into legal power that intervenes in the private domain in which recognition struggles were initially launched. Thus, society, politics and law are not 'autopoietically closed systems.' Rather, 'the constitutionally structured political system is internally differentiated into spheres of administrative and communicative power but remains open to the lifeworld.' Indeed, according to Habermas, 'institutionalized opinion and will formation depends on supplies coming from the informal contexts of communication found in the public sphere, in civil society, and in spheres of private life'.[134] Or in a more succinct formulation, 'the political action system is embedded in lifeworld contexts.'[135]

What is the nature of this 'embedded' relationship between the political action system and the lifeworld? In arguing for a political system that remains 'open to the lifeworld', Habermas' aim is to pursue a tighter integration between abstract systems—of which law is one—and the socio-cultural 'lifeworld' as a whole. Consequently, he asserts the opposition of his own theoretical project to the treatment of social systems as purely abstract frameworks for social phenomena, rather pointing to their dependence upon substantive, motivationally powerful resources present in the lifeworld. Habermas explicitly suggests the limitations of systems theory, pointing to its limited suitability in the face of 'functionally differentiated societies' that involve more than a multiplicity of subsystems'.[136] Systems theory, he accepts, is particularly suited to integrated wholes such as the capitalist economy and to public administration focussed on planning and welfare, but it struggles to explain or establish a route towards the integration of the 'lifeworld' as a whole, which should, across its internally differentiated functions, share a 'code of ordinary language' that ensures that each of the different spheres or 'systems' retains a 'relation to the totality'.[137] For the Habermasian lifeworld to exist according to his normative project, 'ordinary language' must be recruited to the service of public administration so that private spheres ('characterized by intimacy and hence by protection from publicity') can be made to serve the public ends of 'action coordination.'[138] The various private spheres—traditions, families, associations—are home to

[134] Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, 352.
[135] Ibid., 352.
[136] Ibid., 353.
[137] Ibid., 354.
[138] Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, 354.

various esoteric 'codes' and modes of understanding and hence are in need of what Habermas calls 'steering media' so as to 'remain anchored in the society component of the lifeworld.'[139] This is where law, rather in place of ordinary language or deliberative practice, plays the crucial role: 'the language of law brings ordinary communication from the private spheres and puts it into the form in which these messages can also be received by the special codes of autopoietic systems.'[140] Law fulfils a crucial role as conduit across the different spheres that Habermas identifies, in this case not only between different private spheres, but between these spheres and the regulative 'systems' of the state – 'without this *transformer* [italics mine], ordinary language could not circulate throughout society.'[141] Indeed, such unimpeded circulation requires, for Habermas, that language cease to convey conditional meanings—as per the meanings that depend upon revelatory structures or metaphorical resources—and instead assume the "intuitively accessible" register of argumentative reason, 'which reveals, in the conditions of its own pragmatic presuppositions, the conditions for laying claim to an unconditional meaning.'[142]

As discussed above, communicative power—the ability to communicate 'unconditional meaning'—is drawn in Habermas' scheme from the structure of 'grammatical unavoidability' latent in language as a species endowment. This establishes the ability of semantically generalised, propositionally focussed argumentation to circulate throughout an otherwise ethically disparate and functionally disjointed society, binding it again to a set of universally valid procedural norms. But a democratic ethos of rational communication by itself is not enough for the integration of the lifeworld with the political system to which Habermas strives; in Weberian fashion, integration must be at once normative and functional, requiring the development of administrative power along with the power of positive law authorised by 'rational' democratic will formation. Law, in Habermas' terms, becomes the medium for 'transforming communicative power into administrative power'.[143] Law, in Habermas' theory as it develops in *Between Facts and Norms,* is legitimated by procedurally rational democratic deliberation, but only where such deliberation excludes compromising inputs that would connect it the 'concrete' level of ethical meanings. For Habermas, the 'principle of popular

[139] Ibid., 354.
[140] Ibid., 354.
[141] Ibid., 354.
[142] Jürgen Habermas, *Religion and Rationality: Essays on Reason, God and Modernity*, ed. Eduardo Mendieta (Oxford: Polity, 2002), 134.
[143] Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, 169.

sovereignty' necessitates 'a discursive structuring of public networks and arenas in which anonymous circuits of communication are detached from the concrete level of simple interactions.'[144] For communication to circulate in such a way as to evade hermeneutical blockages, and so as to establish a multi-layered form of functional and normative integration upon 'valid' (which is to say, lawlike and necessary) grounds, the 'concrete' level of interaction must be confined discursively by a highly structured public realm. Habermas' argument is, in this domain, a prudential one: given that 'under the modern conditions of complex societies, which require self-interested and hence normatively neutralised action in broad spheres, the paradoxical situation arises in which *unfettered* communicative action can neither unload nor seriously bear the burden of social integration falling to it.'[145] This may, of course, be true, in that the array of ethical or religious discourses at work in a given society cannot easily converge at a singularly unifying register – with Hans Joas, I acknowledge the importance of Habermas' insight into the functionally integrational role of legal discourse, with its own semantic conventions and procedural principles. Whether, however, this requires a comprehensive social theory of functional and normative integration upon formalist principles, is another question. For now, at any rate, we may observe Habermas' effort to formalise the interaction of various, supposedly discreet and identifiable, discourses, in contradistinction to the position fleshed out above that our ethical discourses, which saturate our language through devices like structuring metaphors, are much more tightly interwoven with our communicative efforts, formal, critical or otherwise.

This point illustrates the difference between Habermas' methodologically formalist commitment to lifeworld integration through the 'secularised world of rational-legal discourse' and its 'abstract solidarity', and the practical methodological pluralism advocated by pragmatists such as Bohman and Joas, which focusses more closely on non-ideal democratic practice oriented towards generating shared values and solidarities. While Habermas' constitutionally organised political system remains 'open to the lifeworld', it equally evinces a mistrust of ordinary language's ability to circulate through the deliberative negotiation of shared or divergent meanings. The assumption here is that without the assistance of a methodological formalism that detaches communication from the 'forms of life' from which its meanings draw, ordinary language is subject to insurmountable hermeneutical blockages. From the perspective advanced by this thesis, informed by Gadamerian hermeneutics and the

[144] Ibid., 171.
[145] Ibid., 37.

pragmatism invoked by Hans Joas and James Bohman, the 'openness' proposed here, though structurally creative, will be unsatisfying because it is maintained by a singular conception of rational method, which depends upon formalist rather than dialogical and discursive underpinnings. Law works to 'bring ordinary language from the private spheres', overshadowing in importance the role of efforts at deliberative negotiation of ethical difference. This ostensibly avoids the task of seeking 'practical transformations of epistemological problems', to return to Bohman's challenge to critical theory. Indeed, on Habermas' view, 'practical knowledge orients one to the rules of interaction,' rather than to methodologically plural ways of proceeding amidst the multifarious contingencies of language, as evoked by Taylor and Williams.[146] As Danielle Allen puts it pithily, Habermas thereby 'solves the problem of generating agreement only by undoing the need to work hard for it.'[147]

In contrast with a more thoroughgoing pragmatist position committed to the cultural dependence of 'rational procedure' and 'philosophical reason,' 'practical knowledge,' as Habermas calls it, becomes tethered to a formal but comprehensive social theory that interweaves law, democratic action and the depth grammar of moral argumentation. The indexing of 'practical knowledge' to the 'rules of interaction' is arranged by Habermas through the 'principle of democracy' (that citizens be the authors of their own laws), which gives legal institutionalisation to the discourse principle and confers legitimacy upon otherwise the arbitrary coercive power of positive law.[148] Thus, according to Habermas, 'the key idea is that the principle of democracy derives from the interpenetration of the discourse principle and the legal form.'[149] These ensure that post-conventional morality with its 'idea of self-legislation' is made into more than the 'moral self-legislation of *individual* persons,' but works comprehensively to order not only the formal apparatus of secular law, but also the social discourses upon which it depends for validation.[150] The normativity of this theory remains tied to the discourse principle, and the principled morality to which this gives rise, however, rather than inhering in the legal structure itself. The 'legal form', suggests Habermas, is a device with merely functional implications, remaining 'in no way a principle one could "justify", either epistemically or normatively'.[151]

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[146] Habermas, *On the Logic of the Social Sciences*, 164.
[147] Danielle S. Allen, *Talking to Strangers: Anxieties of Citizenship since Brown v. Board of Education* (Chicago, IL: University of Chicago Press, 2004), 63.
[148] Habermas, *Between Facts and Norms*, 121.
[149] Ibid., 121.
[150] Ibid., 121.
[151] Ibid., 112.

And yet, the 'legal form' remains an arbiter of ethical life that bears the 'unconditional meanings' supplied by the discourse principle, such that its rendering as an instrument of ethically neutral adjudication downplays its dependence upon what Habermas calls 'the world of secular-rational discourse'. An orientation towards 'rules of interaction' posed as 'autonomous', 'formal', and therefore universally transposable, has 'concrete' historical and political dimensions that should colour our appraisal of Habermas' political economy, and within it of the merely 'functional' role of the 'legal form.' As Iza Hussin notes, 'in the current language of global geopolitics and imperium, law has a particularly strong resonance.'[152] This resonance derives from the assumption that secular law is an emancipatory vehicle central to the completion of the Enlightenment project or, in Habermas' favoured terms, the 'project of modernity.' As Hussin emphasises, the discourse of legal realism 'implies that culture is vestigial, and that justice is a universal concept, and universally achievable through procedural and institutional mechanisms.'[153] Indeed the notion of 'rule of law', Hussin argues, is used to denote a normatively desirable system of rational order, but in truth refers to laws reflective of European or US systems and traditions, which in turn give rise to the discourse and institutions of 'international law.'[154] 'Rule of law' discourse and the legitimating language it develops, casts alternative frameworks, such as the contextualised Islamic law discussed by Hussin, as 'traditional' and hence regressive.[155] This in turn suggests that strains of discourse rooted in 'tradition' or 'culture' belong to the discursive space of the multitude and are ill-fitted to the task of generating understanding or agreement in contexts of ethical plurality. Thus, for example, Islamic legal tradition, or indeed the customary traditions with which Islamic law and practice has intertwined in different cultural contexts, are secondary to and superseded by the philosophical reflexivity and legal rationality introduced by Enlightenment presuppositions. As Hussin notes, 'legal formalism and developmentalism combine to paint a picture of law as comprised of codes and courts', colouring our reading of legal history as the progressive codification of preexisting rules, rather than the generation of new institutional configurations defined by compromise and by culturally specific practices.[156] Hussin shows at length that, with regard to legal traditions of both 'secular' and 'sacred' origin, we can speak of a politics

[152] Iza R Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago, IL: The University of Chicago Press, 2016), 222.
[153] Hussin, *The Politics of Islamic Law*, 223.
[154] See Benjamin Allen Coates, *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (New York: Oxford University Press, 2016).
[155] Hussin, *The Politics of Islamic Law*, 219.
[156] Hussin, *The Politics of Islamic Law*, 24-25.

of legal transformation in which different traditions interact, often forcefully, so as to produce new legal configurations that effect transformations in both legal and political practice and accepted modes of reasoning. While it is directed primarily towards the examination of the interchange between early-modern Islamic law and "secular" Western legal codes, Hussin's argument presents us with an added layer of complexity when considering the nature of 'legalist' contemporaneity, given the global circulation, and transformation, of patterns of legal change. In Hussin's view, law cannot straightforwardly be positioned as a 'rationally generated' layer beneath which inter-cultural encounter is carried out because it is itself a discursive network of people and ideas and because the 'layering of multiple systems of law constitutes the creation of an entirely new legal system, rather than the aggregation of separate strands.'[157] As Hussin aptly puts it, 'law makes politics and politics makes law' which counters the view that law is 'peripheral to the conduct of politics' because it is 'formal (and therefore rule-bound, routine, and apolitical) or performative (an outcome or expression of politics rather than a determinant).[158] Once we re-position law as a discourse with specific trajectories and histories enmeshed with power relations, and as an apparatus determinative of the practices and modes of practical agency by which subject formation and social transformation occur, we are able to begin recovering those 'crucial concerns'—socially embedded intelligibility and politically negotiated solidarity—that 'the secularized world of moral and rational-legal universalism' diminishes.

Finally, there is a temporal dimension to this interaction between the legal 'form' and the lifeworld that bears noting. Habermas' account of modernity upholds a narrative of progressive transformation through which normative and cultural unity is displaced by a normatively bare systems integration. In this context, the only viable mode of re-integration, he suggests, is supplied by a 'post-conventional' normativity, which reflects the influence of 'the world of secular-rational discourse', and the 'legal form' through which it is positivised. Following in this vein, Habermas sets up these 'others' of reason within the social domain from the standpoint of post-conventional formalism, which he takes to supply the space within which the cognitively rational activity of moral argumentation may occur. Yet 'post-conventionalism' is, in the nature of the term itself, a waypoint along an historical narrative of linear progress and transformation, which assumes the displacement of metaphysically thick systems by an immanent rationality. For there to be a *post*-conventionalism there has to have been a

[157] Ibid., 225.
[158] Ibid., 13.

successful process of contestation between antecedent rationalities or metaphysical imaginations and ideological strains that posit themselves as independent of conventional meanings. Moreover, we have to accept that the latter have, on balance, emerged triumphant, rather than merely co-existent within an ideologically plural and 'conjunctural' modernity. On the reading of Habermas' critical social theory that I have proposed, formalism—appearing in his accounts of language, reason and law—amounts to one such strain, which draws upon specific cultural and ideological resources, and encompasses identifiable orientations and strategies for organising the relationship between form and substance, state and society, the past and the future.

Conclusion

This chapter has, in some exegetical detail, argued that Habermas' 'comprehensive social theory' of morality and law, though detranscendentalised, retains several of the constitutive dichotomies and practical narrowings of lawlike ianism, particularly where a the rupture effected between 'form' and 'content' operates to objectify the social world from an 'autonomous' perspective. Habermas, I argued, in developing a response to the 'validity problematic' that relies upon an immanent formalism, retains a binary cognitive structure that defines the individual subject's 'critical' relation to the social world.

The discussion here has suggested several key features of an ideological morphology, which, as Hans Sluga suggests, requires diagnosis in its own right. It presents us with the foundational contribution to a contemporary strain of critical theory that negotiates social complexity through a 'detranscendentalised' form of reason – one that is particularly attached to the deliberative activity of justification. And yet, as I have argued above, Habermas' theory, while claiming the mantle of philosophical and political pragmatism, is insufficiently 'pragmatic' – it addresses the social world and its resident cultural and religious traditions by means of methodological abstraction and procedural formality. This, I have argued, exacts a price, leaving us with a conception of *praxis* as fundamentally procedural, with a view of rationality as narrowly justificatory, and with an understanding of tradition as the anti-thesis of critical reason. One practical consequence of this is to narrow the range of 'reason' and restrict the otherwise diverse forms that politically consequential exchange might take, particularly across cultural or religious difference.

In further developing this diagnosis I will examine how the 'immanent' rationality at work in Habermas' moral and political theory also colours the contributions of two subsequent

contributions, by Rainer Forst and Alessandro Ferrara, both of whom work within the parameters established by Habermas, attempting to secure some kind of normative universality by means of a detranscendentalised Kantianism and the resources of the 'pragmatic' turn in critical theory.

Chapter 2: Rainer Forst and the Autonomy of Morality

Introduction

One of the key tenets of the 'pragmatic turn' in critical democratic theory is the hesitation over Kantianism's strictly dichotomous structure and the division it establishes between reason and inclination. And yet, as I argued in the foregoing chapter, even as theorists such as Habermas have worked to overcome such dichotomous oppositions and their attendant idealism, by advancing a view of formalism as a resolution of the 'validity problematic' they have transposed Kantian dualisms onto the social world. The dichotomy established between 'formal' and 'substantive' commitments represents one such dualism, with formalist ideals

declaring methodological independence from narrative discourse. Rainer Forst's theory of morality aims to achieve a synthetic balance between universalist moral imperatives and ethical value attachments, which together forge a 'pluralistic theory of the normative.' As with the foregoing theory of Habermas, Rainer Forst's theory strives to balance what he perceives to be the imperative of preserving a universalist normativity for reasons of emancipatory critique, and resisting ethnocentric chauvinism by remaining receptive to particular ethical value articulations.

Forst characterises his critical social theory of democracy as being oriented in pursuit of 'a better combination of universal moral and particular political-ethical components of the ethos of democracy.'[159] He insists that his theory of justification, which bases relations of justification upon a 'shared sense of justice', produces no universalist-particularist dilemma, 'for the fundamental duty of justice is both a general moral duty…*and* a particular political-moral duty' to respect the right of justification of one's co-citizens.[160] 'Morality' is therefore autonomous, while also being immanent to political practice, to the particular ethical languages, the 'ethos of democracy', with which politics is pursued in any given 'community of ethical communities'. Such a combination is designed to deliver a structurally synthetic political and moral framework that recognises ethical commitment while cultivating resources for a critical 'moral' posture. Sustaining this synthesis is the role of practical reason, which in Forst's theory enacts an adjudicatory function that applies the threshold requirements of moral validity to the different contexts of justification.

This chapter sets out to critically examine the moral and deliberative theory of Rainer Forst, with a view to highlighting its pursuit of a strategy that, while founded upon different normative foundations from Habermas', follows practically in the latter's wake in its adherence to the formalist division between 'form' and ethical 'substance'. I develop a critical reading of Forst's theory of 'autonomous' morality, suggesting that the formally universalist normative system that Forst develops is dependent in practice upon genealogically specific ethical vocabularies. I suggest that while Forst posits his model of normativity as substantively 'empty' and 'autonomous', and while he develops a parallel treatment of 'normative complexity' in the social world, he remains committed to a view of 'practical' democratic agency as a narrowed aptitude for discerning 'contexts of justification' and applying the relevant discursive rules. As in the previous chapter, the aim is to observe and critique the

[159] Forst, 2014, 179.
[160] Ibid., 179.

strategy developed within this strain of critical democratic theory, which pursues the project of 'modernity' by sustaining a Kantian command-normativity upon the normative power it ascribes to methodological formalism.

I begin this chapter by reconstructing Forst's normative theory with a view to developing two lines of argument. Firstly, that Forst's pluralistic conception of the normative aims to develop an autonomous adjudicatory position over the normative complexity presented by religious and ethical pluralism, through the development of a formalistic justificatory order. Secondly, that while his emphasis upon the 'higher level internalism of morality' occurs with a view to upholding universally valid grounds for critique and for normative integration, it forecloses upon the hermeneutical practices that actually facilitate critical transformation in democratic contexts of ethical plurality. This latter argument will then, in subsequent sections, lead to the observation that Forst's narrow view of 'practical' democratic agency sacrifices the possibility of a more capacious view of practical reason as a disclosive, critical and hermeneutically situated enterprise.

Ss. 1. *The autonomy of morality*

This section sets out to reconstruct Forst's theory of a moral dimension that is 'autonomous' from ethical life in virtue of its derivation from a form of moral insight, posited as universally available. Although this represents a divergence from Habermas' account of normativity as developed out of the universal pragmatics of language, it retains a commitment to the notion that a categorically valid or 'lawlike' normativity may be grounded upon immanent features of human experience, without being impaired by culturally located ethical or genealogical sediment. The capacity assigned by Forst to such an autonomous morality to intervene critically within particular political contexts while itself remaining insulated from the values and ethical motivations that these contexts supply, evinces an idealisation similar to the aesthetic ideal of substantively 'empty' form discussed in the previous chapter.

As observed in the previous chapter, for Habermas the answer to the 'validity problematic' lies in the ultimate and 'unconditional' force of rationality, which he takes to have been renewed and guaranteed by discourse ethics against the collapse of the philosophy of the subject and its epistemic 'mentalism'. The resolution envisioned here is afforded us by replacing now unviable 'universalisms' with the authority of 'rational-legal' discourse (such authority being established through an historical process of metaphysical de-mystification and epistemological secularisation). This is the universality of reason that 'bursts every

provinciality asunder' and that generates legal structures and deliberative practices that legitimate the coercive power of secular law, which holds cultural provincialities in their place in the 'informal' discursive realm auxiliary to formal deliberation and even restructures them through the epistemic hierarchy of rational-legal discourse.[161] Consequently, post-metaphysical argumentative reason is uniquely able to 'open the dimension of validity-claims which transcend social space and historical time,' effecting a 'breach in the normality of mundane events, which are devoid of any promissory note.'[162] Our transition from mere simultaneity to the condition of contemporaneity, and to the 'personalities' or subjectivities it inaugurates ('legal personality', 'moral personality'), generates such a breach in both the located nature of our understanding and in our relation to historical time. It is only at the level of such contemporaneity that we are able to sustain the emancipatory promise of critical theory, which looks to unbind us from unreflexive adherence to convention and inaugurate social orders of individual freedom and moral equality.

In a similar vein, Forst argues that an 'overlapping consensus' of ethical reasons cannot provide a strong enough foundation for the priority of justice over 'comprehensive beliefs'. Rather, a conception of morality is required that lies untouched by non-moral motivations, and that may therefore be proclaimed autonomous from particularist cultural or ethical roots.[163] In developing a theoretical schema built upon a commitment to an 'autonomous' and universally valid normativity, Forst's theory of morality undergoes a diremption from particularist forms of life, or "substantielle sittlichkeit". The understanding here is that an autonomous morality of rights and duties can claim a 'non-rejectable categorical force' valid for all, irrespective of ethical or cultural context, in virtue of its derivation from a-cultural features of the human experience. Following Habermas' example, Forst seeks to connect reason and the contextually 'autonomous' morality that it supports to experiential features of human life, making the origins of universal normativity immanent and incarnate rather than dependent upon noumenal qualities. As in Habermas' work, this is a balancing act that depends upon the formalism—which is to say substantive emptiness—that upholds the authority of a contextually autonomous morality. Forst, like Habermas, sets out what he calls a 'pluralistic conception of the normative', which effects a 'better combination' of (Kantian) universalism and ethical particularism by distinguishing between ethical commitments and moral duties that transcend

[161] Habermas, *The Philosophical Discourse of Modernity*, 322.
[162] Habermas, *Religion and Rationality*, 134.
[163] Ibid., 178.

particular ethical contexts. According to Forst's pluralistic conception of the normative, the ethical is differentiated from the moral and the political, with each domain generating different obligations, values or kinds of value (from particular goals to overarching ethical orientations); the ethical domain is just 'one domain alongside others'.[164] Following Habermas, the term 'ethical' as Forst deploys it designates the thick ethical traditions referred to by Rawlsian liberals as comprehensive doctrines. These include religious traditions or culturally particular ethical traditions, worldviews or 'forms of life', to return to Wittgenstein's terminology. 'Morality', on the other hand, refers to a normative standpoint that transcends the ethical identities formed within the web of comprehensive doctrine; as it bears upon subjective identity, morality relates to one's pre-social human features, recognisable irrespective of ethical attachments or perspectives.

Unlike Habermas' discourse ethics, however, Forst's normative theory does without 'a general theory of argumentation' to establish the categorical force of moral precepts, along with their universal communicability. Rather, he asserts the 'higher level internalism' of morality, according to which the moral domain declares its autonomy from ethically or instrumentally hypothetical foundations on the basis that 'no non-moral motives can motivate morality.'[165] Such a stipulation presents us with a stricter bifurcation than Habermas' discursively differentiated account of moral argumentation, which traces the difference between ethics and normative universality according to the 'universal pragmatics' of language. Habermas' stance allows for the possibility of ethical traditions supplying semantic, but not cognitive, resources that motivate subjects to develop a facility for the syntactical structure of post-conventional moral argumentation. Forst, on the other hand, relinquishes Habermas' discursive foundations, which he thinks fall short of guaranteeing the autonomy of morality, and instead pursues the core Kantian commitment to a universally valid morality that rests upon 'unconditional ground'.[166] At the same time, Forst's theory of morality is corrective upon Kant's and the reading of Kant developed by contemporary neo-Kantians like Korsgaard. Morality, for Forst, is in the Kantian vein categorical and binding in the manner of the universalisation maxim, but avoids reference to ideas or noumena in the manner of Kantian idealism. Recognising the autonomy of morality is 'a *moral*, not a metaphysical insight', namely, 'an act of *understanding* one's own responsibility, which is at the same time an act of

[164] Forst, *Toleration in Conflict*, 464.
[165] Ibid., 34.
[166] Ibid., 34.

recognising the other and his nature as a rational and finite being.'[167] This is where Forst departs from Kant, who he suggests 'misunderstood the specific meaning of the moral, which is to regard oneself as obligated to others.' In *The Right to Justificaiton*, Forst argued that 'Kant did not draw an appropriate connection between "respect for the law" and "respect for persons,"' a weakness he aims now to rectify.[168] Thus, Forst prioritises subject-centred capacities to *acknowledge* the demands that moral recognition of the other places upon us, namely the 'understanding' and 'recognition' of the moral subjectivity of one's consociates. In perceiving the human vulnerability in evidence irrespective of cultural or political contexts, we are able to acknowledge the claims and obligations our consociates make upon us in virtue of universally shared features of the human experience. *Vulnerability* therefore acts as a pre-cultural basis for human commonality, if to be human is to undergo the finitude of incarnate life – vulnerability to pain, hunger, cold and other such elementary experiences. The essence of the moral is the conjoined enactment of acknowledging shared experiential features that are foundational to human being, and a recognition of the other in their capacity as a subject endowed with rationality. Thus, for Forst, 'the decisive moral identity is characterised not only by the capacity to posit ends and to affirm particular identities, but by the fact that it presupposes, and is constituted by, a specific identity with others as vulnerable creatures endowed with reason.'[169] This *specific* identity, isolated from the other component identities that constitute the personality of one's consociates, gives rise to a recognition of a general right to justification, which arises out of one's recognition of the other as a being capable of reason. As he argues, 'the ground of morality, the essence of moral normativity, lies in "acknowledging" this duty, in both the cognitive and practical sense of "acknowledge" (*wahrnehmen*). Without this insight into, and acceptance of, the duty to provide justifications the principle of justification would be left hanging in the air.'[170] A central aspect of Forst's moral theory, therefore, is the *act of acknowledgement* and recognition of one's consociates, rather than a reflective perception of Kantian maxims. This rests upon the claim that it is normatively desirable for citizens to develop a moral "way of seeing", which holds in view the moral personality of one's consociates even while we encounter their ethical personality and its various, potentially alien, value articulations. In practice, this means applying the principles

[167] Forst, *Toleration in Conflict*, 479.
[168] Forst, *The Right to Justification: Elements of a Contructivist Theory of Justice,* trans. Jeffrey Flynn (New York: Columbia University Press, 2007), 58.
[169] Forst, *The Right to Justification,* 55.
[170] Ibid., 57.

of semantic generality and justificatory reciprocity, both of which Forst takes to demonstrate a vital form of recognition. Provided that democratic life continues to call forth such morally focused perception, it may proceed under the stabilising influence of a justification regime that appropriately circumscribes ethical life and preserves at the heart of democratic deliberation a 'practical' post-conventional disposition. This 'practical' disposition—which centres on the act of moral acknowledgement—thus establishes a discursive structure that binds public deliberation to the demands of an autonomous moral domain.

Beyond the act of moral acknowledgement, the discursive structure so established revolves around the twin procedural principles of *reciprocity* and *generality*, which together constitute the bases for justificatory validity in public deliberation, lending reasons proffered on a 'moral' frequency the universal validity that ethically inflected reasons cannot approximate. Forst tells us that 'when it comes to justifying morally relevant actions in a social context, the decisive criteria are *reciprocity* and *generality*, since such actions must be justified by appeal to norms that can claim to hold in a reciprocal and general fashion.'[171] 'Generality' in Forst's terms means simply that any normative resolution should take into consideration the claims of all people as moral agents – their moral personality is the most salient dimension of their subjectivity within the realm of public deliberative exchange. Thus, 'each person has a moral veto right of reciprocal and general objections.'[172] 'Reciprocity' means, in a vein reminiscent of Rawls, that 'nobody can make certain claims…which he denies to others' and nobody can appeal to "higher truths" that lie beyond general access, comprehension or possibility of approval. It would, for example, be impossible to make claims that depend upon revelation or upon the wisdom tradition generated by a text held to be sacred (of both religious and 'secular' varieties). This is a familiar restriction made also by more straightforwardly Rawlsian theories of conversational restraint, driven by the imperative of communicating in a language available to all for the purpose of intelligibility, consensus and justificatory validity.

Are such commitments truly autonomous and self-referential as Forst claims? Does the higher-level internalism of morality develop a formalist typology that stands independent of more localised meanings? We have seen how Forst, committed to a normativity capable of arbitrating with categorical authority between different ethical conceptions of the good, views an autonomous morality insulated by a 'higher level internalism' as essential; such a morality offers the prospect of establishing categorically valid normativity that at once draws upon

[171] Forst, *The Right to Justification*, 101.
[172] Forst, *Toleration in Conflict*, 455.

immanent features of experience, while remaining self-sufficient without reference to or dependence upon either a strong transcendental theory of reason, or a culturally enmeshed relativism.[173] Note here, however, the confluence at least in structural terms with the aesthetic modernism discussed in the foregoing chapter, which proposed a view of 'form' as autonomous from discourse due to its 'medium-specific' principles. This is worth noting, not because Forst shares an interest with Habermas in aesthetic modernism, but because his assertion of the higher level internalism of morality bears methodological similarities to high modernist conceptions of form as independent of discourse, as discussed in the previous chapter. Forst insists that his moral concepts act as empty signifiers, guaranteeing a basic right that lacks any substantive content – meaning that the right to justification does not dictate the kinds of justificatory reasons given or the meanings mobilised to attract assent. As the previous chapter argued, the ideal of ethically autonomous procedural principles, such as cognitively rational justification, is certainly traceable to ideological sources that are distinctive in their descent from particular political and cultural experiences. More to the point, however, Forst's autonomous morality, in its command function, ceases to be altogether autonomous – that is, its stipulations descend through a process of vernacularisation to exercise categorical force in particular political contexts.

To elaborate further, observe that Forst insists on the substantive emptiness of the basic right to justification, the foundational principle of his autonomous moral system. Accordingly, 'the basic right [to justification] does not determine from the outset which substantial reasons are adequate, which rights can be demanded, or which institutions or social relationships can be justified.'[174] If, says Forst, 'one discursively develops its universalistic implications, the right to justification makes possible a kind of central morality that can in various ways become part of "thick" forms of social order.'[175] Hence, Forst considers his theory capable of both affirming an immutable and universal 'basic moral structure' while insisting on its vernacularisation within 'political' contexts. For Forst, moral constructivism delivers basic rights that are then realised through processes of political constructivism within legally established political orders. Thus, moral justification is the core of political justification insofar as '*what is valid in the universal moral context must also be demonstrably valid in particular political contexts* [italics mine].'[176] This is made clear, he argues, in relation to human rights

[173] Ibid., 178.
[174] Forst, *The Right to Justification*, 212.
[175] Ibid., 212.
[176] Ibid., 218.

discourse, which supplies a general conception open to vernacularisation in particular contexts. Thus, 'the general conception of human rights, justified in a theory of moral constructivism' amounts to 'the *formal* [italics mine], normative centre of a plurality of possible politically constructivist concrete interpretations, which pursue the goal of establishing a basic structure that is justified both "internally" and "externally."[177] Here, once again, we find the structure of methodological formalism alive in Forst's conception of procedural, syntactically structuring, norms open to vernacularisation in particular political contexts. Forst argues that his conception 'locates the primary meaning and goal of human rights where they belong: in the heart of the political discussions and conflicts about a more just social order.'[178] We therefore meet here with a typological ideal that takes methodological features such as 'generality' and 'reciprocity' to be transposable and unencumbered by substantive ethical baggage.

However, as noted above, Forst's basic principle of justification is interwoven with 'formal' but practical principles of 'reciprocity' and 'generality,' which, though posited as taking on the meanings resonant in particular political contexts, work to shape the manner in which these meanings are formed at a syntactical level. The principles of reciprocity and generality, though substantively 'empty' in Forst's view, convey a syntactical ideal of rational argumentation and the 'rationally non-rejectable' reason-giving it espouses. Thus, 'reciprocity' amounts to the development of justificatory arguments possessed of semantic 'generality', which in turn assumes the primacy of 'rational justification' in an exchange that expresses respect towards one's consociates as moral equals. These 'formal' discursive commitments diminish the possibility that 'reciprocity, for example, might take different form, along lines that are semantically non-universal (in the Kantian sense) and that open space for an exchange of reasons that do not correspond to the same semantic register, but that engage meanings from different ethical traditions to forge a hermeneutically challenging exchange. Forst follows Habermas in downplaying the interdependence between typological or 'formal' principles and specific forms of meaning-making in the 'space of reasons'. With Habermas, he envisions 'consensus' in terms of an argumentatively produced convergence that brackets the historical genealogies and cultural specificity of organisational concepts like 'generality' or 'rational non-rejectability', and the analytical and structural distortions that the assumed 'emptiness' of such concepts has historically produced (in particular, a layer of social and constitutional concepts that are taken to be non-substantive and so transposable in the vein of post-colonial

[177] Ibid., 217.
[178] Ibid., 228.

constitutional settlements).[179]

An example of this relates to Forst's aforementioned understanding of human rights discourse as the 'formal normative centre' of a plurality of different 'concrete' interpretations. For Forst, the language of human rights (a specific vocabulary in its own right), though mobilised and given concrete purpose in particular political contexts, remains normatively resonant because of its assumed substantive emptiness and semantic generality – it enters into particular contexts by ushering ethical discourse upon a universalising trajectory that overcomes the constraints of particular identities. Yet this is to lose sight of the discursive specificity of human rights language, imagining it as establishing normative resonance without bringing with it the ethical meanings out of which it was constructed. Unless we detach human rights discourse from its earliest formal iteration (and so blind ourselves to the genealogy of its various 'democratic iterations' in political contexts) we must grapple with the reality that the authorial process of the 1948 Universal Declaration of Human Rights (henceforth UDHR) is characterised by agent-relative justifications, meaning that the language of human rights is traceable to ethical resources and traditions. Indeed, the agent-relativity of the reasons supplied by the diverse authorial protagonists—from Charles Malik to Jacques Maritain and Hansa Mehta—is precisely what makes the Universal Declaration into an 'iteration' within an historical genealogy of universalist, emancipatory and declarative moral language.[180] It was, as I take Hans Joas to suggest, a process through which agent-relative reasons were found to supply ethical resources for the articulation of a 'positive genealogy' of rights language that suggested a basis for shared social and political commitment[181]; but the agent-relativity of these reasons was not obstructive to the task of value generalisation. Indeed, the agent-relativity of the reasons proposed performed a crucial critical and productive function, notably through Hansa Mehta's advocacy of a non-gendered articulation of basic equality and through the rhetorical (and theological) resources proffered by Maritain, drawing upon developments in Catholic social teaching that, at last, had overcome its historical opposition to democratic

[179] See Frederick Cooper on constitutional rearrangements of post-war French West Africa. Frederick Cooper, *Citizenship Between Empire and Nation: Remaking France and French Africa 1945-1960* (Princeton: Princeton University Press, 2014).

[180] See for an account of the early developments of this historical genealogy, Lynn Hunt, *Inventing Human Rights* (New York: W. W. Norton and Company, 2007).

[181] Joas, *The Sacredness of the Person,*

egalitarianism and now associated 'dignity' with 'equal rights'.[182] Or, to take another example, the Chinese philosopher, playwright and educationalist Peng-chun Chang, whose doctoral thesis was carried out under the supervision of the pragmatist John Dewey, played a role in the negotiations that, in Joas' words, 'warned against any narrowly rationalist foundation for human rights and against the idea that any particular religious tradition should receive special emphasis within it.'[183] Instead, Chang looked towards a synthesis of justificatory traditions, drawing from Confucius, Mencius and from Dewey's pragmatism, and upon normative argumentation on the basis of historical explanation.[184] Chang's arguments—for a what Roth calls a 'thin metaphysics' that could sustain notions of moral conscience while abandoning the thick metaphysical claims that would incite contestation—drew from a specific genealogy (Chinese philosophy and history) and made arguments in its idiom, which itself was important in culturally de-centring the authorial process.[185] In the emergent material and institutional conditions of the nascent post-war order with its renegotiation of constitutional and transnational structures, different ethical traditions—represented by the various authors and intellectual architects—set out to articulate a language of moral declaration that, though in a style shaped by the 18th century European declarations, would be imaginatively resonant across multiple traditions, precisely because of the evocation of their sources in the authorial deliberations, which included the negotiation of substantive difference in order to flesh out *what generalised or universal* language was viable in practice.[186] In the case of the 1948 declaration, its contextual (ethical-religious-philosophical), genealogical (historical) and agent-relative (gender disclosing) attachments do not extinguish either its normative resonance or its potential to underwrite a critical public (that is, 'shareable') moral language; we do not have to associate historically contingent genealogy (the term used by Nietzsche to obliterate

[182] On Rosen's account this association of 'dignity', 'equal rights' and 'democracy' was produced in part by the Church's post-war ideological realignment against Communism. See Michael Rosen, *Dignity*: *Its History and Meaning*, 90-92.

[183] Joas, *The Sacredness of the Person,* 187.

[184] Hans Ingvar Roth, 'P.C. Chang and the Universal Declaration of Human Rights' (Philadelphia: University of Pennsylvania Press, 2018), 147.

[185] Roth, 164.

[186] Maritain, for example, held a dim view of Kantian moral philosophy, which he took to produce an '*a-cosmic-idealist* ethics' depriving moral good of any foundation in extra-mental reality, a difficulty for one convinced of the necessary presence of such a source. Jacques Maritain, *Moral Philosophy* (London: Geoffrey Bles, 1964), 116. And yet, Maritain's conclusion to his Moral Philosophy indicates his theologically and imaginatively based openness to a rights declaration; in reference to the Sermon on the Mount, he envisions an eschatological resolution of the problem of evil, whereby 'those who have wept in our valleys may be consoled forever.' Ibid., 462.

'morals') with the absence of universal normative traction, particularly where genealogies call upon, or are constituted by, collective memories of violence and oppression. Perhaps more to the point, the normative concerns from which a discourse of "human" rights arises are composed from the detail, experiential and ethical, of specific contexts and traditions. Such a discourse is not straightforwardly transposable as a 'form' without these meanings, or their context-bound historical genealogies, travelling with it (to which I will return). 'Human rights' cannot be construed as a merely formal normative core unless, in the manner of aesthetic modernism, we advance the view that there are discursive and organisational forms capable of 'declaring' themselves independent of narrative discourse, asserting their 'higher level internalism' while retaining confidence in their openness to a non-impositional vernacularisation across contexts.

What becomes clearer, then, is that Forst's normative framework, in virtue of remaining tied to a non-historical moral philosophy, does not move far enough in considering the manner in which formalist normative principles—particularly a formal concept of morality—themselves express a genealogically dependent discourse that is both responsive to specific pressures *and* developed out of the semantic resources of Western philosophical, theological and aesthetic traditions. All of these sources upon which moral formalism relies proffer ideals that are responsive to history and that are subject to ongoing composition in response to the contingencies of political and ethical life, just as Habermas' project, and the strain of theory it launched, enacted a response to specific political dilemmas, with recourse to specific ethical resources. The association of morality with a structurally constant moral universalism intelligible by its formal characteristics to rational agents irrespective of cultural location and available ethical meanings, itself expresses specific goods. As Joas puts it in his critique of Kantian formalism, 'the right can only ever be a testing authority, a "sieve of norms" (Paul Ricoeur), unless it itself becomes a specific good, the value of justice.'[187]

Finally, we may observe that Forst's 'autonomous' morality claims to be capable of mandating a 'concrete' form of respect between moral subjects that excludes reliance upon 'thick' ethical discourses for its normative resonance. Instead, it depends upon formal principles of semantic generality and reciprocity, which confine *public* discourse—that is discourse between consociates at a universal register—to the exchange of 'rationally justifiable' reasons. In declaring its 'higher level internalism,' Forst's moral system asserts its transposability across contexts, in virtue of its substantive emptiness and procedural rationality.

[187] Joas, *The Sacredness of the Person*, 104-5.

These formal principles, valid on the terms set by a conception of normative validity as 'universal' and 'lawlike', must equally be 'demonstrably valid' in particular political contexts, in which subjects are expected to 'acknowledge' the normative import of each other's generalised moral personalities. Forst's theory of normativity relies upon 'a moral commitment to a particular, collectively constructed, project of political and social justice'.[188] In focussing on the autonomy and formality of his foundational principles, however, Forst arguably misses the genealogical specificity that such claims to "mere formality" bear with them, along with the reality that all such claims are composed out of the semantic resources of specific contexts of experience and practice. As with the aesthetic modernism countenanced previously, Forst's theory of autonomous morality pursues a strategy invested in separating theory from narrative, which, in the manner of modernist claims to autonomy from genealogical dependence, declares its self-reliance as a principle of authority over the social world.

In the section that follows I will interrogate the idea of a foundational norm that is itself 'basic' in its cross-cultural availability and 'autonomous' from a particular political or ethical tradition. The "basic insights" that underpin their theories of normativity are, given their commitment to a post-metaphysical and immanently grounded moral constructivism, authoritative in virtue of their formality rather than their metaphysical perception; that is, in virtue of these insights being 'law-like' and therefore beyond ideological parochialism in their availability as objects of universal assent. In Habermas' theory, the insight in question is into the universal pragmatics of language, while in Forst's, it is an insight into the ethically autonomous 'basic right to justification' on a relevant register of ethical or moral exchange. In each case, but here with particular reference to Forst, the basic insight is *moral* rather than *political* or *ethical* – it acts not to underpin a single legal and normative order but as a universal insight open to vernacularisation within multiple 'political contexts'.

Ss. 2. ***The 'basic insight' and the challenge of ideology***

The hermeneutically oriented pragmatism advanced in this thesis as both a critical methodology and a practical deliberative disposition refuses a commitment to a foundational normative insight assumed to be available prior to any hermeneutical effort being undertaken. This is not the same as saying that no shared and compelling norms may be developed, but that they will be so out of a dialogical process of inter-ethical deliberation that both excavates and

[188] Ibid., 179.

renews norms so as to make them responsive to the interlocutors involved (including those who involve themselves at a register other than that of 'rational argumentation') and to the specific problems in need of resolution. This latter, I will argue, better integrates the insights of both critical revisionist intellectual histories of empire (and its intellectual chauvinisms), and of the morphological approach to ideas, set down by Michael Freeden, that prioritises ideology as a key component of normative ideation. By way of contrast, Forst relies upon an assumption of epistemic and moral convergence prior to deliberative engagement, his highly architectural schematisation of practical judgment expressing a 'basic insight' upon which different ethical subjectivities may converge without preliminary hermeneutical effort. Accordingly:

> Autonomous morality owes its existence to an autonomous insight into an original responsibility toward others in accordance with the principle of justification, which is acknowledged at the moment this insight dawns on us. There is nothing mysterious about this insight, for this being responsible simply is our basic way of being in the world as finite beings who use reasons, that is, who can give reasons and who demand them of others.[189]

Herein lies a key difference between Forstian formalism and hermeneutically oriented pragmatism – the former posits a basic insight that may be assumed, while the latter suggests that no such basic insight is achievable without dialogical enquiry and the renewal of individual perspectives. The act of moral construction requires a foundation from which to begin, which Forst renders in sociological terms as an insight that is inextricable from the 'way of being' associated with subjectivity in a linguistic community: 'this being responsible simply is our basic way of being in the world as finite beings who use reasons.'[190]

The assertion that there is 'nothing mysterious' about this 'basic insight' into our 'original responsibility' suggests, from a formalist point of view, its plausibility as a foundation for moral construction, primarily because it stands apart from interpretive contingency and thus from the subjective dimension that would corrode its lawlike potential. The basic and 'autonomous' insight set out by Forst resolves the validity problematic at a universal level in virtue of its detachment from the specific resources, and subjective ends, present in a given political context – it is, in other words, a-cultural. Indeed, on the neo-Kantian line pursued by

[189] Forst, *The Right to Justification*, 61.
[190] Ibid.

Forst, the functional imbrication of principles with contextual meanings impairs their effectiveness as bases for 'practical lawgiving'. Kant's argument that a rule, as a representation of universality and a statement of *objective* principle, can have no empirical part is re-made by neo-Kantian formalists like Forst so that the rule may have no *contextually specific* part. In other words, rules draw their authority from their formalism—their internal consistency as rules—and their autonomy from any form of detail, material or semantic, that may connect them to subjective ends, or that may tie them to the pursuit of such ends. According to Kant's definition in the *Groundwork*, 'practical principles are *formal* if they abstract from all subjective ends, whereas they are *material* if they have put these, and consequently certain incentives, as their base.'[191] The rule derives its universality from its formalism, or from the nature of the rule itself, which is to say from its character as a lawlike maxim that offers a 'representation of certain laws', rather than a 'specially constituted faculty of desire on the part of the subject'.[192] Thus, according to Kant's articulation in the *Groundwork*, 'the ground of all practical lawgiving lies…*objectively in the rule* and the form of universality which makes it fit to be a law.'[193] Establishing a suitable foundation for 'practical lawgiving' therefore depends upon the formalism and objective universality of the rule, rather than the ethically substantive position it reflects or the conception of the good it tends towards. In this respect, formalism tends from the outset towards the assertion of its non-historical, non-ideological status; its freedom from ideology is itself a condition of its power and its capacity to resolve the validity problematic through the universal objectivity of the rule.

A basic insight, as a precursor to a "basic right or norm", is a device that underpins a normative order, whether that order be moral or legal, or as we might expect, a synthesis of both. It allows us to establish that a normative or constitutional settlement by which citizens, or ethically diverse subjects, are asked to abide, stands upon premises that are justifiable according to principles to which all relevant subjects might assent. Beyond the level of the constitutional state, the basic insight grounds a universalist morality of which human rights discourse is the specific expression. The constitutional state, or what Forst calls a 'political context', is therefore the domain in which the basic universal right to justification is realised under contextually particular conditions. The 'basic insight' is therefore into the *necessity* of the 'basic right' to justification, which, in turn, indicates further rights and duties to be enacted

[191] Kant, *Groundwork for the Metaphysics of Morals*, 36.
[192] Ibid. 36.
[193] Ibid., 39.

procedurally (specifically, deliberative principles like 'reciprocity' and 'generality'). The 'basic' insight developed by Forst is a 'moral' insight that, because it exhibits formalist characteristics, is posited as available for translation into principles of constitutional settlement. This original insight is freestanding rather than contextually tied down, making it different from the insights developed within jurisprudential theories that, in assessing the nature of constitutional settlement, view the constitution as a spatio-temporally located articulation of values.

The idea of a basic insight, and the basic norm to which it gives rise, plays a central role in jurisprudential debates over the foundations of legitimate constitutional settlement. The literature that falls within the field of analytical jurisprudence offers a wealth of positions on the empirical nature of law and on the issue of its normative foundations. Famously, the positivism of H.L.A. Hart, following from Hans Kelsen's own 'theory of positive law in general', suggests the autonomy of positive law from 'natural' bases and the separation of legal and moral orders.[194] In Kelsen's 'pure' theory of law, the legitimacy and authority of any given legal order rests upon a basic norm that ensures the validity of law as a normative order. Given that 'the reason for the validity of a norm can only be the validity of another norm,' and that 'lower' norms point in turn to 'higher' norms, we must arrive, on Kelsen's view, at a basic norm that 'constitutes the unity' of a multitude of norms by 'representing the reason for the validity of all norms that belong to this order.'[195] Kelsen therefore relies upon the assumption of discrete legal orders each of which refer back to 'basic norms' that are socially endorsed and that confer validity upon a delimited normative and political order. On this view, normative orders require basic norms at which the 'spade' of skepticism is 'turned', to use Wittgenstein's turn of phrase, and from which further derivative norms can be developed.

At one level, then, legal positivism displays certain affinities for methodological formalism of the sort pursued by Forst, in the sense that it eschews overt reliance upon natural law theories and metaphysically imbued accounts that tend towards moral realism. But differently from Forst, this leads the positivists to the position that both law and morals are socially 'posited' in the manner of customary practices, such that morality cannot have a context-transcending universal function that different legal systems then set out to vernacularise in their respective codes and conventions. Indeed, in the attempt to develop a

[194] See H. L. A. Hart, *The Concept of Law*, 3rd ed. (Oxford: Oxford University Press, 2012).
[195] Hans Kelsen, *Pure Theory of Law*, trans. Max Knight (Clark, New Jersey: The Law Book Exchange, 2009), 195.

'science' of law and its relation to morals, legal positivists like Hart and Kelsen broadly affirm the proposition that, in Kelsen's words, 'moral norms, precisely like legal norms, are created by custom and by acts of will.'[196] Importantly, this is not an articulation of Kantian moral constructivism, but rather of a view of normative order that excludes from analysis anything outside of what is 'posited'; it is therefore the task of a positivistic 'science' of law to 'know and describe the law' without reference either to 'absolute' or to 'relative' morals. The law is a 'sanction-prescribing social order' that arises within a context of customary practice and that may be assessed on those terms, rather than the terms supplied by a context-transcending normative standard.[197] This positivist position points towards an empirical picture of law as contextually bound and, crucially, insists that the contextual dependence of legal and normative orders at an empirical level must be taken into account when considering the foundations and extent of their normative validity.

At another level, however, this positivist position strongly rejects formalism in asserting that the meaning and structure of generally formulated rules is significantly dependent upon the judgments that issue from contact with particular cases, introducing 'subjective' material into the formation of rules. Hence, H.L.A Hart in his canonical articulation of positivist legal theory, refers to the 'vice known to legal theory as formalism or conceptualism', which conceals or downplays the need for the 'general' rule flexibly to accommodate the 'unenvisaged case' in encounter with which we clarify, or re-settle, the meaning of the rule.[198] Here Hart considers law to interact with empirical social conditions in such a way as to render the 'general rules' of law contingent upon the conditions that obtain in any given context; more strongly put, such rules are dependent upon particular contexts for their content and for their underpinning foundational norms. Even at the normative foundations of a particular political and legal order, the 'basic' norms that obtain are contextually contingent. In this manner positivists like Kelsen and Hart toy with a form of moral relativism that Habermas and Forst wish to counteract. Thus, Kelsen insists that 'one must be aware, in judging a legal order from a moral point of view…that the standard of evaluation is relative.'[199] For Kelsen, 'the thesis that the law is moral by nature – in the sense that only a moral social order is law' will rightfully be rejected by a 'pure theory of law' on the basis that it presupposes 'an absolute moral order' and because it establishes whatever local coercive regime happens to be regnant as 'law', and

[196] Kelsen, *Pure Theory of Law*, 62.
[197] Ibid., 42
[198] Hart, *The Concept of Law*, 129.
[199] Kelsen, *Pure Theory of Law*, 67.

therefore as 'moral'.[200] There is an issue of arbitrariness that Kelsen identifies here, which both Habermas and Forst set out to avoid through the development of their respective moral theories. Kelsen is concerned to supply legal validity through a basic insight that is explicitly rooted in the conditions that obtain in a particular political culture. Forst, on the other hand, wants to ground the validity of any *particular* legal or political order in a 'basic insight' that is *moral* in nature and that is also universal as a standard for normative evaluation across discursive contexts. What distinguishes the formalist from the positivist account, therefore, is the issue of whether the basic insight (and consequent norm) that underpins a normative order reflects culturally particular resources, or whether the relevant insight is 'basic' in such a way as to be context-transcending and free from cultural parochialism.

We may observe that answering this question involves a detailed discussion of whether law refers to principles and properties that are non-legal – that is, to ethical and political values. As already noted, this is one of the foundational debates within analytical jurisprudence and my purpose is not to reprise it here in great detail. Rather, I wish to highlight that (i) if we regard law as expressing social values and mores, then (ii) we must grapple with the status of those values as particular values. Law continues to depend upon those particular values, rather than becoming a semantic register or normative form that is functionally independent of them. Certainly, we may, like Habermas, lay down procedural conditions in which 'ethical' values might be translated 'fairly' into legal form, but we nevertheless have to grapple with the reality that the legal form, with its conventions and specific conditions of emergence in each jurisdiction, remains an expression of a particular social formation and political order. This recognition will, I think, shift our perception of the relation between law and ethical culture, and problematise a commitment to normative and constitutional settlement as expressive of diminutive formal methods, rather than values in need of reflexive criticism.

One important angle from which to clarify this issue is that of ideological morphology, which prioritises the ideological dimension of any constitutional configuration of concepts. According to Michael Freeden's methodological prioritisation of 'ideology' as an unavoidable ingredient in any process of ideation, we ought to accept that 'in cultural terms a constitution is a remarkable exemplar of ideological discourse.'[201] A constitution, which is the material expression of what normative theorists call a 'constitutional settlement', is itself the product of

[200] Ibid., 68-9

[201] Michael Freeden, *Ideologies and Political Theory: A Conceptual Approach*, (Oxford: Clarendon Press, 2008), 271.

historical emergence such that its precepts are anchored in the language and the normative resources of the authorial moment. It is, as Freeden characterises it, 'a relatively static, textually embodied, configuration of political concepts, fashioning a time-and-space bound de-contestation of political ideas and methods for their implementation. The common interest is thus predetermined by a particular, culturally inspired attempt to formulate it.'[202] We have seen that Forst's theory sets out to ensure that the constitutional settlement in any given political context reflects the basic insight into an autonomous morality, which in turn guarantees the basic right to justification and its attendant norms of deliberative generality and reciprocity. Freeden's morphological approach, however, suggests that no such 'basic insight' can be established as normatively generative without also involving a culturally inspired attempt to formulate an account of the 'common interest'. The 'basic rights' that underpin the development of modern constitutions are, as Dieter Grimm highlights, 'a product of the bourgeois revolutions of the late eighteenth century' that amount to a 'specific form of legal guarantee of freedom' the attractiveness of which derives from its rupture with older forms of legal guarantee.[203] Certainly, one may complicate the account of this rupture as it relates to the historically emergent definition of the social role of secular, rather than sacred, law. Prior to the introduction of the word 'constitutionalism' by the American revolution, the concept of law alive in what Harold Berman, in his panoramic historical assessment, labelled the 'Western legal tradition,' was assigned supremacy over political conduct, albeit in the person of the divinely ordained ruler.[204] Law, therefore, had some framing and regulative relation to the political, understood to mean the relations between subjects within polities, and between polities. Whether one takes up the narrative of revolutionary rupture, or of diachronic amendment, the ideological nature of law, and of our historical reading of it, is apparent: 'the law is not merely ongoing; it has a history, it tells a story.'[205]

From different angles these quite standard considerations of the historical genesis of the modern constitution acknowledge its ideological displacement of early modern ideals of virtue in favour of individual freedom, which, in linking legal personality to 'natural personhood', introduced the 'bourgeois social model' in place of the corporatist and feudal

[202] Ibid., 271.
[203] Dieter. Grimm, *Constitutionalism: Past, Present and Future.* (Oxford: Oxford University Press, 2016), 65.
[204] Harold Joseph Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1999), 10.
[205] Ibid., 9.

models.[206] And although the bourgeois social model itself came under great pressure from 'social and welfare state concepts', it nevertheless persisted, subject to revisions, as a compelling account of the social totality under law.[207] With this in mind, analytically prioritising the historical and social nature of constitutional ideation involves an acknowledgement that any particular constitutional settlement reflects the ideological resources from which it was established and through which it has since been contested as a social and institutional model. This includes the 'basic' norms upon which the constitutional settlement rests, which a morphological approach to ideology would recognise as themselves products of particular resources and orientations – basic norms and 'insights' are part of the process of ideation, and hence of the 'story' that law tells. In this sense, the morphological approach appears to arrive at the same conclusion as the legal positivists – that is, that normative systems, of which law is one kind, depend upon foundational norms themselves specific to a particular order and that work to unify other norms within that domain (which is at once spatial in extent and temporal in its particular historical experience). Once we acknowledge the ideological dimension of constitutional settlements and the contextually driven ideation that they entail, it follows that the establishment of an account of the 'common interest' must proceed through cross-contextual transmission, rather than the presupposition of a universally available mode of moral perception. A critical perspective that sets out to eschew impositional projections of "what we have in common" will be wary of the establishment of de-contested norms that are disengaged from more contingent (and contested) translation exercises.

At the same time, from the pragmatist point of view advanced by this thesis, recognising historical genealogy does not by any means impair the appeal of constitutionalism as an institutional method of instantiating moral and civic equality as bases of positive law. Indeed, in practice, and out of intellectual and cultural appeal in a post-enlightenment culture of modernity, constitutionalism and its attendant rights language occupy central political and normative positions as organisational ideals, even while beset by challenges from communalist politics (India and Turkey), controversies over judicial activism (the United States), and intellectual 'post-liberalism' and integralism (with its open aspiration to a confessional state). Accepting that models of normative and constitutional order themselves constitute 'ideological' complexes does not point inevitably to the deflation of their normative power; it

[206] Grimm, *Constitutionalism: Past, Present and Future.*70.
[207] Ibid., 84.

is, rather, to insist that normative concepts are mediated and moderated in their validity by the conditions of their emergence and ongoing application. These are not simply their 'formal' conditions—their theoretically defined 'particularism' or their formal universality—but the conditions of their historical and sociological formation. To assert this is not necessarily a conservative stance that diminishes critical force; for example, human rights draw on what Joas calls 'cultural traditions' but also demand that these traditions, including religious traditions, be reformulated 'in novel ways'.[208] Indeed, just as we might develop an 'affirmative genealogy' of human rights, to use Joas' formulation, so we might develop one for secular constitutionalism. To do so, however, is to include a narrative dimension that links justificatory argument to historical experience and does not seek to free it from empirical contingency. It eschews the search for 'lawlike' constancy in favour of a consciousness of the ideologically and historically embedded nature of values.

What, then, follows from the analytical prioritisation of ideology as a component feature of normative ideation? In thinking 'constitutionally' about the values that form an account of the common interest, how is the morphological perspective to be integrated? Is it merely of explanatory interest without bearing upon 'ideal' normative frameworks? And does it, to use Grimm's terms, allow for the 'severability' of concepts from their 'conditions of emergence?'[209] Formalism as a method of normative ideation suggests that 'public' norms may be, and indeed ought to be, made autonomous from cultural traditions and the values they articulate. The alternative, however, is not to endorse an extreme historicism by which concepts may not function intelligibly beyond their contextual or temporal origins. Rather, it is to set aside the idea that concepts may function with lawlike constancy and without need for tending and adaptation. The morphological approach to concepts as ideologically situated presents us with a stance that orients individual subjects to the work of interpretive renewal. This is particularly so when paired with a hermeneutically attuned pragmatism that defines the life of concepts as the creative movement between historicity and contemporary application. Once concepts, including 'basic' insights and norms, are understood as such, the methodology through which they are deployed and developed plausibly becomes more receptive to both the finitude of reason and the provisionality of normative assertion.

Foregrounding such ideological provisionality is, I argue, itself a means of 'guaranteeing liberty', to use Grimm's language, because it extends to the cultural traditions

[208] Joas, *The Sacredness of the Person*, 7.
[209] Grimm, *Constitutionalism: Past, Present and Future,*84.

that stand behind any account of 'the common interest'. With this said, however, an important concern arises, to which Forst is attuned: once we dispense with the bannister of a 'basic' insight into the life of 'autonomous' normative principles, do we not lay ourselves open to the dynamics of ethical self-assertion that mark imperial projects? Would a view of 'the common interest' that prioritised the dialogical transmission of values, rather than their vernacularisation from an autonomous starting point not leave us open to ethical chauvinism? One may reasonably be wary, like Forst, of emphasising dialogical translation between and across 'political contexts' out of a concern that value propositions made from one context to another are prone to the distortive exercise of power, where the value articulations of dominant groups, denominations or national cultures override those of the historically and contemporaneously marginalised. Forst's strategy presents itself as a possible answer to this concern; to identify a relatively diminutive norm that is universally perceptible avoids the power-laden transmission of concepts and, instead, places interpretive agency in the hands of "domestic" agents within political contexts.

Forst views the basic insight into 'autonomous' morality as a means of avoiding a cultural chauvinism that extends particular values by means of material and intellectual domination. Paradoxically, his strategy is to insist on a stronger rendering of normativity across jurisdictional boundaries than, for example, Rawls', on the basis that a pronouncedly *universal,* merely *formal* and normatively *lawlike* basic norm avoids the logic of expansionism. Forst identifies in Rawls' *Law of Peoples* a 'moral deficit', which makes Rawls' extension of the domestic, state-bound, social contract to the international arena into a form of "liberal foreign policy" towards other societies – an expression of an ideologically particular attitude to sovereignty rather than a truly universal settlement. According to this Rawlsian model, the principles identified domestically in 'liberal societies' through the mechanism of the social contract are *extended* across sovereign jurisdictions, rather than being *grounded* consistently, which is to say with the formal properties of universality, in each political locale.[210] This implies a temporality that Forst takes to be problematic; rather than being co-original, national and transnational justice come to be developed diachronically through a multi-stage process in which the national settlement precedes the transnational. To avoid this Forst wants to establish a moral foundation for transnational principles, which, firstly, makes these principles into locally identifiable maxims rather than products of particular social contracts extended internationally through imperial assertion and, secondly, that makes their national and

[210] Forst, *The Right to Justification*, 230-1.

transnational dimensions coeval. The vehicle for this resolution is, once again, a 'basic right' that '*lies prior* to every contract', a right that in Forst's theory takes the form of 'the independent normative foundation of the right to justification, whose content is not sufficiently exhausted by a contractualist approach.'[211] Herein lies the difference from a mechanism such as the *Grundnorm* proposed by Kelsen, which the latter depicts as underpinning any given normative system, while remaining relative to that system. Forst's 'basic right' is far more ambitious, being presented as the necessary moral foundation for the 'radical transformation of global and national structures', required 'as a condition for effective democratic institutions at a transnational level.'[212] Freedom from illegitimate coercion, the development of a fair economic order the aim of which is maximising justice (however conceived) and the suppression of inter-state and intra-state forms of domination, requires a basic right, rather than a 'multistage contract theory' of the kind advanced by Rawls: 'it seems', to Forst, 'to be an analytic proposition that anyone who sets out to propose universally valid principles of justice, encompassing and binding upon all states, needs a universally valid normative starting point.'[213]

Ss. 3. *Accounting for Normative Complexity*

Pragmatically oriented critical theory understands the social world and its ethical resources to play a role in determining theoretical constructs; its *critical* role in relation to the liberal constitutional project is one of working to unsettle the sociological assumptions that pervade both Western social theory and the conceptual repertoire of Anglo-American political liberalism. The theories of normative and constitutional settlement, such as Forst's, that follow from and build upon Habermas', are concerned to make their conceptual architecture attuned to social complexity and to the need for less naïve or parochial assumptions about ethical and cultural neutrality. Forst in particular sets out to strengthen political liberalism against what he sees as the moral quietude of Rawls' 'overlapping consensus', and concurrently to redevelop the Habermasian position into one that takes more considered account of ethical traditions as capable of exercising cognitive power amidst modernity. Forst therefore wants to develop a

[211] Ibid., 240.
[212] Forst, *Right to Justice,* 239.
[213] Ibid., 230.

moral and deliberative theory that is at once normatively more robust while *also* being diagnostically more sensitive than antecedent liberal theories.

Recognising this second imperative, one of the key claims advanced by the theorists examined in this thesis is that their pragmatic inclinations interweave profitably with their neo-Kantian commitments, such that the latter stand strengthened upon immanent rather than transcendental foundations. This turn to immanent normative foundations communicates the intent of redeveloping neo-Kantian ethics, and the potential constitutional settlement that they facilitate, along empirically more sensitive lines, which in turn are more accommodating of diverse ethical identities. I have argued that the "turn to immanence" relies upon rendering the social world in terms already established by Kantian formalism and by the imperative to establish a normative order that frames social life without itself being marked by opacity and interpretive instability. At a descriptive or empirical level this renders the social world amenable to the requirement for phenomena of law-like form, which are normatively suggestive in a Kantian vein. This is to approach the social world with reference to 'formal' and constant rather than particular and unstable characteristics. The priority of 'language-as-a-species-endowment', as opposed to contextually determined 'languages-in-use', offers one such example. Forst's theory, as I have already noted, fits within this tradition of formalistic reconciliation, between Kantian transcendentalism and pragmatic attention to specific phenomena as conditions of action.

But how does Forst's theory of an autonomous morality interact with his pragmatically driven assessment of the ethical value articulations developed in the social world? Having set out a conception of morality as defined by a higher-level internalism, Forst grafts his formalistic typology of 'the normative' onto an ethical and social reality that he recognises to be discursively complex. He thus pursues a theoretical strategy that, as Kevin Olson notes, 'builds an idealized model of political or moral practice' and, in a secondary move, relates it to an account of contemporary socio-ethical experience, or what Forst calls 'normative complexity'.[214] In so doing, Forst sets out, in some deference to the pragmatic turn in critical democratic theory, to avoid downplaying or theoretically marginalising complex social dynamics produced by an ethically 'hyper-pluralist' modernity (to use Taylor's term). And yet, his 'autonomous' normative system remains functionally insulated from the normative complexity that he diagnoses. While Forst's laudable acknowledgment of discursive complexity within ethical or religious traditions is characteristic of the strand of 'pragmatic'

[214] Olson, "Complexities of Political Discourse: Class, Power and the Linguistic Turn," 100.

neo-Kantianism in which he follows, his ethnographically more adept characterisation of ethical life arguably falls short of shaping the view of practical agency advanced under the aegis of his moral theory.

In developing his view of normative complexity Forst aims to develop a picture of ethical experience and identity more multi-faceted than that of "comprehensive doctrine," long embedded in the language of post-Rawlsian liberal political theory. Rawls' characterisation of ethical, philosophical and religious traditions conveys his perception that those attachments of a 'comprehensive' nature instigate conflict and consequently undermine the 'bases of social cooperation'.[215] While Rawls suggests that the 'fact of pluralism' is defined by a multiplicity of 'reasonable' comprehensive doctrines, his terminology is nevertheless suggestive of a heavily context-dependent view of religious practice derived from a Protestant Christian privileging of the unmediated text and of individual hermeneutical autonomy, both of which defy the rule of 'doctrine'. While comprehensive attachments may be reasonable insofar as they submit to the translation demands of political liberalism, Rawls' terminology determines the contours of 'doctrinal' plurality in ways insensitive to the cultural and sociological complexities of religious practice and ethical life. Thus, religious or ethical traditions are categorised as systems in which doctrine is comprehensive, static and centrally defined, as opposed to multivalent and dynamic in the range of meanings they encompass. Moreover, it suggests that plurality stripped of the mediating and controlling framework of a 'political' conception of justice will descend into the pit of controversy for which the 'Wars of Religion', the founding myth of political liberalism, offer the ominous archetype. However benevolent Rawls' intention, his characterisation of pluralism suggests that 'comprehensiveness' is a state antithetical to 'reasonableness' and to be doctrinally bound is inimical to 'rational' reflection, thus leading ethical and religious 'pluralism' to an association with unforgiving contestation à la Hobbes.

From a perspective concerned with placing theory in contact with ethnographic nuance, Forst makes important adjustments and improvements to Rawls' categorisation of religious or ethical commitment. He does so with a view to making his own theorisation of ethical pluralism less vulnerable to criticisms directed at Rawls on grounds of ethnocentricity or the over-prioritisation of a 'Protestant' view of 'religion'. In this he acknowledges one of the common scholarly critiques levelled at the project of secular constitutionalism, that it projects, and through the historical practice of colonial governance has worked to reify, a conception of

[215] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

religious forms of life (or simply unrecognisable ethical traditions) as defined by the forms and lexicon of European Christian Protestantism. Such arguments, levelled by theorists of a Foulcautian bent such as Saba Mahmood and Talal Asad, have been met recently in Laborde's account of a liberal constitutional republicanism that treats religiosity at a level with ethical practice more generally, disaggregating those elements of religious life that merit particular forms of regulation or response, rather than focussing upon 'religion' in general as demanding a distinctively calibrated response. Similarly, while he is prepared to use the concept of 'comprehensive doctrine', Forst draws it into a more multidimensional portrait of contemporary ethical plurality, asserting that the pluralism to which critical theory must be made responsive is 'not *only* [italics mine] a pluralism of "comprehensive doctrines."' Rather, it is a pluralism of social spheres, practices, and activities in which citizens play multiple roles.'[216] Society is marked not only by 'plural activities and commitments', but also by different 'modes of cooperation and association' that cultivate democratic habits and act as bases for a 'functioning deliberative democracy'.[217] Such modes may presumably include being politically mobilised, being religiously engaged, as well as joining in communal anger at injustice or contributing to a narrative self-understanding that demands political transformation. In other words, Forst perceives ethical plurality not only as the meeting of codified and distinct comprehensive doctrines but as including a variety of agent-based dispositions, forms of imaginative life and ways of being political. Thus, he recognises that the various modes of association beneath the level of one's civic or political personality are relevant to sustaining democratic habits and practices.

A depiction of ethical plurality in terms of overlapping and mutually formative types of subjectivity presents a significant improvement upon the notion of the interpretively static 'comprehensive doctrine'; it acknowledges the multiple forms of identity and agency at work within a modernity that refuses a singular characterisation. Instead of presenting a theoretical rendering of "religion" or of "custom", Forst sets out to schematise the *kinds of claims* made from within different forms of life. The society that Forst has in mind is an 'ethically pluralistic society' in which conceptions of value are intertwined with ethical practices, or what Forst describes as 'forms of life which have a (more or less thick) cultural character.'[218] Forst moves beyond this simple description, however, to spell out several possible 'ethical pluralisms'.

[216] Forst, "Justifying Justification: Reply to My Critics," in *Justice, Democracy and the Right to Justification: Rainer Forst in Dialogue* (London: Bloomsbury, 2014), 180.
[217] Ibid., 180.
[218] Forst, *Toleration in Conflict,* 522.

Firstly, ethical pluralism may be understood as a 'plurality of substantive conceptions of the good that specify the *content* of what constitutes a good life and how it should be evaluated'.[219] On this view, ethical perspectives offer substantive or 'higher order' conceptions of the good, along with theories of moral knowledge and reasoning by which ethical subjects approach it. Of importance here, argues Forst, is the relative 'comprehensiveness' of the various conceptions – the degree to which they concern themselves with the good life as a whole – and their ambitions regarding the constitution of social life.[220] So, for example, a religious tradition taken to cast itself as a singular repository of eschatological hope and ethical authority would present a particularly comprehensive collective life-form. Implicitly, this view of ethical pluralism, though it overcomes the reductivism of Rawls, establishes a linear gradation of 'comprehensiveness' vis-à-vis a formalist ideal of moral reflexivity that engages formally relevant moral features and the categorical command they express. Such self-reflexivity, in contrast to 'comprehensiveness', would recognise the contingency of a tradition's claims to truth and the possibility that other traditions or perspectives might themselves offer insights of value. Secondly, ethical pluralism may refer to a 'plurality of higher-order conceptions of the good' which determine 'the *form* of the good life and are compatible with a plurality of substantive conceptions of the good.'[221] This is the level at which Forst takes 'reasonable agreement' to be possible: a deliberative regime of non-substantive justification, whereby citizens reason with each other on a 'moral' rather than ethical plane, establishes the form of the good life as one in which one gives and receives due recognition of moral personality. Finally, the third level of ethical pluralism identified by Forst entails 'different conceptions of the *sources* of the good.'[222] At this level, Forst considers the nature of the proclaimed sources of the good; are such sources taken to be 'real' in a metaphysical sense or are they set out in constructivist or culturally particular terms?[223] The purpose here is to differentiate between world-views that can be distinguished according to how their adherents understand 'their place in a normative "cosmos"' and the kinds of values—'objective', 'naturalistic' or 'historical'—that sustain this understanding.[224] Religious values, for example, retain what Forst calls an 'objective' dimension, distinguished from subjectively located values in laying claim to

[219] Ibid., 462.
[220] Ibid., 462.
[221] Ibid., 462.
[222] Ibid., 463.
[223] Ibid., 463.
[224] Ibid., 463.

universal validity. Religious values may 'imply a cross-cultural validity', or may simply assert their validity beyond the bounds of a particular group or culture, but will nevertheless fail to meet the requirements of generality and reciprocity that would lend them 'non-rejectable categorical force'.[225]

At this point, Forst's schematisation of ethical plurality as introducing value articulations that demand consideration on their own terms, rather than on terms set pre-emptively by post-metaphysical epistemology, appears to differentiate him significantly from Habermas. The difference here between Forst and Habermas in their description of ethical life is the former's ostensible acceptance that the values articulated within specific ethical or religious traditions may be taken to have cognitive content within its discursive field – content that simply fails to meet the threshold standard that would ensure universal categorical force. For Forst, pace Habermas, it is therefore 'not the case that a position standing in the Kantian tradition can only recognise and ascribe cognitive content to those values which, so to speak, have passed through a moral filter. This would amount to a "colonisation" of ethical evaluations by an overweening morality, which 'violates the plurality of the normative world.'[226] In place of such a colonisation, Forst wants to establish that 'ethical values are not some kind of by-product of moral discourses; rather, they constitute their own normative sphere of values and reasons.'[227] We arrive at a conception of the 'normative world', as Forst calls it, as demarcated according to spheres of validity defined by different sets of rules that inhere in discrete discourses, based upon the *kinds* of claims these discourses make. Of course, it is hardly controversial to suggest that persuasive or justificatory language take account of context – that is, that utterances made with the intent of persuasion register the field of exchange, and the subjects, to which they are directed. The alternative is a suspension of language in its communicative dimension even while poetics, which moves beyond the straightforwardly communicative, may offer more complex means of amending and adding to the range of meanings available. There is, therefore, no prima facie issue with the notion that practical rationality ought to take account of discursive context and the relevant conditions of intelligibility and argumentative persuasiveness. In making this assertion through his notion of 'contexts of justification', Forst introduces a more strongly contextualist dimension into his account when compared to Habermas' presentation of language in terms of its 'universal',

[225] Ibid., 462.
[226] Forst, *The Right to Justification,* 71.
[227] Ibid., 64.

rather than contextual, pragmatics. But Forst's account of how the justificatory difference between contexts is discerned is more obviously indebted to a principle that itself stands outside of discourse and that Forst's theory takes for granted as a normatively authoritative and universally perceptible foundation. In this regard Forst's treatment of ethical pluralism is governed by his theoretical attachment of normative ideation to a 'basic insight' from which other subsidiary insights follow, forming the normative order of justification that he describes.

Despite registering the cognitive value of ethical value articulations, this view of normative complexity as an ethnographically complex reality that imposes limits and demands upon the individual subject's finite reason, and upon our normative concepts, is ultimately indexed to an autonomous principle. Forst is committed to the notion that the appropriate form of reasoning in any given context may be discerned by means of a form of moral perception shared by all that 'cannot take the place of concrete practical insights' but that is instead a second order insight: 'the moral insight is essentially an insight into one's responsibility for others'.[228] As Forst insists, this second order insight does not displace practical insights into the nature of reasoning in particular contexts, but establishes a basic principle that we ought to take consideration for our interlocutors qua moral personalities, as well as consociates in a particular setting. The *nature* of the validity claim encountered in any particular context is discerned in relation to the moral typology set out in Forst's theory of autonomous morality; if 'moral' validity claims are substantively empty, syntactically formalistic and therefore 'universally valid', a claim (whether assertoric or simply expressive) that falls short of these stylistic features may be circumscribed by the threshold principles of reciprocity and generality. The formalistic ideal of a moral validity claim that evinces an autonomous and independent syntactical form works to determine the kind of judgment by which the practically rational subject tailors their reasons to context. Once the practically rational subject gauges the kind of claim presented to them according to Forst's schematisation of ethical pluralism, they relate this claim to the form of moral validity established under the conception of autonomous morality. It is to the ideal of the cross-contextually transposable formal validity claim that practical reason refers in gauging the shortcomings of the 'thicker' claims posed in particular contexts of ethical practice. In this respect, the moral typology that Forst establishes, along with the characterisation of validity claims along a gradation of 'comprehensive' (and therefore parochial) to formal, ultimately converges with Habermas in sustaining the priority of secular reasoning over the kind of ethically imbued dialogical reasoning that, in open

[228] Ibid., 36.

acknowledgement of its own historical genealogy, develops principles of normative generality out of ethical particularity, in the manner of the authorial process of the UDHR.

Indeed, to this commitment to a cosmopolitan duty to others as participants in a human moral community, Forst conjoins the stronger claim that the standpoint from which such a duty may be discerned and advanced must itself eschew the social details, or ethical meanings, that constitute particular identities. For it to retain its critical integrity, the moral perspective, and the rights and duties it calls forth, must be protected from semantic and justificatory interaction with ethical details. Indeed, in alignment with his commitment to the theoretically worked out 'autonomy' of morality, Forst's argument makes it possible to arrive at the universal only via the act of rational perception, rather than through the dialogical working out of a more inclusive or more equitable set of normative principles, open to reassessment in light of further deliberation and the collaborative development of new moral meanings. Thus, 'the "autonomy" of morality means not just that reason recognises no criteria of justification higher than its own; rather, it means that whenever an ethical or instrumental reason for being moral is asked for, the moral standpoint simply cannot be found.'[229] So, when the citizen asks, "why should I enact this duty or obligation?" the kind of reason that justifies their adherence to the precepts of mutuality and reciprocity must itself be free of ethical grounding, or from dependence upon any ethically intoned reasons. Once ethical reasons are asked for or proffered, the moral standpoint of concern for all as 'members of a moral community embracing all human beings' is lost; there is, then, no route from inter-ethical exchange to the moral standpoint, because the autonomy of morality means that both its sources (its constitutive forms of perception and recognition), and its defining mode of reasoning, be free from ethical value articulations.

Hence, we can observe that Forst's disaggregation of the various types of validity claims made within different contexts goes some way to recovering from Habermas a sense that the value articulations at work in ethical discourses may possess cognitive, rather than merely semantic, force. At the same time, Forst's schematic differentiation between discursive contexts ensures that, whatever cognitive force attaches to ethical conceptions of the good, it remains constrained by formal threshold requirements as soon as it seeks to launch appeals beyond its "native" discourse – once it posits itself as "universal" or as possessing "critical" validity to which all should attend. Ethical values may not be 'by-products' of moral discourses, but they are organised and schematised according to a morally tethered practical reason. The ideal of moral formalism escapes the intra-mundane constraints that attach to other,

[229] Forst, *The Right to Justification*, 76.

more ‘concrete’ ideals, and appoints itself as an idealisation that organises the practically rational subject’s perception of the *form* of validity claim being advanced in any given discourse. It therefore produces a categorical difference between the kind of criteria that are bound to historical contingency, and those that are free of narrative discourse. Disaggregating the different forms of ethical commitment fails to undo this essential structure, which, though remaining open to amendment in terms of the specific reasons that command justificatory validity in any given context, insists that the idealisation of a “merely grammatical” formalism remains in place, unaffected by shifts in semantic composition. Forst’s more complex characterisation of ethical pluralism, therefore, ultimately works in support of his schematisation of the normative domain as defined by ‘contexts of justification’ delineated on the basis of formalist principles.

Ss. 4. *The transposability of concepts*

As signalled in the previous chapter, the temptation for critical democratic theorists committed to the notion that formalistic procedural ideas are substantively ‘light’ is to adhere too readily to the proposition that formal principles or concepts are transposable across discursive contexts. By ‘transposable’ I mean that they may operate across ethical and political contexts while functioning with recognisable, and even desirable, consistency. Such concepts are positioned as capable of playing a normatively universalising role that upholds and orients subjects towards the same normative ends, irrespective of the semantic and semiotic resources upon which they draw. What is missed, I argue, is the critically reflexive hermeneutical effort involved in the transmission and generalisation of concepts, including the values that underpin both an account of the ‘common interest’ and the shared action it promotes. This is not to advance a strong relativistic argument that conceptual commonality across cultures is beyond reach, or that there are no ideals that may be shared, but to attach priority to the notion that values are ideologically and contextually attached, rather than being located at a formal level “beneath” the crust of ethical culture. As argued in the previous chapter, the act of “making values formal” by dissociating them from their ethical meanings—and from their motivational resonance—is itself a culturally particular effort that builds upon a highly specific philosophical heritage.

The cross-cultural transposability of “merely formal” insights or norms is a proposition notably refused in critical intellectual histories of European colonial governance and its attendant intellectual and cultural extensions, which tend more strongly to register the political

(which is to say agonistic and power-laden) dimension of claims to neutral arbitration, or to the reflectively developed availability of insights upon which 'rational' political economies might be established. Indeed, there is a noteworthy dissonance between Forst's theory of universal morality and the critical-historical approach to political universalisms developed within the revisionist historical literature on enlightenment thought and empire, and on the twentieth century experience of de-colonisation and renegotiation of relations between former colonies and imperial metropoles. In its most basic formulation, the post-colonial perspective insists, in Bellah's words, that 'to assume that "we", particularly if we mean by that the modern West, have universal truths based on revelation, philosophy, or science that we can enforce on others, is the ideological aspect of racism, imperialism and colonialism.'[230] This cautionary insight has been integrated into critical theory's understanding of the relationship between claims to universality and particularity. Thus, for example, for Thomas McCarthy a properly postcolonial disposition will accept that 'by their very nature, the universal cannot be actual without the particular, nor the formal without the substantive, the abstract without the concrete, structure without content.'[231] One might read this simply as a concise articulation of the commitment to immanent normative foundations shared by Habermas and his descendent formalists, including Forst, if it were not for the more assertive commitment to formalism's dependence upon 'the substantive'. This does not necessarily indicate determined opposition to the neo-Kantian formalism of Habermas and Forst, but it does suggest a view of normative integration as built upon intellectual and imaginative transmission, rather than formalism and the ideological independence it declares. Accordingly, we are brought to view the imbrication of universal claims with particular experiences as occurring in such a way as to change the nature of the "universalism" advanced, such that, in Jennifer Pitts' words, 'universalisms always take particular form' both with respect to their attendant (post)metaphysical or legal frameworks and to the anthropological qualities asserted.[232]

In Forst's attempt to ground cross-contextually valid norms upon a 'basic insight' into an ethically autonomous 'right to justification', the intimacy of this dependence of 'universalisms' upon 'particular form' is downplayed to the point that this critical insight is of little practical significance. Forst's theory of the 'basic insight', upon which autonomous

[230] Bellah, *Religion in Human Evolution,* 606.
[231] Thomas McCarthy, *Race, Empire, and the Idea of Human Development* (Cambridge: Cambridge University Press, 2010), 223.
[232] Jennifer Pitts, *Boundaries of the International: Law and Empire* (Cambridge, MA: Harvard University Press, 2018), 77.

morality depends, presents formal principles as at once normatively commanding at a universal level as well as open to contextual definition. This synthesis, based on the argument that 'autonomous' principles escape particularism in virtue of their formality, lies open to criticism from both hermeneutical and morphological perspectives. According to Forst, 'whoever speaks this language [of justificatory argumentation] does not rely on an unjustifiable authority, but rather on an idea of mutuality' and an 'idea of reciprocity' that 'appears wherever authorities and privileges are examined.'[233] On the Forstian view, the 'ideas' of mutuality and reciprocity are the normative ingredients that bestow sufficiency upon deliberative exchange and that motivate its transformation from parochial ethical interchange to discourse answerable to the voice of critical universality. The notion here is that these 'ideas' present empty signifiers that may be filled in with various ethical sources while performing the role of attaching ethical discourses to the rubric of autonomous morality and the discursive differentiation it establishes between contexts of justification. The problem that arises, however, is that procedural ideals of 'mutuality' and 'reciprocity' are themselves significantly indeterminate and their vernacularisation within specific contexts conceivably changes their social import altogether. Indeed, the meanings by which they are developed and deployed are radically constitutive of their operation. For example, the ideal of 'mutuality' articulated within an economy of Islamic revelation may entail modes of consideration, including for the spiritual good of one's consociates, that do not translate simply into the argumentative exchange of reasons unified by a secularised ideal of equitable interchange. Of course, one cannot assume that one's consociates are committed to a view of the person as oriented towards spiritual goods, but neither can one assume that, in any given context of justification, discourse will not be interwoven publicly, and reasonably, with a structuring economy of sacred revelation, interpretation and imagination. The *idea* of mutuality—of a commonly enjoyed moral integrity recognised in deliberative interchange—will take on different kinds of action-guiding import based upon the background assumptions and meanings by which it is articulated; that is, based upon what counts for the participants as 'integrity' and what language is used to develop the normative resonance of 'mutuality.' In other words, these ideas turn out to be difficult to separate from the ethical projects of self, or collective, realisation from which Forst wants to distinguish them. This challenges the notion that 'ideas' of mutuality and reciprocity may be transposable from one context to another without depending upon local meanings in a manner significant for their practical operation. We may agree that some pattern of reciprocity, for

[233] Forst, *The Right to Justification, 212.*

example, reflects a commitment to equal treatment, but the manner in which the necessity of this principle is understood is relevant for its enactment. If it entails evoking meanings that refer to a cosmology, or in a more immanent sense to a social imaginary, that advances a contextually intelligible schematisation of authority and legitimacy, then the practical implications of the principle will be determined by those meanings and the inflection they give it. Forst might respond to this with the rejoinder that his theory of autonomous morality allows room for the procedural principles of mutuality and reciprocity to be vernacularized very significantly in light of contextual meanings. However, Forst still asks us to follow him in blithely side-stepping the ideological dependence of formalism itself and its interaction with legal and governmental discourses that, as Hussin indicated in the previous chapter, have been implicated in the reinforcement of colonial hierarchies, intellectual and material. Where formalism allows ethically diverse consociates to avoid discussion about deliberative premises, it foreseeably impedes what Mehta calls 'a posture of imaginative humility' that 'accepts that there is no shortcut around the messiness of communication, no immanent truth on which words can fix, no easy glossaries of translation.'[234]

In contemporary democratic theory, procedural ideals like mutuality and reciprocity tend to refer to dispositions required of citizens as consociates and co-participants in a 'public sphere'. Generally, procedural norms figure within wider framing ideals about the kind of discursive space, and the forms of agency, through which they might be realised. At this level also, the concepts that do the work of normative integration turn out to be more significantly dependent upon particular experience and contextually established meanings than the ideal of "mere formalism" allows. To give this a little more flesh, let's briefly turn back to Habermas and his notion of the 'critical public sphere'. For Habermas, and implicitly for Forst, the notion of a 'critical public sphere' is a concept taken to be available to subjects of diverse ethical backgrounds; it is essentially embedded in the meta-culture of globalised modernity, even while taking various forms in different political cultures. Habermas and his heirs, such as Forst, are certainly not alone in this assumption. Indeed, even Habermas' critics at the level of epistemology, such as Taylor, adhere to a similar conception of 'the critical public' as a concept that can be more or less unproblematically transposed, because both genealogically and in practice it is separate from and critical towards power. Taylor, developing his reflections on the public sphere in conversation with Habermas, characterises it as 'a space of discussion

[234] Uday Singh Mehta, *Liberalism and Empire: A Study of Nineteenth Century British Liberal Thought.* (Chicago: University of Chicago Press, 1999), 216.

which is self-consciously seen as being outside power.'[235] This extra-political status is what allows the 'public sphere' to tame power with the force of reason, presenting the political sphere—the sphere of formal deliberation—with rationally formed opinion precisely because of its freedom from partisanship.[236] This, suggests Taylor, is the historical ideal traced by Habermas and other proceduralists in their treatment of the eighteenth century public sphere, yet suitably carried forward and made contemporary. Thus, Taylor suggests that the public sphere 'was and is' an 'extra-political, secular, meta-topical space'.[237] That this rendering of the public sphere is highly idealised along culturally specific lines seems obvious enough and indeed, Taylor makes this description in the course of tracing such an historical emergence within a broader discussion of European secularity. Yet, in this historical depiction of "publicity without power" there is the temptation to free structuring categories, such as 'the critical public' from material and conceptual dependencies marked by patterns of domination that a *critical* theory of democratic life would wish to go further in disassembling. Minimising the 'critical public sphere's' integration with power, with the assertion of a political economy of 'secular' (that is, intra-mundane) social order, arguably blunts the critical reflexivity of such an idealisation in contact with the cross-pressures, collective memories, and ethical reinterpretations that characterise the contemporary negotiation of ethical pluralism. Moreover, it proves essential in making the concept of 'the public sphere', and 'publicity' as a disposition towards reciprocal justificatory generality, into concepts that we may transpose across contexts with less reflexive hermeneutical effort than otherwise might be called for.

Returning, then, to take up Freeden's morphological approach, we can see that key ideologically enmeshed concepts - of which the critical public is one—that do the work of interconnecting and framing particular ethical discourses are themselves hardly formal and non-substantive, but actively contest rival conceptions - and imaginative visions—of social order. From the point of view of postcolonial revisionism, this is a necessary and pressing insight to be incorporated not only into the relevant historiography, but also into our theoretical frameworks for contemporary deliberative interchange. Thus, from the perspective of contemporary South Asian studies, infused with an interest in 'multiple modernities,' Scott and Ingram insist upon a reading of the 'critical public' as a concept that organises social detail and that depends upon a specific intellectual and material lineage, which does not easily lend itself

[235] Taylor, *A Secular Age*, 190.
[236] Ibid. 190.
[237] Ibid., 196.

to transposition onto non-European contexts (the project of transposition and replication anyway being central to the colonial intellectual enterprise). The formation of the unitary 'public' (rather than 'publics') and the definition of its discursive character or permissible form also defines conceptually unitary antonyms—the 'private', the 'ethical'—so making an intervention that takes for granted terminological and typological arrangements that themselves should be subjected to critical appraisal and, beyond theory, to the developing ethical and cultural sensibilities of citizens in hermeneutical engagement with one another. As Scott and Ingram emphasise, the term 'public' exhibits conceptual instability, both in North Atlantic societies and in India (the primary focus of their analysis). What counts as 'public' and as 'private' has been continually subject to complex cultural re-workings that draw upon both the literary technologies of the 'European bourgeois public sphere' as well as traditions of orality and the ethical imagination they furnish. The notion of a singular kind of 'public', within which we experience 'historical learning processes' in a specific post-metaphysical direction, presumes a discursive, semantic and conceptual stability that is arguably absent from a social world defined by more stubbornly plural and unstable forms of meaning.

Additionally, the nature of these learning processes is itself shaped by the narrative definition of the 'critical public sphere', which is to say by the 'whig history' of concepts related by Habermas, and differently by Forst, as a preface to their normative constructions. As Sanjay Subrahmanyan writes, this narrative definition arranges 'the very perception of the idea of change – the problem of human agency in determining both the possible identity of the subject and his or her trajectory in time.'[238] Habermas' view of the bourgeois public sphere—to which Forst is heavily indebted—develops an account of historically emergent 'publicity' that reflects a modernity narrative according to which, in Durkheim's words, 'political, economic, scientific functions gradually free themselves from religious control' with the consequence that 'the individual feels less *acted upon*; he becomes more a source of spontaneous activity.'[239] I do not wish to overstate the case here – in his later work Habermas has offered closer consideration of the continuing life of 'enchantment', of religious practice, and of sheer ethical difference of all kinds, over and against the balder variants of the Durkheimian 'subtraction narrative.' In this he prefaces Forst's own appreciation of 'normative complexity.' And yet echoes of the Durkheimian subtraction narrative nevertheless reverberate

[238] Sanjay Subrahmanyam, 'Hearing Voices: Vignettes of Early Modernity in South Asia, 1400-1750.', *Daedelus* 127, no. 3 (1998): 75–104, 100.
[239] Émile Durkheim, *Selected Writings* (Cambridge: Cambridge University Press, 1972), 245.

around his understanding of 'publicity', particularity insofar as the public is the 'critical' space constituted by individuals adept at deploying practical reason 'spontaneously', or enjoying access to a 'basic insight' without ethical cultivation or hermeneutical effort, in service to a substantively autonomous normativity. Accordingly, the distinctive transformation made by 'post-metaphysical' modernity, from 'mere simultaneity' amidst ethical parochialism to a formal 'moral contemporaneity' across our discrete traditions (and so borders and Gadamerian 'horizons'), depends upon a particular concept of publicity and the 'space of [certain kinds of] reasons' that this safeguards from the dominance 'subjective' concerns.

The presumption of conceptual stability across contexts, at least in the case of key framing concepts, also underwrites Forst's commitment to the idea of diachronic "progress". With formally stable key concepts in place (reciprocity, mutuality, generality, "publicity"), Forst, like Habermas, finds himself able to assert a lawlike normativity against which progressive social transformation may be measured. Thus, for Forst, the basic insight into an 'autonomous' morality of justification allows for the avowal of a 'logic of development', which post-colonial and revisionist intellectual histories of liberalism and empire have otherwise rendered problematic. The 'basic' insight into one's justificatory responsibility towards others, argues Forst, leads to the possibility of 'a logic of development – in the sense of a "moral modernization" – in which more and more reasons for social relations can be demanded on the basis of the right to justification and ever more constructive justifications of rights can be provided.'[240] This occurs at a cultural level – 'this process is set in motion once this dynamic logic of asking for reasons develops in a culture', and it can be 'stopped' only by the legitimate provision of sufficient justifications or through the illegitimate use of force. Considering that Forst is here identifying a 'logic' of critical reasoning, rather than a specific lexicon, he may be understood to leave open the substance of such reasoning, to be filled from a plurality of sources relevant to a specific discursive context. Justifications that meet the relevant threshold requirements of validity will presumably be 'sufficient' on the terms established by the cultural terrain within which the 'dynamic logic of asking for reasons' is implanted. At the same time, however, Forst indicates that, whatever the substance of the reasoning that proves to be 'sufficient', its sufficiency stems from the integration of a formal justificatory logic rather than from the ethical resonance, problem-solving capacity, or specific normative intelligibility, bestowed by the particular lexicon involved.

[240] Forst, *The Right to Justification,* 21.

In setting the standards of sufficiency in accordance with formalist principles (abstraction, detachment from narrative, semantic generality), Forst's account follows Kant in positing a teleological end to which 'progress' must tend in order for it to constitute 'moral modernisation'. His position relies firstly, upon subjects having unmediated access to the 'basic' insight into 'responsibility for others' and, secondly, being able to translate that insight into the specific discursive demands of semantic 'generality' and justificatory 'reciprocity'. Forst might argue that his account of 'development' is confined merely to the act of 'asking for reasons', which introduces a demand for justification that cannot be avoided without suspending the exchange in favour of coercive force. However, for justificatory reasons to become objects of 'moral' rather than parochial adherence, they must take on the garb of a Kantian formalism, which actively inserts precepts about the nature and premises of normative universality and, with it, narrative accounts of both modernity and the common interest. The danger here is that Forst's formally 'autonomous morality,' posited as an independent variable or reference point, acts to establish what Uday Singh Mehta calls a 'temporal linearity' that situates ethical traditions in relation to implicit norms of 'progress' and 'backwardness'.[241] 'The moral' may operate as the 'caboose of [liberal] politics' to which Mehta refers, driving ethical traditions marked by the deficiency of 'backwardness' towards 'the time of the future' where 'reasonable' relations of justification obtain.[242] Pursuing this line of argument, the structure of justification implies what Mehta calls the 'presumption of foreknowledge', distracting from the difficult contingency of conversation and orienting practical reason away from the effort of understanding toward the normative arrangement of ethical perspectives by the imperatives of autonomous and formally lawlike morality.[243]

Where Forst thinks that the mere fact of 'using reasons' is sufficient to establish the priority of the 'basic insight' over the forms of reasoning we employ in encounter with ethically alien consociates, thinkers more attached to a 'multiple modernities' framework, and to a hermeneutical ontology, argue along lines that question his confidence in agreement at this preliminary level. Taylor, for example, rejects the kind of epistemic hierarchy supported by Habermas and Forst, defying the privileged credibility of secular reasoning over and against other systems of rationality, such as those that derive from religious traditions. For Taylor, both utilitarianism and Kantianism have 'points at which they fail to convince honest and

[241] Mehta, *Liberalism and Empire*, 108.
[242] Ibid., 108.
[243] Ibid., 216.

unconfused people.'[244] Indeed the notion that secular reasons, or reasons unencumbered by social and ethical detail, should command greater likelihood of assent (let alone 'unconditional meaning') is a matter of anthropology, of contextually contingent accounts of "how human beings are". As Taylor writes, 'the mistake here is to believe that there can be some decision whose neutrality is guaranteed by its emerging from some principle or procedure.'[245] This tends to breed 'the illusion that there is no need to negotiate the place of these symbols, and hence to confront the actual substantive differences…'[246] When we dethrone 'reason' and 'rational procedure' from the place of epistemic authority assigned to them by the deflationary Kantianism canvassed in the previous chapter and echoed by Forst, we meet the need to 'confront substantive differences' without relying upon a conception of argumentation that secures validity apart from any disclosure of its own background values. This argument attracts characterisation as 'communitarian' upon the perception that it aims to relativise religious and secular reasoning, such that religious traditions and the soteriologies they espouse can assert their authority as confidently—and as universally—as those committed to the validity of post-metaphysical thought. This is not the conclusion that Taylor looks for, however. His argument is primarily epistemological, insisting that post-metaphysical reasoning does not command an immediately perceptible rational superiority over and against the reasoning present within non-secular or explicitly religious worldviews; its claim to superiority rests rather upon a culturally specific confidence in certain epistemic principles, an often unreflexive stance towards its own historical genesis and a disregard for the insoluble dilemmas of deep disagreement. Whereas the human capacity for suffering, for example, amounts to an unchallengeable proposition, 'as our being creatures of God is not…', contra Forst, 'what is less sure is what follows normatively from this claim.'[247]

The rubric of multiple modernities challenges the presumption of formal conceptual stability across contexts, both at the level of basic insights and foundational norms, and also with regard to concepts such as 'publicity'. Even though we may set out to ground a basic insight upon shared human capabilities, or vulnerabilities, its normative meaning will be developed and rendered via the meanings available within ethical cultures. In this sense, discerning 'what follows normatively' from some core of shared experience is also a matter of

[244] Charles Taylor, *Dilemmas and Connections : Selected Essays* (Cambridge, MA: Harvard University Press, 2014), 329.
[245] Ibid., 143.
[246] Ibid.
[247] Ibid., 329.

comparing, contrasting and redeveloping the manifold ethical languages that shape the way we conceive of a normative dimension to our shared life. The ideal of an immanent capability, or reality, that may be translated into a formally universal and cross-contextually transposable normativity thereby comes under pressure from, and in practice gives way to, the necessary negotiation of ethical meanings and the partial and provisional *transmission* of values.

Ss. 5. *What of critique?*

"Negotiating substantive differences" sounds all very well, but what of critique? From the perspective of a critical theory concerned with undoing structures of domination, Forst is rightly concerned with the potential for arbitrary power disparities to colour the communication and transmission of values across 'political contexts'. Moreover, we might reasonably be concerned that, without an ethically autonomous morality to which we may refer with confidence in its 'formal' authority, we are left without the ability to disrupt and reform unjust political and social settlements.

As noted above, from a pragmatist point of view, the dependence of Forstian morality upon an 'autonomous insight' ascribed theoretically to rational subjects is flawed as an account of our arrival at the kind of 'moral perspective' that expands the imaginative horizon so as to include the broadest possible array of identities within a community of moral equals. To assert this flaw is not to deny the role of a moral perspective capable of critically destabilising extant social dispensations, but rather to suggest that such a perspective depends upon the comparative, genealogical and dialogical work to which a methodologically pragmatist approach tends. This latter understanding, evoked by Joas in his discussion of the authorial process of the UDHR and discussed theoretically by philosophical pragmatists like William Rehg, insists that 'contextually indexed ideas of reason' may still supply *'sufficient'* leverage for critique within dialogical and deliberative settings.[248] The pragmatist may emphasise the priority of the participant perspective over and against the 'autonomous insight' prioritised by Forst, while positing that such a perspective still allows for a hermeneutically grounded mode

[248] William Rehg, 'Adjusting the Pragmatic Turn: Ethnomethodology and Critical Argumentation Theory.', in *Pluralism and the Pragmatic Turn*, ed. William Rehg and James Bohman (Cambridge, MA: MIT Press, 2001), 115–43, 135.

of critique that eschews claims to autonomy. According to this position, the kinds of competence that underpin critical reason are quite distinct from the 'autonomous insight' referred to by Forst; they are instead dependent upon interlocutors discerning 'each time the concrete methods, the situated rhetorics, by which they can argue reasonably' within a specific context, and in response to the particular problems or challenges that arise there.[249]

Forst's view here differs markedly from the less finalist aims of pragmatists like Bohman, primarily because of his commitment to a conception of critique as inextricably tied to an autonomously established perspective, insulated from the projects of self-realisation pursued in the social world through the enactment of ethical life. Accordingly, 'while ethical advice has the form of suggesting a particular behaviour to a person because it best expresses his or her personality, moral demands have the form of demanding categorical adherence from persons. The possibility for moral reproach rests on that.'[250] Critique, therefore, rests upon the ability to refer to a norm that categorically commands through its lawlike universality.

However, a conception of critical reasoning that eschews a view of morality as a functionally independent variable does not have to be fatally compromising for a commitment to critique, but it does suggest a shift in the way we understand critique. A pragmatic conception of critique might, as Bohman suggests, avoid the Habermasian 'pragmatic presupposition' of a single right answer to which rational subjects will assent under ideal conditions.[251] Instead, this strong assumption about an ideally perceivable right answer, which Habermas and Forst take to be a necessary condition for the perspective of moral critique to be made available, largely depends upon the goal set by the critical democratic theorist. Bohman contrasts this with a view of critique as the ability of agents to see their circumstances 'more reflectively and thus differently'.[252] What does 'more reflectively' mean and how does it differ from the kind of genealogical reflexivity—tethered to Kantian ethical presuppositions—to which Habermas and Forst cleave? For Bohman, a comparative perspective has the effect of generating this shift in self-perception without assuming the conjoining of participant perspectives with an ideally or formally generated pragmatic presupposition of agreement. As Bohman puts it, even if there is no such thing as 'a single right answer independent of agent's needs, interests, and self-interpretations', the critical perspective is not left without

[249] Ibid., 129, 137.
[250] Forst, *Right to Justification,* 76
[251] Bohman, *Public Deliberation: Pluralism, Complexity, and Democracy*, 100.
[252] Ibid., 100.

resources.[253] Rather, instead of engaging in argumentation that either aims towards, or presumptively reflects, a single right answer, critics can aim to change perspectives 'and thus to begin processes of reflection anew.'[254]

Pursuing 'practical reconstructivism', Bohman argues for an approach to inter-subjectivity that insists on the priority of social and ethical detail in shaping methods of critical inquiry. For Bohman the relevance of this detail is clear as long as critical theory intends to be alert to the political dimensions of ethical pluralism and to its attendant experiences of marginalisation, inscrutability and disempowerment. Thus, the contemporary plurality of ethical perspectives is, in Bohman's view, 'central to the methodology of critical inquiry' and a 'fundamental political issue'.[255] In contradistinction to Forst, Bohman interweaves the critical perspective closely with pragmatically embedded insight, resisting the Forstian establishment of a higher-level internalism for morality—its independence from ethical life—from which perspective criticism is directed at contexts of social and ethical practice. Bohman highlights the divergence between 'practical' and the 'theoretical' conceptions of critical theory in their view of practical knowledge: 'in one case as the instrumental application of independent theoretical knowledge' and in the other 'as continuous with the reflective abilities and practices of knowledgeable social actors being criticized.'[256] In the latter case, critical theories have a role in 'reconstructing the nature and scope of actors' pre-theoretical knowledge of the social world.'[257] Thus, crucially, the tensions between different ethical or social perspectives are 'not resolved theoretically by the critic' but 'practically in ongoing and reflective practices such as democracy.'[258] Bohman makes an important point here about the necessary focus of pragmatist critical theory on praxis that is 'ongoing' and that does not seek for a final—or indeed pre-emptive—resolution of ethical difference beyond the bounds of discourse and of democratic relationships. This is a commitment to which Forst also subscribes, but whereas Forst's theory rests upon the normative power of the registration of pre-cultural moral personality and its capacity to enforce recognition prior to the ethical meanings borne by language, Bohman's pragmatist methodology proffers a view of democratically achieved critical insight deriving

[253] Ibid., 100.
[254] Ibid., 100.
[255] James Bohman, 'Participants, Observers and Critics', in *Pluralism and the Pragmatic Turn: The Transformation of Critical Theory, Essays in Honor of Thomas McCarthy*, ed. William Rehg and James Bohman (Cambridge, MA: MIT Press, 2001), 87–113, 89.
[256] Ibid., 90.
[257] Ibid., 90.
[258] Ibid., 90.

not from the practices and habits enacted between subjects enmeshed within relationships of hermeneutical engagement.

The marginalisation of hermeneutical understanding apparent in the forms of agency prioritised by Forst matters for those concerned with the distinctly 'critical' objectives of disclosure and the renewal of values, primarily because the act of critical interpretation is a political one that re-situates subjects within an interchange that bears with it the possibility of changed perception and political transformation. Thus, Bohman emphasises that 'interpreting is not merely describing something…but establishes commitments and entitlements between the interpreter and the one interpreted.'[259] Hermeneutical engagement as an exercise of applied practical reason, like Forst's conception of moral recognition, establishes responsibility; but it does so differently, within a relational context embedded within social detail. Referring again to Bohman: 'to offer an interpretation is…to establish the terms of a social relationship.'[260] The key emphasis here, to draw out Bohman's meaning relative to my line of critique, is that the hermeneutical relationship is *social* in contrast to the autonomous and pre-social meeting of moral personalities that Forst envisages. Citizens in hermeneutical deliberation establish not merely a formal relationship as purely 'civic' actors, but a social interconnection that acts as the basis for critical mutuality.

Ss. 6. *Practical subjectivity*

Frameworks, normative and constitutional, shape agency by entrenching models of 'practical' subjectivity aligned with the conceptual structures, and moral-psychological assumptions, they specify. In the case of Forst's schematisation of the relationship between formalist morality, ethical life and constitutional settlement, his admission of normative complexity gives way to the more formal mode of practical subjectivity demanded by the 'basic insight' into the right to justification. The Kantian project of normative and constitutional integration is to induct citizens into a form of moral freedom protected by the state, which, in Kant's formulation, though non-democratic, will be governed according to republican principles. In other words, it will be governed according to the ideal of a free people engaged in self-legislation, even where

[259] Ibid., 94.
[260] Ibid., 94.

this is not practically the case (in monarchical regimes).[261] In neo-Kantian re-formulations, as in Habermas' and Forst's work, democratic deliberative authorisation becomes a crucial fount of legitimacy for the positive law developed and enacted by the constitutionally founded state; but, the project of inducting citizens into a practical subjectivity tied to the ideal of moral freedom remains fixed. Yet the relationship between certain articulations of this ideal and the practical subjectivity they imply is a matter of contestation. Critiquing the intellectual architecture of neo-Kantianism, Axel Honneth reprises the assessment of John Dewey that 'Kantian dualisms have left deep and long-lasting traces in the social lifeworld and have become real in the form of social disturbances and pathologies.'[262] While it may not amount to a diagnosis of pathology, an examination of the forms of agency prioritised by the Forstian continuation of neo-Kantianism is important, as it enables us to gauge whether the imprint of 'autonomous' morality is as light as Forst claims.

What are the prevalent forms of agency that follow from Forst's 'pluralistic' account of the normative, and from his indexing of the 'normatively complex' society to the 'basic insight' of autonomous morality? I have earlier suggested that like Habermas' social theory, Forst's theorisation of normativity attempts to perform a balancing operation by holding together an inter-subjectively resourced Kantian normativity with the identities developed in the social world. I will now highlight the manner in which Forst's normative scheme, despite its incorporation of a more ethnographically receptive view of ethical discourse, enshrines an overly narrow view of practical subjectivity (and the practice of democratic citizenship) as rule-bound agency. I argue that Forst's view of practical subjectivity derives primarily from the formalist theory of the normative that he establishes, rather than from the practical dilemmas that arise when developing solidarities through the mobilisation of historically contingent ideals. As such, the synthesis developed by Forst, which on his terms gives rise to a conception of the 'complex self', tends towards the prioritisation of formalist rather than hermeneutical modes of practical reasoning.

The first constituent virtue of the practical subjectivity introduced by Forst is the reflective capacity for self-relativisation. We saw earlier that Forst establishes the practical priority of different 'contexts of justification', to which the practice of self-relativisation

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[261] "An Answer to the Question: What is Enlightenment?" in Kant, Immanuel, Jeremy Waldron, Michael Doyle, and Allen Wood. *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*, ed. Pauline Kleingeld, trans David L. (New Haven: Yale University Press, 2006).
[262] Axel Honneth, *Freedom's Right: The Social Foundations of Democratic Life* (Cambridge, UK: Polity Press, 2014), 323.

responds in its tailoring of ethical self-expression to the discursive threshold requirements set by each context. Forst suggests that the requirements of public justification across these various contexts, ethical and moral, demand the practice of self-relativisation without enshrining a thoroughgoing ethical relativism (where self-relativisation implies the reflective displacement of the ethically constituted self and its temporary marginalisation in light of justificatory requirements). Such self-relativisation involves recognising the different criteria for justificatory validity that inhere in distinct contexts of justification. In other words, it demands responsiveness to discern the nature of the discursive context in relation to a moral justificatory ideal, and then to show consideration to one's interlocutors on this basis. Offering such consideration entails the degree of self-relativisation brought about by refraining from the assertion of one's ethical beliefs or truth claims irrespective of context or deliberative theme. More specifically, it follows from a capacity to discern the nature of the discourse being developed in any given context, along with the form of validity required by the practical principles of 'generality' and 'reciprocity'. Hence, where a citizen engages an interlocutor of a different ethical or religious background, they are to give reasons that avoid reference to ethical tradition, to their background 'lifeworld', to use a Habermasian term. Yet this voluntary self-limitation of ethical claims to truth or to universally applicable conceptions of the good does not, Forst insists, rupture the reflective and discursive continuity between the ethical and the moral, unsettling an individual's normative identity; it rather introduces a set of syntactical discursive rules into the field of ethical reasoning, which make clear the normative priority of moral consideration over the assertion of one's ethical particularity. Self-relativisation, occurs, therefore, not through encounter with the ethical detail of another's identity but with reference to an autonomous moral reference point.

Just as his normative theory attempts to hold in balance the demands of moral justification and ethical life, so Forst's theory of "practical" self-relativisation aims to cultivate a 'complex self whose identity is constituted in the *tension* between different normative poles.'[263] Normative complexity, suggests Forst, demands a conception of the self as complex – as balancing various commitments and the normative personalities to which they give rise. For example, one might be a practicing Hindu, a citizen, a member of a guild and a committed humanist, negotiating between these different registers of ethical and practical identity. Indeed, Forst emphasises that within his dualistic justificatory structure the 'self-understanding of persons remains complex', their consciousness being marked by 'internal conflicts' between

[263] Forst, *Toleration in Conflict,* 513.

ethical-religious values and moral duties.[264] The Forstian citizen is at once embedded within and between various normative sources, navigating between their different claims and imperatives as a self-reflexive and practically perceptive agent. As a statement of sociological description this is perceptive, capturing the manner in which the individual citizen of a complex, ethically pluralist society is stationed betwixt and between a wide array of identities, historical narratives and contingent discursive arrangements (such as the intersection of Islamic jurisprudential discourse with migrant identity and the communal memory of French colonialism referred to by Fernando).[265] The theoretical vision of complex selfhood prefigures at the individual level the wider normative synthesis attempted by Forst between context-dependence and transcendence. Thus, Forst states that within his proposed normative framework 'a personal identity evolves which always remains tension-laden while, as an autonomous identity, remaining aware of the different contexts of justification in which it is situated.'[266] In construing 'practical subjectivity' as an orientation towards normative tension-dwelling, Forst attempts to retain a version of practical reason as a fundamentally reflexive, critical capacity, that balances the different contexts of justification by acknowledging the different validity requirements that apply in each.

The difficulty here is that this prioritises a discernment of form over what Bohman calls the 'cognitive act typical of social criticism', which is 'the joining and crossing of social perspectives'.[267] Contra Habermas, on the Forstian view of justification the twin criteria of generality and reciprocity allow for judgments to be formed about the justifiability of normative claims *even in cases of disagreement*.[268] Where, for example, citizens disagree while deliberating from different ethical viewpoints, the disagreement will presumably be resolved by a comparative assessment of the justifications offered by each citizen, not with a view to making substantive judgments but with a view towards discerning the form of reasoning employed. Thus, for Forst, reasons rendered within the public domain 'need not be universally *shared* but they must be universally *shareable*', their 'shareability' being decided according to the criteria of generality and reciprocity. Crucially, then, in developing reasons that are valid on the moral plane, and so in public deliberation on generally binding decisions, 'one must subordinate one's view of what is true to the normative priority of the other, to his right to

[264] Ibid., 497.
[265] See Mayanthi L. Fernando, *Republic Unsettled* (Durham: Duke University Press, 2014).
[266] Forst, *Toleration in Conflict*, 513.
[267] Bohman, 'Participants, Observers and Critics', 91.
[268] Forst, *Toleration in Conflict*, 453.

justification.'[269] One's thick ethical conception of truth gives way to the normative urgency of the "face to face", where this morally generative encounter occurs between persons as members of a 'community embracing all human beings.'[270] In this sense the public-political domain comes to be synonymous with the moral domain – it is the deliberative space in which the 'moral' personality is engaged and 'general' reasons obtain.

The emphasis upon a moral commitment to rational non-rejectability brings with it a focus, familiar from Habermas, on the validity generating form or pattern taken by justificatory reasoning, which establishes the deliberative practice of subsuming particulars beneath overarching regulatory codes, or de-transcendentalised Kantian rules. Under the framework established by Forst the fundamental cognition made by the practically rational citizen is arguably less the 'joining and crossing' of perspectives, which would be at heart a hermeneutical exercise, than the act of continually 're-cognising' oneself as 'a human being among human beings that are on an equal moral footing.'[271] This cognitive movement distinguishes itself from a more pragmatic focus on the 'ongoing' and insoluble – the hermeneutical engagement that "re-weaves" democratic relationship (to use Allen's metaphor). Forst's practically reflective citizen moves cognitively from the encounter with ethical alterity to the exercise of autonomous reason, as per the critic's levelling of 'theory' at social detail. Yet this exercise of autonomous reason is not to be read as straightforwardly aligned with the Kantian view of pure practical reason as operative a priori. Forst, in discussing the form of 'moral insight' possessed by the practically rational citizen, asserts the divergence of his conception from the Kantian "fact of reason" with its view of the moral law as 'synthetic a priori proposition of pure practical reason.'[272] Instead, Forst understands his own conception to take 'an intersubjective turn' that points neither to the 'claim of reason', nor to a 'claim of the good', but to 'a claim of others, to whom one is morally responsible.'[273] Thus the practically rational agent's recognition of the 'categorically valid' demand of justification in moral contexts enacts, on Forst's view, a de-centering of the normative subject prompted by the 'basic insight' into the moral import of inter-subjectivity.

Ss. 7. *Tolerance as a practical virtue*

[269] Ibid., 455.
[270] Forst, *The Right to Justification*, 77.
[271] Forst, 2014, 37.
[272] Ibid., 36.
[273] Ibid., 36.

Tolerance is the reflective practice that Forst takes to be most essential to sustaining deliberation in contexts of normative complexity, its exercise presupposing 'knowledge of the complexity of the normative world as a world *between* individuals and (in different degrees) also *within* the individual.'[274] Characterised thus, tolerance appears to be the political expression of the finitude of reason and of practical insight into the nature of subjectivity amidst value pluralism. In light of this, 'tolerance proves to be a virtue of practical reason.'[275] The contours of the Forstian conceptualisation of tolerance are decided by the overarching principle of justification – the 'decisive point', he writes, is that the limits of toleration are defined 'not on the basis of a competing ethical-metaphysical teaching', but by the principle of justification which, for Forst, is 'unavoidable' for 'reasonable and responsible persons.'[276] These reasonable and responsible persons are presumably those who exercise practical reason so as to fulfil the duty of justification. This, argues Forst, is 'the essential meaning of an autonomous justification of toleration for autonomous persons.'[277] The tolerant person has a 'single practical identity, though a complex and differentiated one', the integrity of which 'is a product of coherent behaviour in different contexts of justification' in which he or she will be capable of discerning reasons appropriate to a particular justificatory context.[278] This unified practical identity is made 'tension-laden' in its incorporation of complexity and differentiation along with behavioural coherence. Operationalised, however, tolerance discourse reinforces a series of static dichotomies that, while deployed as heuristic devices, reduce and discursively control the material of ethical traditions. Within this discourse, Forst's complex and differentiated practical identity is placed under enormous pressure, the demand for behavioural coherence pushing the 'tension-laden' self toward a more single-tracked justificatory identity. The Forstian view of tolerance as a component virtue of practical reason diverges widely from the assessment of toleration made by Wendy Brown, who sounds a powerful cautionary note to Forst's establishment of 'tolerance' as the signature disposition of the 'practically rational' agent. Brown's critique gives cause for re-examination of the role of tolerance in Forst's theory, with a view to assessing whether a conception of tolerance as tied intimately to moral perception avoids operating as a mechanism of coercive—rather than reflexive—self-

[274] Ibid., 514.
[275] Ibid., 514.
[276] Ibid., 501.
[277] Ibid., 501.
[278] Ibid., 501.

relativisation. Brown analyses toleration along pronouncedly Foucauldian lines, as a discourse of power and engages in criticism of the ways in which it interacts with ideological systems, including late-capitalism and post-modernity. On this account toleration operates to codify and to exclude—particularly where religion is concerned—drawing discussion around religion and ethical difference into the wider discourses of liberal democratic "crisis" and the politics of state neutrality. While tolerance is celebrated contemporaneously as a beacon of multiculturalism and theorised as the liberal civic virtue par excellence, it has operated historically, on Brown's reading, as 'a code word for mannered racialism'.[279] This is not the key point of divergence between Forst and Brown; indeed, Forst's rich historical discussion acknowledges the complex operation of tolerance discourse within prior legal instantiations of toleration, such as the 'permission conception' articulated by the 1598 Edict of Nantes, which established the French Calvinist community as "tolerated" within Catholic France. Despite this historical alertness however, there is a notable divergence between Brown and Forst in their relative openness to the contemporary deployment of tolerance in answer to the "problem of difference." Whereas Forst makes tolerance central to the practical subjectivity of citizens operating within normatively complex societies, Brown retains a stronger appreciation for the way in which contemporary tolerance discourse intersects problematically with the 'governmentality' of the secular state. 'Tolerance', she suggests, operates to codify and settle the boundaries of 'the religious' and of the 'secular', with the latter being defined by a supposedly rational, ethically non-substantive, or at least neutral, character. Hence tolerance operates to 'reinscribe' the disempowerment of the marginalised by 'opposing their difference to the normal, the secular, or the neutral.'[280] The principle of tolerance contributes to what Brown labels the contemporary 'culturization of politics', which marks out supposedly non-liberal political life as 'culture' and, in a parallel move, disassociates liberal democratic institutions from 'the cultural domain'.[281] The effect of this dual movement is to confer the authority of ethical neutrality upon liberal institutions and to codify 'culture' as a non-political sphere to be regulated. Indeed, as Brown points out, where 'tolerance' is invoked as a liberal democratic principle with reference to a 'cultural domain' distinct from the political space of liberal democratic institutions, it 'essentializes identities,'—ethnic, sexual, ethical or

[279] Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire.* (Princeton: Princeton University Press, 2006), 1.
[280] Ibid., 45.
[281] Ibid., 23.

religious—so producing 'the problem of difference within contemporary liberalism.'[282]

There is no doubt that Forst makes a serious effort to avoid the essentialisation of identity through his theory of normative complexity. Yet the rubric of 'toleration' arguably operates to reinforce a dichotomous opposition of the 'comprehensive' and the 'practically rational' in Forst's theory. This is a culturally particular dichotomy in its own right, which, as noted above, follows in a philosophical tradition Forst sets out to criticise. Yet, Forst's association of tolerance with the flowering of one's practical rationality and moral perception draws close to denying the potential for "thick" ethical perspectives to develop their own normative subjectivities oriented toward the recognition and justification of moral equality; one is either practically rational, and consequently tolerant, or ethically 'comprehensive' and so lacking in self-reflexivity and moral perception. Forst might well retort that his notion of 'practical subjectivity' makes this opposition redundant, as one can be ethically committed and tolerant at the same time. But this still allows for a situation in which an unimpeachable framework of justification sets epistemological, deliberative and normative boundaries that demarcate the terrain of 'rationality' and 'reasonableness'. In Forst's theory, the dispositions of 'reflexivity' and its antithesis 'comprehensiveness' are drawn out by the delineating mechanism of moral justification, being displayed through one's capacity to recognise and willingness to uphold the justificatory rights of one's interlocutors. In this sense, Forstian tolerance appears to fulfil Brown's expectations, expressed in the observation that 'tolerance not only produces, organises and marks subjects, it also delineates a purview and the availability of alternatives to tolerance.'[283] Tolerance discourse juxtaposes the 'tolerant' with the 'intolerant' and the reflexive with the strident, readily resourcing the deliberative and normative exclusion Forst explicitly seeks to avoid. Where tolerance represents a discourse that codifies subjects based on their capacities for 'practical' discernment and their responsiveness to 'moral' deliberative requirements, its role in sustaining a 'tension-laden' identity becomes questionable. Arguably, Forst's use of tolerance as a bridge between social complexity and moral universality in fact subverts the unified practical identity he claims to develop and reduces the 'complexity of the normative world' by making practical subjectivity a vehicle for the sustainment of normative governmentality. In a formal sense Forst may avoid the theoretically split subjectivity imposed by Rawlsian theories of conversational restraint[284]

[282] Ibid. 23.
[283] Ibid., 23.
[284] Such as Ackerman's, for example; see Bruce Ackerman, "Constitutional Politics/Constitutional Law," *Yale L.J* 99 (1989).

upon begrudging citizens: the practical rationality embedded within normative subjectivity ensures *willing* compliance (to the applause of Habermas) with the demands of justification. But Forst's conceptual interweaving of practical rationality and tolerance with the rubric of autonomous morality nevertheless situates citizens within a discursively bifurcated space in which their political and practical subjectivities are re-oriented and made 'reasonable' (lest they be negatively categorised as morally imperceptive agents).

Forst's normative framework represents a theoretical resolution of the "problem of difference," with this resolution being upheld in practice by a conception of tolerance that depends upon the critical agency of subjects "more fully rational" than others, so confirming Brown's assertion that 'tolerance is premised upon and pertains to difference'.[285] In relation to ethical difference tolerance discourse differs from the logic of liberal neutrality, which prompts citizens to public semantic uniformity as a means of managing "private" plurality. Rather, as Olson observes, Forst's tolerance conception may well establish 'a seemingly neutral domain of politics that is differentiated along pre-existing lines of group privilege.'[286] In this context, Forst's moral rubric, his insistence on the universal capacity to perceive oneself as bound to the other in vulnerable commonality, operates politically to deny the kind of mutuality developed in the midst of linguistic complexity, hermeneutical dialogue and political action – the mutuality to which a politics of 'reweaving' strives. Rather than producing the complex 'tension-laden' self that Forst advertises, such a context, in Brown's words, abandons 'the project of connection across differences', let alone the enterprise of forging mutuality out of the resources offered by ethical difference.[287]

The account of toleration articulated by Forst acknowledges the importance of ordering discourses remaining reflexive in relation to their own expression of power; he demonstrates alertness to the historically sedimented power relations between different groups within a 'common political culture,' including those to whom dominant ideological strains, such as public laïcité, for example, might prove favourable or easy to bear. Thus, as well as valorising tolerance as a practical virtue, he emphasises the importance of 'critiques that show how dominant political discourse excludes and distorts the perspectives and claims of certain groups.'[288] Public discourse, says Forst, should also play the 'important role of exposing and

[285] Brown, 2008, 36.
[286] Olson, 2015, 99.
[287] Brown, 2008, 88-89.
[288] Forst, *The Right to Justification,* 181.

criticizing social power relations.'[289] He seems less alert, however, to the possibility that deliberation framed by a formalist conception of moral justification can itself encode a normative hierarchy that pre-emptively situates ethical traditions according to their relative proximity to or distance from the 'moral' justificatory ideal. The practical consequences of this may also be the narrowing of deliberative disclosure and the possibility of a more capacious practical exchange – one involving a more pronounced hermeneutical dimension capable of drawing out ethical multi-valence, discerning internal contestation, and unveiling the complex normative subjectivities that inhabit ethical traditions.

Ss. 8. ***Socially embedded critique***

To restate: the dilemma raised by social and normative complexity is, for Forst, like Habermas, that of how to bring about the 'normative integration' of society as a whole, along lines that ensure normative constancy across the diverse ethical perspectives that reside there. This stands in contrast with a more openly, less normatively unified, account of political action in liberal-democratic contexts, aimed at establishing shared bases for common action, or what Danielle Allen calls 'wholeness' where an ethically uniform 'oneness' is impossible without ethnocentric coercion. In her theoretical treatment of citizenship and democratic deliberation Allen examines "oneness" as a historically powerful metaphor aimed at making the notion of the democratic "people" imaginatively conceivable. For citizens who are convinced that politics is the project of a "people" who are the authors of the laws to which they adhere, the ideal of "oneness" supplies a way of describing a citizen's solidaristic relationship to the 'invisible whole'.[290] However, as Allen discusses at length, the metaphor of "oneness" falls short of recognising the 'radically different versions of democratic life' open to members of the same democratic political community; depending on ethical perspective (and the relationship this establishes with public ethics) and on relative socio-political empowerment, citizens develop different 'etiquettes of citizenship', the underlying spirit of which may be dominance or submission.[291] Moreover, 'oneness', in prioritizing a unitary view of citizenship as assimilation, which by narrowing our view of the practices that constitute civic agency, narrows the range of identities that may be expressed *through* citizenship, has historically

[289] Forst, 181.
[290] Danielle S. Allen, *Talking to Strangers Anxieties of Citizenship since Brown v. Board of Education* (Chicago: University of Chicago Press, 2004), 17.
[291] Ibid., 13.

'produced invisibility', failing to enable '*explicit acknowledgement'* [italics mine] of 'difference, exclusion and domination.'[292] With this in mind, Allen suggests that, in place of the unitary vision of 'oneness', the practice of citizenship should derive from a metaphor of 'wholeness'. With its connotations of 'knitting' and 'reweaving' diverse threads into a non-exclusionary social fabric, 'wholeness' is more attuned than 'oneness' to the reality of ethical diversity and political disempowerment; it suggests democratic habits that militate against relations of coercive homogenisation and discursive domination, and that prioritise practices of 'explicit acknowledgement'.[293] Differently from Forst, Allen's 'wholeness' rests upon ethical sources immanent to social practice, which demand hermeneutical sensitivity to the particular experiences that shape politically expressed, morally salient, experiences of one's consociates. As Allen puts it, 'the metaphor of wholeness can guide us into a conversation about how to develop habits of citizenship that can help a democracy bring trustful coherence out of division without erasing or suppressing difference.'[294]

As noted above, like Habermas, Forst's account of normative and social integration is intimately bound up with preserving an unconditional validity that may act as the basis for critique of forms of life. On this basis, morality requires a model of practical reason that centres on the subject's capacity to acknowledge the moral personality of their consociate and to observe the categorical demands that this then makes upon them. We might contrast this with Allen's conception of political agency oriented towards forging 'wholeness' through a process that facilitates 'citizenly practices' which develop and renew solidarities out of 'the mutual exchanges and appropriations that have already occurred among different groups and that will always keep occurring.'[295] Allen refers to such practices as 'reweaving', which entails attention to the particular speech, identity and memory of one's consociates, so that their claims to participation and their specific experiences of citizenship—marginalised, or otherwise—may be foregrounded and recognised.

'Reweaving' implies the critical renegotiation of social and civic practices through immanent encounter with alternative ethical perspectives, while Forst's discursive reconstructivism instigates critique by orienting language toward an 'autonomous' moral form and a semantically generalised register. Allen's account of the civil rights movement's contestation of a violently oppressive and racist American public culture suggests that

[292] Ibid., 19.
[293] Ibid., 24.
[294] Ibid., 20.
[295] Ibid., 20.

'reweaving' occurred not through an institutionally reinforced demand for justification, but through the 'reweaving' of local racial and political prejudices with the eschatological language of Martin Luther King Jr—the view from the heights towards divinely inspirited freedom—and the re-statement of this eschatology through the peaceful protest of black citizens or through communicative acts as apparently simple as the symbolically laden clothes they wore.[296] Allen thus draws a portrait of politically enacted critique that remained within, and drew upon the polyvalent ethical resources of, a disparate group of political allies. Bringing 'wholeness' into nascent being—and with it the socially just recognition of co-citizens as moral equals irrespective of race—required ethically resonant testimony that spoke to particularity so as to effect a transformation of perspective. The eschatological vision of this transformed perspective presumably amounted to something like what Forst calls the 'shared sense of justice' that 'tells citizens what they owe to one another on moral grounds as members of their shared basic social structure.'[297] Yet as Allen's discussion makes clear in the case of the civil rights struggle, what renewal of perspective was achieved was propelled not by a pre-existing 'supportive culture' of moral respect, but by the dialectical and agonistic re-weaving of ethical commitments until something like 'wholeness' became imaginable. Moreover, the subsequent history of racial injustice in America suggests that whatever 'supportive culture' of moral respect may be established, it must also be discursively re-established through a politics that continues to marshal the ethical resources of those implicated. Thus, we can see one way in which critique and the transformation that stems from it may depend upon ethically embedded language and practices that 'reweave' the details of a particular socio-political configuration to establish the possibility of transformation.

Ethically embedded hermeneutical agency equally has an important disclosive function that supports ethical renewal and social transformation. Allen's proposed practice of 're-weaving', oriented as it is towards 'explicit acknowledgement' of the ethical and experiential specificity of one's consociates, works against what Mayanthi Fernando calls the 'semiotic collapses' of identity effected by a discourse of 'oneness' upon ethical identities that reside under the aegis of secular citizenship. In a vein that resists the characterisation of pluralism as a simple contest of doctrines to be contained by the mediational agency of secular law, sociologists like Fernando have brought into view the complex struggles of vulnerable citizens to contest structural injustice and to assert identities that conjoin, in this case, public (French),

[296] See Allen, *Talking to Strangers*.
[297] Forst, *Right to Justification*, 179.

social (North African immigrant) and religious (Muslim) dimensions.[298] Fernando's sociological work presents the multiple angles at which religious and ethical tradition ties in to different dimensions of identity. Thinking in Ahmed's terms, of ethical or religious traditions as hermeneutical *processes*, rather than analytical objects, presents a challenge to unitary analytical categories or dichotomies that frequently underwrite assessments made of from 'the world of rational-legal universalism'. 'Christianity', 'Islam', 'Religion', 'religious minority' along with the counter-category of 'the secular' all represent complex discursive formations that demand a form of practical reason less overwhelmed by the formally derived imperative of rational justification.

Religious or ethical traditions, as scholars like Fernando and Shahab Ahmed make clear, do not present merely a set of metaphysical beliefs and doctrinal commitments, but a 'complex' within which one can identify points of hermeneutical and practical contradiction. Within Islamic discourse, for example, there are a vast variety of interpretive sub-traditions across what Ahmed calls the 'Balkans-to-Bengal complex', which are protean and multi-form.[299] Indeed, Ahmed points to religious tradition's interaction with geography, politics and culture, denying it the status of a historically independent variable unshaped by ethnographic particularities. This is not to suggest that religious discourse merely reflects an all-encompassing materiality or is a secondary expression of "essential" power dynamics. It is, rather, to suggest that the multivalent nature of religious discourse demands that we shed the habit of 'orthodoxising' religious or ethical traditions through the heuristic of the 'comprehensive doctrine' and acknowledge that religious discourse includes a complex relationality through which a subject 'orients and constitutes his or her self in and by an environment full of other things.'[300] These constitutive 'things' include interpretive or literary traditions, sacred texts and 'the accumulated lexicon of means and meanings' that arrange the semiotic 'space' of Islam.[301] Out of this multivalent ethical complex, religious tradition situates citizens politically and positions them in a posture of negotiation astride the intersecting territories of ethical discourse and political participation. This posture of hermeneutical balancing itself becomes central to religious identity, as encounter with the political introduces new forms of contestation and reformation 'internal' to the religious traditions in question. The

[298] See Fernando, *Republic Unsettled.*
[299] Ahmed, *What is Islam: The Importance of Being Islamic* (Princeton: Princeton University Press, 2016), 366.
[300] Ibid., 325.
[301] Ibid., 357.

point that both Fernando's and Ahmed's work draws out here, is that religious or ethical tradition, in its imbrication with various kinds of political and social experience, rupture and memory, problematises the very notion of 'discourse': to what do we refer when we use the term 'discourse'? What does it include? If discourse is marked first and foremost by a relationality of diverse elements that produces contradiction alongside some degree of unity, then the challenge of intelligibility is heightened for the consociate who is an ethical stranger, as is the temptation to revert to orthodoxising habits of mind of the sort encouraged by the language of 'comprehensive doctrine'.

Such habits of mind undercut one of the key political pursuits of critical democratic deliberation seen from a pragmatist perspective, which is to stimulate and re-direct social life toward more equitable relations amidst ethical difference, negotiating a complex recognition of alterity that resists dichotomous interpretive structures, along with the semiotic collapses and disempowerments they effect. The key term here is "negotiation", which I use to refer to those acts of hermeneutical engagement, novel expression, learning and perception that together constitute the social act of reweaving. As Rowan Williams suggests, 'to speak at all about action as open to critique, to understanding and misunderstanding…is at least to raise the question of what is "seen" in respect of the environment, especially the human environment.'[302] To engage in critique depends upon renewed perception, which, on Williams' view, is drawn out of the hermeneutical act of understanding. To perceive or 'see' the human environment is to be drawn into sensitivity to its multivalence and to the interplay of diverse sources, a task made all the more complex by the disunity of religious discourses, their varied interactions with the political and their ambiguous relationship to the category of "culture" and to the political.

'Seeing' the 'human environment' is partly to do with appreciating this ambiguity and, practically, with seeking out a trans-perspectival location—akin to the Gadamerian 'fusion of horizons'—that brings the ambiguity and provisionality of discourse into our interpretive range. Unveiling and negotiating the aforementioned discursive relationships is a vital step along the road to what critical theory terms 'disclosure'; if 'seeing' is brought about by understanding, then critique depends upon the hermeneutically driven disclosure of ethical multivalence and discursive provisionality. Thus, for example, where religious tradition's association with "culture" is conceptually fraught, and socially and semiotically complex, it

[302] Rowan Willams, "Between Politics and Metaphysics: Reflections in the Wake of Gillian Rose," *Modern Theology,*11, no. 1, 1995: 7.

demands a hermeneutically sensitive rather than heuristically reductive treatment. As Ahmed points out, a theoretically convenient, though misguided, approach is to locate multiplicity and difference in *culture* and unity and conformity in *religious tradition* – in this case Islam.[303] Such an oppositional construction produces an orientalist, and by extension ethnocentric, heuristic that resists the possible coexistence of polyvocality, cosmopolitanism and creativeness within the 'comprehensive doctrine' of "Islam".[304] Applying this conceptual framework, we come to treating discourse that defies confinement to singular concepts with 'orthodoxising' habits of mind, which in turn lead to the theoretical construction of dichotomous oppositions between reason/unreason, secular/nonsecular, dynamic/static liberal/authoritarian, tolerant/intolerant, global/parochial.[305] These heuristic devices are, as Ahmed's portrait of the meta-discourse of Islam makes clear, powerfully distortive and ethnocentric. One side of each of these dichotomies (the tolerant, secular and global) is taken to rest upon an epistemological superiority and a more finely tuned rationality, with the other side (the non-secular, the intolerant, the local) cast as suffering from a certain kind of myopia, to be lifted by the orchestration of secular authority. This is a well-rehearsed critique of rationalistic enlightenment discourse: that it constructs categories and concepts out of which to build a narrative of progress, alongside foes to launch itself against. Predictably, such foes tend to be those communities and traditions taken to be running an epistemic deficit, sustaining rich interpretive and oral traditions but supposedly lacking the world-making technology of 'modern' social order. But the general point is that dichotomous conceptual arrangements operate to make static the features of each of the aforementioned dispositions or lenses, codifying, for example, what counts as 'unreason' and associating it closely with the parochial and the non-secular. Rather than taking the multi-valence and dynamism of religious or ethical discourse fully into account, along with the various historical nodes and current axes along which it encounters "the secular", such codification works to bring about a conceptual simplicity that is thoroughly "local" in its own right.

The insight central to the vision of ethically embedded critique - of 'seeing' and 'reweaving' - is that the critical project of unsettling unjust ethical and legal arrangements depends upon a practical facility for re-negotiating ethical discourse to support shared purposes, including ones that speak in terms of universality, such as the UDHR. Rather than

[303] Ahmed, *What is Islam?,* 238.
[304] Ibid., 238.
[305] Saba Mahmood, *Religious Difference in a Secular Age: A Minority Report (*Princeton: Princeton University Press, 2015), 210.

practical reason being indexed to a basic right that stands free of particular meanings, it serves to draw citizens into an engagement with the discursive details of their political life, to discern how those details may themselves offer fertile ground for enhanced mutuality and shared values. To make this suggestion is not to ignore the finitude of reason, nor is it to cultivate the kind of "doctrinal" controversy that ends the possibility of commonality. Rather, it is to suggest with Williams that there is a form of 'practical' politics that treats difference, and the injustices that follow with it, as 'an occasion for work.'[306]

Conclusion

In discussing Forst's theory of normative and constitutional integration I have been concerned to investigate practices and concepts that allow for the uncertain deliberative space in-between various ethical sources to be both critical and open to the development of commonality. In so doing, I have engaged Forst over the methodological dilemma of how critical democratic theory should operate between the divergent gravitational poles of normative universalism and context-specificity. My more particular aim has been to examine and critique the way in which Forst theorises practical reason, which plays an important role in his broader theory of justification. Forst's theory, I have argued, offers rich insight into the nature of normative complexity but responds inadequately to this insight by offering an attenuated theory of practical subjectivity, and within it practical reason, as a vehicle for 'moral' justification. In so narrowing his vision of 'the practical' to make it synonymous with the operation of justificatory reason, Forst ignores the disclosive and critical potential of a hermeneutically engaged practical subjectivity that operates within and between ethical discourses.

I argued in the previous chapter that, although he undoes the architecture of Kantian transcendentalism, Habermas' transposition of Kant's idealising anticipations from the 'objective' onto the social world preserves, at an immanent level, a range of analytical dichotomies. Similarly, as discussed in this chapter, while Forst speaks of developing a novel synthesis that sets to one side both the theory of 'overlapping consensus' and an overdependence upon 'substantielle sittlichkeit', his view of practical reason continues to rely upon the dichotomous categories that separate, at a sociological and historical level, 'modern' politics from ethical discourse. Thus, he follows openly in the Habermasian mould of dividing morality from 'ethical life'. This is not to say that Forst is inattentive to the discursive

[306] Williams, "Between Politics and Metaphysics," 55.

complexity of ethical horizons within political discourse; his discussion of 'normative complexity' defies any such assertion. Rather, it is to suggest that the normative scaffolding Forst erects around the concepts of justification and toleration is *practically* weak insofar as, in virtue of its formalism, it circumvents the depth and sustained presence of disagreements upon fundamental values, the dependence of formalist ideals upon their own specific genealogies, and the imbrication of moral argumentation with ethical meanings.

In the chapter that follows I will explore another theoretical response to the social complexity of value pluralism that, like Forst's, aims to form some bridge between ethical life and Kantian normativity, while attaching similar importance to an inter-subjectively focussed ideal of practical subjectivity: the 'multi-variate' theory of democracy advanced by Alessandro Ferrara. The reason for placing these two thinkers side-by-side in this way is to unveil their common deployment of formalism as a mediating mechanism between ethical life and moral universality. Ferrara's theory, like Forst's, works around the philosophical problem of universalism-contextualism, seeking to allow space for ethical particularity while retaining ground for cross-contextual normative constancy. I will argue, however, that in the context of value pluralism the challenge presented to critical theory is, as Taylor and Dreyfus indicate, not merely the identification of bases for a fundamental commonality (as per Forst's justificatory morality), but the points of dissonance, contradiction and inscrutability that define cultural traditions, ethical and religious. What citizens of a pluralistic polity face is not so much the spectre of total incomprehensibility or incommensurability as much as the 'jackals and the vultures of partial and…surmountable non-communication.'[307]

[307] Dreyfus and Taylor, *Retrieving Realism,* 112.

Chapter 3: Alessandro Ferrara and aesthetic reflective judgment

Introduction

In the preceding chapters this thesis identified and examined the resources and strategies developed by Habermas and Forst (one of Habermas' students) for the continuation of Kantian normative universalism amidst ethical plurality. I have argued that both Habermas' and Forst's theories follow the same strategy in deploying methodological formalism as a means, firstly, of de-transcendentalising reason and, secondly, of sustaining a theory of adjudication between ethical value articulations, which sacrifices what Zerilli calls 'a world-building practice of freedom' grounded upon negotiation of plural 'forms of life'. In the chapter that follows, I set out to examine a third such strategy, advanced by another of Habermas' students, Alessandro Ferrara, which similarly reflects the strategic and ideological commitments of the formalist strain in critical democratic theory. My initial aim in this chapter is to illustrate the manner in which Ferrara's theory cleaves closely to the formalist instincts of Habermasian modernism, prioritising the ideal of 'form' as independent of substantive content that requires hermeneutical engagement. My additional aim is to continue to highlight the dependence of normative integration, and of inter-ethical negotiation, upon a hermeneutical dimension that is disclosive as well as world-building.

We are, on Alessandro Ferrara's view, responding—both in political theory and as citizens—to the epistemologically challenging experience of 'multiple modernities', which prompts us towards a 'condition of further stepped-up reflexivity' because we are 'beyond the modern horizon'.[308] We find ourselves in a condition of intensified ethical pluralism—or 'hyper-pluralism'—in light of which the conceptual inadequacy of straightforward oppositions between immanence and transcendence, ethical and moral, or religious and secular is made clear. The demarcations set out by these dichotomies do not sustain a reflexive alertness to their historical construction in service of particular political ends. And there are political consequences too, insofar as these constructions frame our perception of political and ethical subjectivity; working across these dichotomous constructions arguably reduces our perception of the movements made across and between such categories by the kind of normatively

[308] Alessandro Ferrara, *The Democratic Horizon: Hyperpluralism and the Renewal of Political Liberalism* (Cambridge, UK: Cambridge University Press, 2014). 124.

complex subjects that inhabit the hyper-pluralist polity. As discussed in the previous chapter, the first two of these dichotomies are subject to criticism by Forst who seeks, as an alternative, to theorise a complex inter-*relation* between immanence and transcendence so as to avoid the Scylla of relativism and the Charybdis of foundationalism. Similarly, Ferrara seeks a new relationship between social detail and context-transcending normativity in response not only to important concerns about the ethnocentrism of key ideals that constitute Rawlsian political liberalism, but also to developing social phenomena: the contemporary transformation of ethical traditions, their interaction in modern mass society, and their alienation from each other and from the deliberative process.[309]

My argument in the following chapter is that Ferrara's theory prioritises a formal commonality that diminishes the hermeneutical dimension of cross-contextual dialogue, particularly as a result of its orientation towards discerning ethical 'self-congruence'. This, I argue, evinces several important weaknesses: firstly, it assumes that ethical traditions or paradigms are marked fundamentally by an instinct towards congruence and self-demarcation, rather than by contradiction and discontinuity. Secondly, it suggests that practical wisdom and aesthetic judgment, when conjoined, are able to underwrite a citizen's perception of a particular tradition or 'ethical paradigm' meeting its own hermeneutical potential (or, by implication, falling away from this). This narrows the role of practical reconstruction between ethically diverse citizens by anchoring commonality at the level of aesthetic form, rather than upon the commonality extracted out of ethical sources by means of interpretive interchange. Thirdly, although Ferrara is concerned to establish grounds for critique that are free from unconstrained and unregulated political agonism or from the temptation toward hegemonic moralisation, his theory, like Habermas', places de-contextualised, formalistic, aesthetic values that carry potentially exclusive and reductive practical implications when applied to the social world and its ethical 'forms of life'. Ferrara's overall aim is to develop a basis for deliberative convergence from different ethical or religious standpoints.

I begin this chapter **(i)** by examining Ferrara's theory of 'authentic subjectivity', so as to illuminate his consequent theories of aesthetic and practical judgment.[310] I illustrate the manner in which Ferrara's theory—and the place it accords to authenticity—is framed within the "project of modernity" as well as being a response to inter-subjectivist theories of the sort

[309] Ferrara, *The Democratic Horizon*, 124.
[310] See Ferrara, "Authenticity as a Normative Category," *Philosophy & Social Criticism*, *23*, no. 3, 1997, 77–92.

advanced by Forst. The chapter then proceeds to discuss what Ferrara calls the 'methodological consequences' of this authenticity thesis, which primarily take the form of two concepts of judgment—aesthetic and practical—to be applied within contexts of ethical pluralism. In the second section **(ii)** I argue that aesthetic judgment as developed by Ferrara functions to discern a "commonality of form", but downplays the interdependence between form and the particular meanings it bears, thus underestimating the hermeneutical effort required to interpret the meanings proposed by the work of art and the knowledge it espouses. The third section **(iii)** then assesses Ferrara's closely related conceptualisation of 'practical judgment' as 'post-metaphysical phronesis', which, I argue, operates to marginalise a view of political practice as an effort towards world-disclosure and world-formation, rather orienting citizens' practical faculties toward the discernment of an aesthetically formal commonality. Ferrara's version of phronesis as the competence to make judgments upon immediately 'better or worse' deliberative options follows Forst in stripping practical deliberation of the kind of hermeneutical role that situates citizens in socially embedded, hermeneutically active relationships. I conclude **(iv)** by considering the consequences of these three concepts for Ferrara's design of the 'multi-variate polity' and for the deliberative practices that it accommodates. Finally, I develop this argument as a means also of highlighting the continuity between Ferrara's concern with aesthetic form (presented with the concerns of aesthetic modernism in play) and Habermas' own interest in the separation of 'form' from "non-rational" meanings. I set out to demonstrate Ferrara's adherence to a strategy broadly similar to Habermas', and his convergence with Habermas and Forst confluence as a theorist working to forge normative integration that is authorised and validated by 'formal' aesthetic ideals.

Ss. 1. *Situating Ferrara's theory: forging inclusive convergence*

Ferrara's project is explicitly concerned with revitalising political liberalism so as to overcome several key problems with the deliberative threshold requirements it imposes. First among these is the requirement of public reason, which broadly stipulates that citizens deliberate within the framework of conversational restraint, withholding or translating their 'thick' ethical reasons to offer reasons comprehensible and valid for all. Rawlsian public reason has of course been subjected to a vast array of criticism, with several key points of contestation drawing a great volume of theoretical commentary: namely, the asymmetrical translation burden public reason imposes upon religious citizens, its tenuous assumption that public reason is indeed equally accessible to all, and, following Chantal Mouffe, its 'moralising' demarcation of the

reasonable and the unreasonable.[311] Moreover, Ferrara joins Forst in viewing public reason and the attendant concept of overlapping consensus, as unable to offer sufficiently resilient shared premises across profound ethical difference.

With Forst, Ferrara embarks upon the project of re-configuring political liberalism so as to free it from these criticisms and to make it more practically attuned to contexts of 'post-secularism' and 'hyperpluralism'. In taking up this task, Ferrara's theory develops a 'convergence' rather than a 'consensus' based view of deliberation, a theoretical opposition now familiar in the literature on democratic deliberation and religious pluralism.[312] Whereas consensus based approaches broadly rely upon public reason requirements to bring about agreement based on shared "public" premises, convergence approaches suggest the possibility, and indeed the desirability, of deliberative agreement out of diverse premises. Rather than juridically imposing a public reason framework, convergence approaches suggest that citizens of various traditions chart a course from their own particular ethical sources to a public convergence that accommodates the interests of all. Taking the latter route, Ferrara argues that 'it is crucial to respond to the challenge of hyperpluralism by constructing a convergence that may succeed where public reason leaves us in a quagmire of difficulties.'[313]

In situating himself in the tradition of seeking democratic convergence, Ferrara stakes out his intention of theorising a non-exclusive public sphere, which will deliver a deliberative framework made sensitive to diverse ethical traditions. Ferrara rejects Mouffe's agonistic characterisation of the public sphere as necessarily exclusive the grounds that this view forfeits any 'foothold' on which critique of existing hegemonic practices or 'grammars of the political' might rest.[314] In essence, Ferrara positions himself against the Foucauldian perspective that asserts the radical dependence of epistemic ideals and political practices upon socio-cultural contexts defined by hegemonic power dynamics. While acknowledging, like Forst, the imbrication of power, knowledge and representation, Ferrara retains a philosophical and political attachment to the importance of a formally established and context-transcending normativity – to a form of moral orientation that is self-reflexive while being universally recognisable. Just as for Habermas, the universal standpoint that acts to objectify and destabilise customary commitments is, for

[311] Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2005).
[312] Nicholas Wolterstorff, *Understanding Liberal Democracy: Essays in Political Philosophy* (Oxford: Oxford University Press, 2016).
[313] Ferrara, *The Democratic Horizon*, 100.
[314] Ibid., 94.

Ferrara, essential to the emancipatory enterprise of critique, as well as to the preservation of the moral autonomy of individual subjects. Thus, for Ferrara, the Foucauldian view taken up by Mouffe of the inevitable 'moralisation' of hegemonic practices abandons 'all possibility of distinguishing between coercive and non-coercive forms of political order', a possibility that he wants to maintain.[315] Here a further aim of Ferrara's project is unveiled: the establishment, as demanded by the ideal of a non-exclusive public sphere, of a suitable ground from which to launch critique of unjustified forms of political coercion. Thus, the project of non-exclusion is intimately bound up with the establishment of non-particularist, non-hegemonic modes of criticism – in other words, it is bound up with the search for a "post-metaphysical" universalism as per Habermas. Ferrara therefore sets his theory up in contrast to Mouffe's agonistic critique of political liberalism, orienting it toward the development of a non-exclusive public sphere amenable to social conditions of hyperpluralism and, by extension, distancing himself from a conception of 'the political' as fundamentally agonistic. Against Mouffe's view of the political as inevitably contestatory, Ferrara holds to the belief that the promise of political liberalism—of a polity grounded upon procedurally rational decision making and the reflective instantiation of individual autonomy—can be brought to life through a theoretical re-working not only of its institutional contours, but of its internal sources of normativity. Indeed, from Ferrara's point of view, the 'agonistic perspective' takes societal cohesion for granted, whereas the constructivist perspective he advances, which is 'closer to the spirit of the Rawlsian enterprise', emphasises that the 'cohesion of the polity' demands particular attention in the face of 'always present centrifugal forces'.[316] That this is the crucial concern of Ferrara's theory suggests its divergence from the agenda set out for critical democratic theory by pragmatists like Bohman. Hence, we can situate Ferrara's theory as following in Rawls in its concern with the achievement of 'overlapping consensus', even while Ferrara introduces notable and innovative amendments to Rawlsian political liberalism.

Ss. 2. *Hyperpluralism and authentic subjectivity*

Foundational to Ferrara's attempt at renewing the institutional contours and practical dynamics of political liberalism is his multi-pronged theory of 'authentic subjectivity'; together with its 'methodological consequences', it combines to generate a theory of post-metaphysical

[315] Ferrara, *The Democratic Horizon*, 94.
[316] Ibid., 100.

normativity. Specifically, Ferrara develops his theory of 'authenticity' into the bedrock for a formal universalism in conditions of post-metaphysical ethical pluralism. Ferrara's political and deliberative theory is significantly shaped by the theory of subjectivity he develops, driven by a concern to move beyond the "project of modernity" along with the well-established inter-subjectivist paradigm exemplified by Habermas' communicative rationality. The authenticity thesis aims to replace 'the modern notion of a rational and autonomous subject not so much with the notion of intersubjectivity as with that of authentic subjectivity', with attention to the methodological consequences that follow.[317]

The value of authenticity is anchored in particularly contemporary sensibilities, suggests Ferrara, who bases his 'authenticity thesis' upon the notion that 'authentic subjectivity is to contemporary modernity as the notion of autonomous subjectivity is to early modernity'.[318] The early-modern enlightenment valorised autonomy and the unencumbered, "rational" will as an emancipation from the weight of traditionalism and, consequently, the Kantian notion of autonomy insists on the submission of individually generated norms to 'the test of dialogical generalization'.[319] Alternatively, late modernity works in light of psychoanalytic theory, which supplies a framework for conceiving of the quality of 'authentic subjectivity' or of the 'self fulfilled'.[320] Ferrara offers a detailed genealogy of the psychoanalytic foundations for a contemporary conception of 'authentic' subjectivity, which I will largely leave aside here. My focus, instead, is on situating Ferrara's perspective on subjectivity vis-à-vis the Kantian-formalist 'project of modernity'. Ferrara poses the self-critical question of whether 'the culture of authenticity…partake[s] of the project of modernity in the sense of drawing its normativity out of a certain privileged "true" description of human subjectivity'.[321] His development of the theory of authenticity as exemplary self-congruence seeks to offer an answer to this question by avoiding the kind of formalistic and 'autonomously' derived moral subjectivity developed by Forst and instead privileging a form of subjectivity defined by a series of aesthetic sub-concepts which measure subjectivity 'on its own terms'. Importantly, and I suggest to his credit, Ferrara's authenticity thesis reflects a certain wariness of the formalistically driven rendering of moral inter-subjectivity in Habermas' and Forst's work, based on the assessment that these represent attempts 'to rescue the positive aspects of

[317] Ferrara, Reflective Authenticity, 2002, 4.
[318] Ibid., 5.
[319] Ibid., 9.
[320] Ibid., 11.
[321] Ibid., 148.

modern autonomous subjectivity and to reformulate them in terms of intersubjectivity', while problematically remaining 'too close' to the 'early modern ideal of a dehistoricised and depersonalized knowledge'.[322] Not only is this dehistoricised ideal 'trite' when echoed in a contemporary setting, but it also casts shadows of ethical authoritarianism given its association with notions of linear human progress and intrinsic rationality accessed by 'higher' civilisational forms. Ferrara argues that the authenticity thesis, by contrast, is responsive to the array of bewildering social conditions that complicate and confound the narrative of modernity, with its attendant sub-narrative of progressive secularity. Instead of privileging 'reason' as the fullest manifestation of human personality, the authenticity thesis supposedly allows room for an account of subjectivity more sensitive to plurality.

What are these social conditions that necessitate the authenticity thesis? The contemporary context positions us "beyond the modern horizon", in a social reality that shifts epistemological premises and demands new sources of normativity and modes of practical engagement with alterity. We are, suggests Ferrara, faced with the social reality of hyperpluralism, which denotes a social condition marked by the proliferation of ethical and religious traditions within the one polity. Along with this social condition runs a post-metaphysical philosophical reality, intensified by the Linguistic Turn, in which no particular perspective provides access to uninterpreted truth or to metaphysically laden insights that are uniquely and universally valid. Within the context of ethical hyper-pluralism, a great variety of traditions offer various conceptions of the good, which an epistemological lens coloured by the Linguistic Turn leads us to view as perspectivally anchored. Against voices like those of Macintyre and Taylor, both of whom Ferrara takes to be attempting to reconcile hyperpluralism with a continued philosophical acknowledgment of higher order goods, Ferrara is adamant that there is no going back to anything like a thesis of natural order or of classical *eudaimonia* (which is not to outlaw *eudaimonistic* standards of truth altogether).

Our condition 'beyond the modern horizon', defined by social complexity and post-metaphysical epistemological premises, brings Ferrara to make the claim that 'the kind of universalism that we can thus hope to obtain is of a peculiar kind, exemplary rather than methodologically cogent, singular rather than generalising, and not susceptible to demonstration.'[323] This claim is crucial to the critical enterprise that Ferrara undertakes, which is to generate a non-imperial form of universality via a range of theoretical and institutional

[322] Ibid., 4.
[323] Ibid., 72.

amendments to the framework of Rawlsian political liberalism. Obtaining some form of universalism for standards of deliberative judgment is imperative for Ferrara for the same reasons as it is for Forst: first, as a means of establishing normatively independent ground for critique of hegemonic practices, and second, for the sake of solidifying political cohesion on fair terms (stability being a key aim of the Rawlsian 'political' conception of justice to which Ferrara holds). These two objectives demand a deliberative framework that relinquishes ethnocentric normative commitments while sustaining a capacity for cross-contextual validity, so as to make reasoning and judgment possible between ethically diverse citizens. And behind this effort to theorise such a deliberative framework lies the aforementioned philosophical Scylla and Charybdis of foundationalism and relativism, the task being to forge a route between. To this end Ferrara attaches himself to a the universal yet subjective validity offered by the autonomous aesthetics established by Kant, asserting that 'the form of universalism most appropriate to a post-metaphysical standpoint is that proceeding from the exemplary self-congruency of a symbolic whole.'[324] Within the socially and normatively complex context of hyperpluralism, the only viable source of universal validity, Ferrara suggests, is that of the particular or unique 'self-congruency' of an ethical paradigm, described above as a 'symbolic whole,' which can refer both to the individual subject and to what Ferrara calls 'collective identities' (such as religious or ethical traditions). This characterisation relates to what Ferrara calls an ethic of 'authenticity', which is brought to fruition in the form of exemplary self-congruence on the part of individuals and collective identities. Citizens of various ethical backgrounds or perspectives are able, by means of universally available aesthetic sensibilities to perceive whether another ethical 'subject', singular or collective, meets its own hermeneutical promise, so evincing the quality of 'exemplarity'. Crucially, the hermeneutical promise of a particular identity is decided 'on its own terms', rather than by the heteronomous imposition of an autonomous moral standard. Such an imposition, which arguably occurs under Forst's theory of morality, is easily made by conceptions of universalism dependent upon 'methodological cogency', with such conceptions setting out to *demonstrate* their context-transcending validity through an equally context-transcendent form logic or argumentation. Hence the situation against which Ferrara warns, of an ordering good such as 'pluralism' or 'tolerance' being endorsed only out of premises that already register these values as normatively compelling. Ferrara's theory of exemplarity, following Kant's aesthetic theory, is 'indemonstrable', given that 'demonstrability' relies upon a

[324] Ibid., 10.

singularly valid form of reasoning or upon a logic that is in some sense categorical. Rather, the 'values' that enter into the aforementioned process of perception are aesthetic, with self-congruence including four key sub-dimensions: coherence, vitality, depth and maturity.

The account of universality proposed by Ferrara differs significantly from Forst's theory of an 'autonomous' morality. Ferrara hesitates more obviously before the prospect of a rationally non-rejectable universalism, asserting that there can be 'no real reconciliation' between uncontestable universalisms and the "fact of pluralism".[325] Indeed, the goal of any form of universality that establishes itself 'beyond the modern horizon' must be circumscribed to an extent that Forst is unwilling to accept, its authority delimited more significantly by the plurality of social conditions and ethical cultures. Thus, Ferrara suggests that 'the only kind of universalism that can "defuse", if not "solve" or "overcome"' incommensurability between ethical traditions or paradigms is 'the universalism *sui generis* that adheres in phronesis or judgment.'[326] Faced with the "fact of pluralism", aware of the challenges it poses to theories of justice that stage claims to universality, and suspicious of neo-Aristotelian traditionalist calls for a return to moral coherence, we are faced with a demand for ethical theories that 'embed a formal or thin theory of the good'.[327] Such a theory, proposes Ferrara, will be fundamentally concerned with the task of 'reconstructing certain common intuitions regarding the good'.[328] As I will set out later in the chapter, the 'reconstructed' cohesion that Ferrara aims to guarantee takes on a primarily formal nature, reconciling ethical difference through the convergence of reasons and through the recognition of context-transcending *formal* conditions for normativity**.** These conceptions are supposed to allow for reference to universal moral experience that does not eclipse the particularities of ethical life.

Ss. 3. *Aesthetic Judgment*

Like Habermas and Forst, Ferrara sets out to develop a strategy that employs features immanent to the social world, and to our functioning within it, to underpin normativity. Foundational to the deliberative framework developed by Ferrara is the exercise of two different kinds of judgment, aesthetic and practical. Examining Ferrara's deployment of each of these modes of judgment assists in clarifying the way in which he integrates the ethical and the moral, or, in

[325] Ibid., 71.
[326] Ibid., 71.
[327] Ibid., 72.
[328] Ibid., 71.

terms more suited to his framework, the particular and the universal. As the ensuing discussion will illustrate, each of these elements—universality and particularity—are supported by their attendant form of judgment; practical judgment allows for the self-reflexive negotiation of ethical difference and aesthetic judgment for the retention of universally recognisable forms that act as criteria of moral and hermeneutical excellence. Thus, on Ferrara's view, the synthesis of these two forms of judgment resolves the meta-theoretical tension between universality and particularity by offering grounds for a context-transcending normativity and for the practical, self-reflexive orientation suited to deliberation amidst value pluralism.

In the preceding chapters I took issue with the formalist diremption of form from value articulations. Here, similarly, Ferrara seeks to isolate judgment from the hermeneutical task of understanding, by developing a model of practical subjectivity that parses the social world through the application of aesthetic concepts derived from Kant's account of aesthetic judgment. The contingency of aesthetic values—their reliance upon contextually derived meanings—is downplayed as a means of positioning aesthetic judgment as an ethically diminutive mode of evaluation. Ferrara looks to aesthetic experience as rendered by Kant's Third Critique, to establish a form of 'normativity without principles'—a pre-conceptual normativity embedded in our common perception of aesthetic form. In so doing, he follows Arendt's appropriation of Kant's aesthetics, joining a burgeoning literature that finds in Kant's Third Critique the source of a possible reconceptualisation of political judgment as non-determinative and as enmeshed with practical rather than speculative reason.[329] J.M. Bernstein suggests two very different ways of reading Kant's Third Critique, one of which acts to reinforce the epistemological premises of transcendental reason, and another that problematises such premises and introduces the possibility of a more multi-tiered theory of knowledge. If we read the Third Critique as establishing an autonomous aesthetic realm, we will be likely to follow the analytic tradition in pursuing truth-only cognition, which underpins an 'uncritical acceptance of enlightened modernity'.[330] On the other hand, if we are to read the critique as 'the radical undoing of the categorical divisions between knowledge, morality and aesthetics', we are likely to follow the continental tradition in interpreting it as a critique of 'modern' epistemologies and the moral and political philosophies they undergird. In drawing on the Third Critique to theorise a politics adequate to the 'project of modernity', Ferrara's reading

[329] For example, Linda Zerilli on judgment; see Zerilli, *A Democratic Theory of Judgment* (Chicago: University of Chicago Press, 2016).
[330] Bernstein, 1992, 7.

takes the latter route, aiming to problematise and resist the imperialism of abstract reason and its marginalisation of particularity.

The concepts that Ferrara introduces to this end, leave us, however, with an underdetermined and problematic basis for asserting such universality. I say problematic not because it is impossible to envisage a trans-contextual commonality carried by aesthetic experience—as Bernstein suggests, the existence of a diverse but "regulated" discursive field relating to art and to beauty problematises the rationalist account of reason and testifies to the existence of 'a rationality determined through a discriminating formation of sensibility and not through transcendental legislation'.[331] Moreover, the Kantian concept of *sensus communis*—of a common aesthetic 'taste' shared beneath the level of reflective understanding—offers the possibility of resistance to 'methodological solipsism' and drives a 'reinscription of sensibility' into our epistemology.[332] Instead, problems arise because the vehicles for the perception and assertion of such universality impose a set of aesthetic presuppositions without sensitivity to the particular materiality of art, or in a more politically relevant sense, to the discursive complexity of ethical identity.

How should exemplary authenticity and its 'indemonstrable validity' be understood? In Ferrara's authenticity-thesis, the 'aesthetic sphere' and the aesthetic judgment it accommodates constitute a 'human practice, which has always been functioning on the basis of an intrinsic and accepted pluralism of standards' along with 'a normative notion of universalistic yet indemonstrable validity that falls under the heading of exemplary authenticity.'[333] Kant writes that in response to beauty, 'liking is the necessary consequence of an objective law and means nothing other than that one absolutely (without any further aim) ought to act in a certain way.' He goes on to assert that:

> As a necessity that is thought in an aesthetic judgment, it can only be called *exemplary*, i.e. a necessity of the assent of *everyone* to a judgment that is regarded as an example of a universal rule that we are unable to state. Since an aesthetic judgment is not an objective and cognitive one, this necessity cannot be derived from determinate concepts and hence is not apodeictic.[334]

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[331] Ibid., 36.
[332] Ibid., 8.
[333] Ferrara, *Reflectie Authenticity: Rethinking the Project of Modernity* (London: Routledge, 1998), 150-151.
[334] Kant, *Critique of Judgment,* 85.

So, the necessity generated by the exemplary qualities of an aesthetic object is informal, calling upon one's subjective perception rather than upon understanding formed under determinate concepts. If, as Kant suggests, judgments of taste had 'a determinate objective principle', then it follows that 'anyone making them in accordance with that principle would claim that his judgment is unconditionally necessary'.[335] This would bring us back to a problematic extrapolation from subjective preferences to the formation of universal rules. On the other hand, if judgments of taste had no 'principle' or 'concept' to which they referred, 'the thought that they have a necessity would not occur to us at all'.[336] We would be unable to assert that there is anything made present to us via the aesthetic medium that can or should be registered in common, leaving us with a relativism that Kant wants to resist and that is at least problematised by the existence of trans-contextually shared aesthetic forms and the conceptions of excellence, or the experience of the sublime, to which they gesture. The answer, for Kant, is somewhere in between, which explains the appeal of his aesthetic theory to critical theorists trying to resolve the meta-theoretical problem of foundationalism and relativism via a practical and post-metaphysical synthesis. Kant draws the conclusion that judgments of aesthetic taste must have a 'subjective principle', which 'determines only by feeling rather than by concepts, though nonetheless with universal validity'.[337] If this 'principle' or 'feeling' can be identified, Kant suggests that we describe it in terms of a 'common sense' that is distinct from 'common understanding' insofar as it relies upon taste rather than reference to determinate concepts. Hence the notion of a common sense, or *sensus communis*, does a great deal of work in establishing the 'necessity' that generates trans-contextually valid aesthetic judgment. The universality established by a 'common sense' does not depend upon subsuming particulars, or the details of the social world, beneath concepts perceived a priori. It is rather, as Kant writes, that our subjective taste facilitates our judging a priori 'the communicability of the feelings that (without mediation by a concept) are connected with a given presentation'.[338] Thus, as Bernstein points out, taste is in fact rule governed, but not by concepts as much as 'certain products of taste being treated as models which are, for taste, exemplary'.[339] Exemplarity, which on the highest model of taste refers to beauty, thus establishes some order

[335] Ibid., 87.
[336] Ibid., 87.
[337] Ibid., 87.
[338] Ibid., 162.
[339] Bernstein, "The Fate of Art", 1992, 35.

to the heterogeneous aesthetic domain without imposing transcendental concepts. Instead, exemplarity is a standard particular to the aesthetic: 'the archetype of taste, and the other models of taste, are what stand in for objective rules and conceptual criteria in judging the beautiful.'[340]

Immediately, two important problems come to the fore. On the one hand, as Bernstein points out, 'Kant's epistemological deduction of the judgment of taste leaves it radically underdetermined.' It cannot, he suggests, explain 'why we must all aesthetically respond to specific objects in the same way.'[341] On the other hand, a stronger 'moral interpretation' of the judgment of taste 'overdetermines it by converting the claim of taste into a moral command', thus effecting a 'breach in the disinterestedness and autonomy of taste'.[342] This latter moral interpretation would run contrary to Ferrara's strategy in deploying aesthetic judgment, as it relies upon the kind of determinate judgment that he seeks to avoid for the sake of ethical inclusivity. Aiming to circumvent this problem, Ferrara's attempt to establish the cross-cultural validity of aesthetic judgment falls prey to Bernstein's initial problem of a radically underdetermined conception of cross-cultural commonality that asserts trans-contextual validity without adequately explaining our common response to complex cultural objects (in Ferrara's theory, the hermeneutical life of ethical traditions). And, at the same time, his failure adequately to assert the idiosyncrasy of ethical traditions and the aesthetic values they inculcate assumes a mode of aesthetic judgment that subtly imposes externally derived values, so performing the same imposition as the overdetermined 'moral interpretation'.

Thus, we arrive at the second key problem with the deployment of Kantian aesthetic concepts as vehicles for trans-contextually valid judgment amidst value pluralism: although Kant's deduction of taste may be underdetermined, his insistence that we judge aesthetic objects from a disinterested standpoint, or without attachment to political, social or generally purposive 'inclinations', asserts a set of contingent aesthetic values. What does it mean for a judgment of taste to be disinterested? Kant writes that were we to pass a negative aesthetic judgment upon the design of a room that violates symmetry with its oblique angles and frenetic decoration, our dislike would be directed towards the 'contrapurposive' nature of the design; the oblique angles or the scattered decoration would be contrapurposive for our 'judging of them with all sorts of possible aims [in mind]'.[343] The point here, according to Kant, is that

[340] Ibid., 35.
[341] Ibid., 29
[342] Ibid., 30.
[343] Kant, 2013, 92.

such a judgment would not constitute a judgment of taste because it 'connects our liking or disliking directly with the mere *contemplation* of the object, irrespective of its use or any purpose.'[344] Consequently, where we take an empirical interest in objects of taste—or objects that stimulate a response beyond the rational apprehension of concepts—'in such an interest taste caters to inclination, and no matter how refined this inclination may be, still the interest will also easily fuse with all the [other] inclinations and passions that reach their greatest variety and highest degree in society.'[345] He goes on to insist that such 'interest' in the object of taste erodes the 'necessary' apprehension of universal validity: 'if our interest in the beautiful is based on these [inclinations and passions], then it can provide only a very ambiguous transition from the agreeable to the good.'[346] Kant's theory of aesthetic reflective judgment, in the moment that it is theorised as 'autonomous', reveals, in Bernstein's words, 'the subjective interests of truth-only cognition and categorical moral reason'.[347] Thus, the very attachment of reflective aesthetic judgment to the regulative norm of disinterestedness belies a historical position dependent upon 'Kant's unearthing of the logical grammar of the aesthetic'.[348] Put otherwise, there are subjective interests that define the aesthetic, which themselves prioritise disinterestedness as requisite for judgments of taste to establish the trans-contextually communicable beauty of an object. As Bernstein suggests, we should not repudiate altogether the possibility 'that reflective judgment became merely aesthetic under determinate historical conditions'.[349]

These subjective interests should prompt us to hesitate before insisting on the trans-contextual nature of formal aesthetic properties, including that which, within the aesthetic domain, counts as exemplary. Ferrara's deployment of aesthetic judgment problematically presupposes the possible perception of the exemplary and the congruent without due attention to the contingency of discursive practices. Here a Foucauldian perspective is instructive in reminding us to turn a critical gaze beyond 'the expressive operation by which an individual formulates an idea, a desire, an image', to the discursive practices denoting 'a body of anonymous, historical rules, always determined in the time and space that have defined a given period, and for a given social, economic, geographical, or linguistic area...'[350] Foucault

[344] Ibid., 92.
[345] Ibid., 165.
[346] Ibid., 165.
[347] Bernstein, 1992, 49.
[348] Ibid., 49.
[349] Ibid., 50.
[350] Foucault, 2002, 131.

prioritises such structures in his account of discourse, disassociating it from the 'rational activity' operative in a system of inference and from the grammatical 'competence' of the speaking subject.[351] Deploying aesthetic concepts like self-congruence in the hope that they offer a 'singular rather than generalising' universalism is to downplay the political or perspectivally contingent operation of historically determined discursive rules, not only within the various ethical or religious traditions one encounters but within the language and framework of aesthetic judgment itself. This is not to proffer a Foucauldian perspective as an altogether appealing alternative to Ferrara's reading of Kantian aesthetics by prioritising rules over expressive operations; but it does stimulate a useful alertness to the manner in which rules or 'criteria', to use Cavell's favoured term, operate within the frameworks applied to the diverse expressive details of political and social life, including those that hope for an expansive theoretical accommodation of such diversity. Indeed, one of the subjective interests that the Kantian aesthetic framework avows is the autonomy of aesthetics from those expressive operations to which Foucault refers—ideas, desires, images—all of which are constitutive of ethical and political identity. These are operations that might well take place through encounter with the aesthetic—with the morally or politically repugnant or with positive exemplars—but would presumably breach the Kantian requirement of disinterestedness, these functions being, as Foucault would have us believe, purposive. Political imagery, for example, or the kind of ethically—and sometimes eschatologically—laden symbolism deployed by movements for emancipation or inclusion, hardly fits the category of "disinterested". This exclusion of politically or ethically purposive operations from the domain of aesthetic judgment problematises Ferrara's claim that Kantian aesthetic judgment generates a 'singular' universality based on a shared conception of the exemplary. How in practice can such universality be sensitive to the contingent political and social discursive formations with which ethical and religious identities interplay and through which the exemplary is imagined? Hence the subjective interests embedded in the Kantian aesthetic framework impinge upon its relationship to and ordering of the political and ethical world in ways that, as I will subsequently argue, impede the advancement of deliberative aims of critical disclosure and emancipatory "world building". Here I note that, despite the exclusion demanded by Kant of the purposive from the domain of aesthetic judgment, Ferrara makes the Kantian aesthetic framework into the vehicle for the realisation of an architectonic purposive end. When we deploy aesthetic judgment in the deliberative domain, we are presumably putting our

[351] Ibid., 131.

judgments to some purpose – in Ferrara's case the realisation of deliberative convergence in support of liberal pluralism based upon a pre-conceptual, pre-ethical commonality. We are thus mixing the aesthetic with the empirical and thereby undermining what Kant suggests guarantees the autonomy of aesthetics. Consequently, although it acts to separate purposive instincts and operations from aesthetic judgment—the social details, images and desires that underwrite movements for political transformation—Ferrara's theory is, like Kant's to which it is beholden, a vehicle for subjective interests and discursive rules.

Ss. 4. ***Exemplarity's hermeneutical deficit***

This thesis has argued throughout for a view of social criticism, and of practical reconstruction of shared norms, that rests upon hermeneutically detailed engagement understood as an act of disclosure. The section that follows examines Ferrara's commitment to aesthetic judgment—and specifically to the concept of 'exemplarity'—as a means of launching social criticism.

On Ferrarra's scheme the normative coherence, and indeed fecundity, of an identity is recognisable in aesthetic terms through what he designates 'self-congruence'; a given action, decision or pronouncement will be either less or more 'congruent' with an identity's inner normativity, and with its 'hermeneutical potential'. Such 'hermeneutical potential' will, in turn, be recognised with the assistance of another aesthetic form**:** 'exemplary self-congruence'. Where an ethical tradition or identity demonstrates exemplary self-congruence, it evinces a form of excellence that may be registered on aesthetic grounds, even at a hermeneutical distance from that tradition. Where a tradition demonstrates exemplary self-congruence, it positively demonstrates its own 'hermeneutical potential'. By this I take Ferrara to mean an alignment with the ethically more expansive components of a tradition as they stand beckoning towards hermeneutical possibility – the capacity of an ethical tradition to generate sources inspiring to the moral imagination and to discern for itself the optimal combination of those aforementioned sub-dimensions of self-congruence: coherence, vitality, depth, and maturity.

At first glance, what lends Ferrara's notion of ethical self-congruence some appeal is its avoidance of the obvious trap of equating 'congruence' with ethical 'consistency'; he does not propose to evaluate ethical identities in terms of their diachronic coherence with a more or less static *sittilichkeit* as per a more conventionalist or communitarian perspective. Rather, Ferrara defines 'congruency' as composed of five sub-features: narrative coherence,

vitality, 'joyful empowerment', depth and maturity.[352] The structure of congruency is thus characterised by a degree of continuity, such that the ethical identity in question can be said to exist across time, and with 'depth' and 'maturity', which presumably implies its encompassing a reflective tradition that subjects wisdom sources to a developed intellectual appraisal through theological scholarship or disputation. At the same time, however, it refuses classification as static or conventionalist through its internal 'vitality' (presumably of a hermeneutical and expressive kind) and the 'joyful empowerment' of its adherents—that is, their dedication, positive attachment and, perhaps, their willingness to brave otherness within the setting of ongoing hermeneutical relationship.

However, Ferrara places undue confidence in the power of aesthetic judgment to discern a normatively meaningful commonality of form, without pursuing a hermeneutically more textured sensitivity to ethical meanings**.** He suggests that, in light of aesthetic judgment applied to the form of exemplary self-congruence, 'the impossibility of exhaustively translating one vocabulary into another ceases to be an obstacle to the universality of judgment.'[353] Thus, for Ferrara, exemplarity displaces the task of translation, which he associates with the intractable problem of commensurability, replacing it with a form of aesthetic recognition of congruence, that telos of ethical identities that Ferrara takes to be context-transcendent, though in a manner akin to Kant's aesthetic subjective validity. If there is a thin possibility of cross-contextual recognition of exemplarity, then there is still a possibility of universal judgment without the laborious task of 'exhaustive' translation. For example, where we can recognise in an alien ethical tradition an instance of reaching towards its 'hermeneutical potential' through exemplary lives or moments in that tradition's broader life, we recognise the capacity of an alien ethical identity to inspire the moral imagination. Alertness to a tradition's hermeneutical potential, suggests Ferrara, is sufficient to ground cross-contextual recognition and overcome mutual alienation. But, if it is indeed 'singular' and born out of particularity, then exemplarity depends upon hermeneutical engagement so as to be made intelligible as a sign of positive hermeneutical potential. An example of this dependence might be the genre of supererogatory actions undertaken by 'exemplary' figures within religious traditions—the trans-historical community of Christian saints and Judaic prophetic figures perhaps. Whether we think of Abraham's obedience to God's command to sacrifice Isaac, or of Byzantine saints like St Simeon Stylites, whose life is spent in ascetic remove at the top of a stone pillar, their

[352] Ferrara, 2008, 60.
[353] Ferrara, 1989, 71.

exemplarity depends upon a wider spiritual geography composed out of theologically complex symbolism, eschatological narrative and metaphorical frameworks to which we must be sensitive so as to read these "icons" as such. Or, to take alternative examples, the exemplarity of a tradition's imaginative response to "evil" or violence—such as the response of European Jewish and Christian theology, philosophy and poetry to the Holocaust—or of its politically vigorous response to environmental degradation, as in the papal encyclical 'Laudato Si', necessarily mobilises the imagery, language and desires given life by that tradition.[354] These may be the historically traceable desires for the mundane realisation of spiritual vision, or for emancipation and the restoration of that ideal temporal state ordained by covenant or envisioned eschatologically. Think, to return to the last chapter's discussion, of the eschatologically intoned emancipatory rhetoric of Martin Luther King Jr, of the theological and spiritual response to evil of Deitrich Bonhoeffer, or indeed, of an icon of modernist art, Picasso's *Guernica*, in which one fallen figure carries the stigmata on his palm, making the suffering at Guernica into a moment of kairotic return to the "foundational" event of Christ's torture and death. What Gadamer would call the 'knowledge' being communicated here, draws upon a hinterland of meaning-making, narrative discourse and hermeneutical competencies that are functionally different from an aesthetic consciousness that registers abstract forms. As in chapter one of this thesis, therefore, we return to the recognition that communication about normative resources—necessary for establishing the commitments that bear normative power in and amongst ethical plurality—engages competencies that extend well beyond rational cognition, or the 'moral argumentation' that expresses it. This argument is not necessarily hostile to Kant's account of aesthetic judgment, insofar as his distinction between *determinate* and *reflective* judgments—judgments that do not subsume their objects beneath fixed concepts—allows for the 'noncognitive character of judgments of taste'. Notably, Kant's classification of 'noncognitive' judgments of taste as 'rational' depends upon an attendant notion of the 'supersensible', which encompasses an 'indeterminate' and 'indeterminable' concept of beauty, referring once again to some version of a noumenal reality. On Zerilli's reading, this amounts to the claim that we can at once argue over questions of validity in aesthetic judgment with reference to a concept—or a 'fact of the matter'—while in the knowledge that this 'fact' can never be decided in principle.[355] The key modification made by

[354] See Pope Francis, 'Laudato Si: On Care for Our Common Home.' (24 May 2015)', http://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html.
[355] Ibid., 71.

Kant to his more obviously criterial account of the noumenal is in his expansion of the notion of a concept to include the feature of indeterminacy. For Zerilli, this expansion of our account of the 'concept' means that we are able to retain an interest in 'decision procedures' to which our judgments of taste might refer, while 'opening the space for thinking about judging outside a rule-governed framework'.[356] Yet this space can only be held open without collapsing into complete indeterminacy or rigid determinacy by a form of 'judgment' that engages understanding; as Zerilli insists, 'you have to be within the life of the language used in aesthetic description to be affected by its meaning—indeed to know *where* to look when told, "But don't you *see*?"'[357]

Returning, then, to Ferrara's re-directing of the Kantian account of aesthetic judgment towards the social world and its ethical traditions, we can observe that the dependence of aesthetic judgment upon understanding the 'life of a language' is downplayed, and with it the hermeneutical structure of the encounter with the aesthetic. The moments of exemplarity evinced by certain ethical or religious 'forms of life' can be taken to exhibit the quality of 'exemplary self-congruence' only where their particular "language" is disclosed. Of course, all of these exemplars remain, in their purposiveness, well within the category of those elements banished by Kant from the domain of aesthetic judgment. But more to the point, even if these details were admitted into the purview of aesthetic judgment, reading 'self-congruence' into a multivalent tradition—discerning the terms of exemplarity—presents a challenge of an indubitably hermeneutical character, where the exemplarity, and overall self-congruence, of certain "icons", memories or modes of action is contested and negotiated in the course of that tradition's self-interpretive life. In order to gauge exemplarity in the form of "self-congruence", hermeneutical attention is required to the meanings from which a tradition or 'form of life' might be said to establish itself as an intelligible world of discourse for its adherents. Exemplary self-congruence is unreadable without a wider development of hermeneutical understanding in relation to the meanings upon which one's contemporaries depend.

Gadamer helpfully elucidates the difference between a mode of aesthetic judgment prioritising discernment of abstract form and an account of aesthetic experience that acknowledges the imbrication of form with meanings. His critique in *Truth and Method* sets out to overcome the 'radical subjectivisation of the aesthetic' begun by Kant, which in Gadamer's view amounts to a 'methodological abstraction corresponding to a quite particular

[356] Ibid., 71.
[357] Zerilli, *A Democratic Theory of Judgment*, 72.

transcendental task of laying foundations which led Kant to relate aesthetic judgment entirely to the condition of the subject.'[358] The price, according to Gadamer, is that aesthetic objects cease to communicate knowledge and so 'in taste *nothing is known* [italics mine] of the objects judged to be beautiful, but it is stated only that there is a feeling of pleasure connected with them a priori in the subjective consciousness.'[359] The subjective a priori involved here works to establish taste as subjective, whereas Gadamer wants to involve it more intimately with 'humanistic' forms of theoretical knowledge that stand apart from the authority of the natural sciences. But, without cleaving tightly to Gadamer's project of re-asserting the place of the humanistic disciplines, here we can at least say that for pleasure to have any relation to the aesthetic object that engages its mode of being, it must entail an effort towards 'understanding-as,' which necessarily engages with the meanings that constitute the object and give it its identity. This insight brings us to a different methodology for relating to the aesthetic and discerning its properties. Gadamer, in his critique of the abstraction inherent in the Kantian account of aesthetic consciousness, argues that an aesthetic vision freed from Kantian idealism is 'characterized by not hurrying to relate what one sees to a universal…but by dwelling on it as something aesthetic.'[360] 'Something aesthetic', however, is inseparable from the knowledge that it embodies and expresses; it cannot be taken in or 'understood' under conditions of radical subjectivisation, as Gadamer puts it. Rather, Gadamer uses the term 'dwelling', in place of perception, to suggest the relational dimension between perceived and perceiver, which engages and works upon the perceiver's self-understanding, so that meanings are both uncovered in the aesthetic object and brought to bear upon it by the viewer. 'Dwelling' upon a work of art, or upon the aesthetic dimension of any given object, entails an effort at understanding beyond strictly aesthetic properties—thus, 'lingering vision and assimilation is not a simple perception of what is there, but is itself understanding-as.'[361] This being the case, 'understanding' the object of aesthetic judgment is conditional upon the meanings that constitute its aesthetic nature; it entails drawing close to the life of a language—to the language games that shape aesthetic values such as 'taste' or 'exemplarity' within a particular form of life. Thus, we draw close to the argument set out by Wittgenstein for the interdependence of aesthetics and culture, which registers that 'the words we call expressions of aesthetic judgment play a very complicated role, but a very definite role, in what we call a culture of a period. To

[358] Gadamer, *Truth and Method*, 88.
[359] Ibid., 40.
[360] Ibid., 82.
[361] Ibid., 82.

describe their use or to describe what you mean by a cultured taste, you have to describe a culture.'[362] Describing a culture, in this case, involves the mundane details of social life that constitute the 'taste' of any given period, and with it the values expressed in aesthetic judgments – hence 'in describing musical taste you have to describe whether children give concerts, whether women do or whether men only give them', along with the value articulations that stand behind these arrangements.[363] With this imbrication in mind, aesthetic judgment moves beyond a process of cognition through which we discern an object and relate it to an available concept; it remains in an important sense existential. Beyond the primordial faculty of bare perception, by which we pre-conceptually intuit our way towards optimising perspective, aesthetic judgment engages us in relating to taste, and hence to 'a whole culture'. It therefore takes on the phenomenological conditions of our being-in-the-world, which for Gadamer involves a hermeneutical situation in which our self-understanding is engaged whenever we attempt to understand an alien tradition or, in this case, object. Thus, as Gadamer insists, 'pure seeing and pure hearing are dogmatic abstractions that artificially reduce phenomena. Perception always includes meaning.'[364] If perception includes meaning, then understanding what we perceive entails sensitivity to the mode of being of the work of art, or the aesthetic object under our lens. This applies also to objects of our perception with aesthetic characteristics, such as texts or music, which exhibit formal characteristics and involve us with what we might register as a specific 'form', but nevertheless require 'understanding' rather than plain perception. Hence, as Gadamer puts it:

> Only when we understand a text—that is, are at least in command of its language—can it be a work of literary art for us. Even in listening to absolute music we must "understand" it. And only when we understand it, when it is "clear" to us, does it exist as an artistic creation for us. Thus, although absolute music is a pure movement of form as such, a kind of auditory mathematics where there is no content with an objective meaning that we can discern, understanding it nevertheless involves entering into a relation with what is meaningful.[365]

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[362] Ludwig Wittgenstein, *Lectures and Conversations on Aesthetics, Psychology and Religious Belief*, ed. Cyril Barrett (Oxford: Blackwell, 1970), 8.
[363] Ibid., 83.
[364] Gadamer, *Truth and Method*, 84.
[365] Ibid., 83.

The difference between perception and understanding as spelt out by Gadamer invites a reconsideration of the enactment of aesthetic judgment, and the ideal of cross-cultural commonality with which Ferrara associates it. The 'form' of self-congruence' in accordance with which ethical or religious traditions may produce 'exemplary' enactments of their own potential, is indiscernible without an understanding developed by 'dwelling' with the meanings by which these ideals are established. Although the Kantian view distinguishes between aesthetic concepts and *rules* so as to retain a view of the former as properly aesthetic (as inviting an affective rather than cognitive response), it nevertheless separates aesthetic objects, works of art, from the non-aesthetic knowledge that they bear through the unity of form and content (meaning). Gadamer's existential account, on the other hand, invites us to appreciate the hermeneutical dimension involved in relating aesthetic objects to meanings, so that the unity of form and meaning may be unveiled. Much is left aside in this brief appraisal, including Gadamer's complex account of aesthetic being and the self-forgetfulness involved on the part of the spectator, which 'precludes practical or goal oriented participation'.[366] Yet his distinction between perception and understanding nevertheless signals the difficulty of transposing aesthetic concepts such as 'exemplary self-congruence' onto ethical forms of life without accepting the perspectivally delimited hermeneutical stance that this involves, and the limits thus placed upon 'formal' universality.

The hermeneutical stance, which begins in acknowledgement of perspectival delimitation, potentially offers a way of criticising, and overcoming the practical limitations of unifying concepts such as 'congruence'. As Ferrara positions us, we are drawn toward recognising 'congruence' through alertness to 'vitality' or 'depth', but without having a substantive notion of what congruence consists of within any particular ethical identity, or indeed whether that identity imagines its own flourishing in terms of "self-congruence" rather than heterogeneity. Ferrara might resist this by arguing that his view of exemplary self-congruence is concerned with working out the particular configuration of ingredients—again, vitality, depth, coherence and maturity—that represents each collective identity's "self-realisation". Hence Ferrara's claim to establish a form of universalism that avoids basing itself upon 'structures of subjectivity' that all persons share in common (a la Forst), or upon 'the right general principle'. Rather, 'the ability of the exemplary to project a cogency outside of its context of origin…depends upon its exceptional degree of internal congruency, on its being

[366] Gadamer, *Truth and Method*, 129.

perfect in its own terms.'[367] Thus, the universal validity of the aesthetic form of congruency is concerned with 'unifying the plurality of vicissitudes undergone by a given identity into a narrative' marked primarily by 'the aspects of cohesion, continuity and demarcation.'[368] Ferrara goes on to state here that 'collective identities with a low degree of coherence are characterised by a great indeterminacy as to the boundaries of the group also in the sense that it becomes difficult to say who belongs and who does not.'[369] Being able to say 'who belongs and who does not' thus becomes, for Ferrara, one of the requisite characteristics of a coherent identity, over and against a view of such identity as composed out of emergent subjectivities that are responsive to the constitutive experiences of modernity: as produced by the act of wrestling with internal contradictions and poly-vocality. Yet these latter features of contradiction and poly-valence are precisely the experiences that require greater priority if critical social theory—and the democratic theory it attends—were to open its concepts to destabilisation by the "everyday". If 'modernity' is a conjunctural phenomenon, how are our moral contemporaries situated within the conjunctural setting of political, religious and social commitments and experiences? And how do they sustain internally conflictual identities, beset with contradiction, yet defined by continued reference to wisdom sources or to religiously expressive life? The critical angle here relates to *how* ethical subjectivity is enacted within an admixture of concerns, meanings and purposive struggles. These are questions that extend beyond the purview of conjectural reasoning, which aims to demonstrate how an ethical tradition—confined here to its formal hermeneutical or expressive practices—can develop a line of reasoning in support of liberal-pluralist principles. They are fundamentally critical-disclosive questions vital to overcoming the inscrutability of the religious or ethical other and to generating grounds for hermeneutically sensitive critique. Alternatively, to be able simply to state 'who belongs and who does not', and to treat this is a marker for the health of a religious or ethical collective identity, is to bring about a reduction of religious-ethical discourse and the manifold hermeneutical dissonances and contradictions that such a discourse entails.

At this point it becomes possible to see the dissonance between Ferrara's conviction that traditions may be assessed with a view to the 'perfection' of their 'internal self-congruency' and a more ethnographically sensitive account of religious tradition amidst the cross-pressures of modernity. As we have seen, Ferrara's aesthetically driven conceptualisation of tradition

[367] Ferrara, 1989, 164.
[368] Ibid, 113.
[369] Ibid., 112.

rests upon a quasi-empirical assessment of the nature of traditions, and upon the normative project of discerning formal aesthetic principles to support secular critique. Ferrara, like Habermas, draws notably on Weber in addressing the 'subdimension of cohesion', and in particular Weber's theory of the rationalisation of religious cultures. Thus cohesion—'understood as the explication of value premises for the purpose of rendering these premises consistent with one another'—becomes crucial to any ethical culture.[370] Indeed, on Ferrara's reading of Weber, the rationalisation of identity is propelled by 'the need to overcome the contradictions and tensions which exist within the web of representations of which every identity consists.'[371] Cleaving to this Weberian view, Ferrara therefore takes collective identities to be driven by the necessary task of sustaining the cohesion of value premises and upholding recognisably demarcated shared identities against the inevitably centrifugal forces present in the diachronic life of tradition. And, while Ferrara does assert, 'the inevitability of cultural tensions and contradictions', the primary phenomenon with which the 'practical' citizen must grapple is the 'quasi-natural drive, typical of group life and individual life alike' towards a 'more complete coherence of the cultural form'.[372] This Weberian social theory of tradition, which advances a view of the structures and tendencies of the 'cultural form', in turn shapes the normative answer constructed by Ferrara as suitable to empirical reality—that is, the normative salience of aesthetic forms like 'exemplary self-congruence'. Of course, once we develop an account of what Wittgenstein calls 'forms of life' upon the notion that they tend towards reinforcing coherence, we are licensed in valorising a form of judgment that discerns form, rather than the hermeneutically tangled multiplicity of meanings in which ethical identities are both de-stabilised and re-constituted. Indeed, a social theory of religious or ethical tradition that prioritises coherence of this kind—the kind associated with 'consistent' premises and demarcated identities—evinces an attachment to an ethnographically thin view of ethical 'forms of life'.

To illustrate, we may fruitfully contrast Ferrara's description of the drive towards coherence within ethical traditions with the immensely detailed hermeneutical theory of tradition developed by Shahab Ahmed in his influential account of Islam.[373] Ahmed's diagnostic account of Islam as a process of 'hermeneutical meaning-making' highlights, firstly, the problem with prioritising analytically what Ferrara calls the 'quasi-natural' drive towards

[370] Ibid., 113.
[371] Ibid., 113.
[372] Ibid., 113.
[373] Shahab Ahmed, *What Is Islam?: The Importance of Being Islamic*.

coherence and, secondly, "instinct for consistency" between value premises that Ferrara assigns to religious or ethical cultures. If Ahmed's account turns out the more persuasive, as I think it is, then Ferrara's theoretical construction of normative commonality upon the basis of a shared potential for discernible 'exemplary self-congruence' comes under pressure, particularly given his commitment to a de-transcendentalised and ethnographically sensitive form of social theory.

What is 'Islam'? Until recently, Anglo-American liberal political theory stood ready to offer an answer, usually with some confidence: Islam is a 'religion' or, in the catch-all term supplied by Rawlsian political liberalism, a 'comprehensive doctrine'. However, as already discussed in the preceding chapter, such categories as 'comprehensive doctrine' are markedly deficient in their proposing an understanding of religious tradition that is deeply imbued with Protestant Christian assumptions—inherited also by modern secularists—about what constitutes 'religion'. These assumptions tend to produce a dichotomous distinction between 'the religious' and 'the secular' along with an energetic focus upon religion as 'law' or as 'doctrine' that asserts theological exclusivism and transcendental absolutism (as opposed to the reflexivity of secular reason).[374] Ahmed addresses the aforementioned tropes from within the sociology of religion, seeking to displace them from our assessments of 'Islam' in order to replace them with a post-colonial theory of 'Islam' as 'process' rather than 'object' or 'essence'.[375] While rejecting the conceptual binaries that attach to Western and westernising descriptions of 'Islam' and of 'religion' in general, Ahmed accepts the need for *some* kind of conceptualisation as an intellectual architecture for our understanding of diffuse phenomena. He therefore offers a 'diagnostic reconceptualization of Islam' according to three domains: Pre-text, Text and Con-Text. Pre-text, in this instance, refers to the history of revelation, not only from the life of the Prophet but in the longer axial tradition out of which Abrahamic prophecy speaks.[376] 'Text' refers to the sacred Texts of Islamic tradition, namely the Qur'an—the divine revelation in textual form—and 'Con-text' to the whole constellation of hermeneutical, mystical and social practices that constitute the reception of both revelation and

[374] See Cécile Laborde, *Liberalism's Religion* (Cambridge, MA: Harvard University Press, 2017). Cecile Laborde's recently developed account of religion and the constitutional state, proposes to integrate the insights of critical scholars of religion by advancing a more subtle, 'disaggregated,' understanding of religiosity that might generate a more inclusive and equitable relationship between religious citizens, their religiously inflected ethical and political 'reasons', and the secular-constitutional state.

[375] Ahmed, *What Is Islam?,* 297.

[376] Ahmed, *What Is Islam?: The Importance of Being Islamic*, 541.

sacred text within Islamic societies. This tripartite structure, Ahmed suggests, enables us to move away from a view of Islam as object or static category, towards an understanding of Islam as a process of meaning-making and truth-seeking within the imaginative terms established by revelation. In its emphasis upon Islam as discourse, it thereby echoes emphases present in both Talal Asad's and Alasdair Macintyre's conceptions of 'tradition', although Macintyre certainly is less inclined to prioritise non-rational practices such as wine consumption in his account.

Crucially, Ahmed insists that his conception of Islam as hermeneutical engagement with 'Pre-Text, Text, and Con-text,' despite advancing a conceptual framework for our understanding of the tradition, allows room for its internal contradictions and points of dissonance. In the face of the aforementioned liberal-protestant conceptions of religion as 'comprehensive doctrine' or law-defined social entity, Ahmed points us, through an examination of literary wisdom traditions such as the Divan-i-Hafiz and practices as prosaic as wine consumption, to the historical and present reality of significant societies of Muslims whose thought and quotidian practice takes place 'in a manner that destabilizes any reflexive conceptualisation we might have of Islam having been constituted by the overweening or unmediated supremacy of those sources of Revealed Truth that we moderns are intellectually conditioned to regard as primary.'[377] Alongside the features of '*prescription, restriction, homogenization, monovalency, orthodoxy,* and *agreement*', which have taken pride of place in Euro-American scholarly and popular depictions of Islam, Ahmed insists upon juxtaposing the features of '*exploration, ambiguity, ambivalence, wonder, aestheticization, diffusion, differentiation, polyvalence, relativism, and contradiction.*'[378] Islamic 'meaning-making' is, and has been, 'conceptually, discursively, socially and spatially non-compartmentalized.'[379] Rather, Ahmed argues, its history and contemporary practice presents us with discursive diffusion, and with this, points of contradiction and dissonance that resist the forms of 'coherence' liberal political theory has tended to attach to the category of 'religion'. Just as 'Islam' includes an authoritative (though internally diverse and contested) framework of jurisprudential thought, so it includes artistic and poetic traditions that contest and contradict in practice the formalised productions of *Fiqh* as developed across the different schools of law. Throughout what Ahmed calls the 'Balkans to Bengal complex', the array of practices and

[377] Ibid., 97.
[378] Ibid., 303.
[379] Ibid., 191.

subjectivities that make themselves meaningful in terms of 'Islam' is irreducibly plural, making 'Islam' into a febrile and polyvalent matrix in which 'meaning' can be made along myriad trajectories.

Why attend, like this, to Islam as a process of meaning-making, rather than to Islam as an edifice of ethical and legal codification in promotion of exclusive propositional truth claims? In Ahmed's view, it has a crucial critical and reflexive function, enabling us 'to detect and recognize Islam not just in the usual places where our received cognitive and analytical habits lead us, but where it actually is present in discourse and praxis as means and meanings.'[380] We are to attend to the cultural and religious constellation of 'Islam', not as a doctrinally unified independent variable, separate from historical conditions in virtue of its conceptual status as 'religion', but rather as inextricable from them and expressed through them. To do so is not to lose sight of Islam as a matrix from within which claims to transcendental truth are made; rather, it is hermeneutically to discern the way in which truth-claims intertwine with diffuse, contradictory and mundane practices, drawing our attention 'to the inter-actions and *processes* of *interpretation* and *understanding*, to the identity of the *sources* of meaning inter-acted with, to the *methods* employed in the *process* of *truth-knowing* and *meaning-making*.'[381] What defines the various subjectivities that unfold within 'Islam' is the act of making oneself meaningful through hermeneutical engagement with Revelation, Text and Con-text.

We therefore meet with an ethnography of Islam that prioritises meaning-making along diverse, even contradictory, avenues, in ways that shape the 'whole' even as they dispel any myth of unity or easily attributable coherence. This postcolonial ethnography—postcolonial in its recognition of manifold forms of agency, affective and quotidian as well as literate and formal—is suggestive also of how critical social theory should approach religious and ethical tradition. For the critical theorist enquiring into the meanings and practices present in Islamic milieu, a hermeneutical stance is similarly called for, an approach that aims 'not so much to define, as to *bring into definition*—to bring into view, to discern and to descry—Islam in its plenitude of meaning.'[382] To this plenitude of meaning must be added the meanings and idioms generated through the conjunctural encounters between the ideological discourses of modernity, secularity and religiosity, against a background of shifting social composition in North Atlantic societies.

[380] Ahmed, *What Is Islam?: The Importance of Being Islamic*, 544.
[381] Ibid., 345.
[382] Ibid., 546.

The detail that I wish to bring into definition here is the manner in which meanings (including assertions regarding truth and universality) emerge in Con-text, their form shaped by multiple modes of agency, action and contribution. Meanings are not unilaterally asserted, but rather 'co-generated' or 'co-authored' in interaction with other forms of agency and in relation to the hermeneutical 'object', which, in this particular case, is the history of Islamic revelation. Moreover, modernity being the 'conjunctural' phenomenon that Sanjay Subrahmanyan describes, such co-authorship extends beyond the bounds of particular traditions—ethical and social meanings drawn from tradition are shaped by the presence of alterity that in turn shapes the hermeneutical action of adherents.[383] This is a crucial point – the Con-text of any one tradition includes not only sacred and mundane practices, but also *elements of other traditions*, even in their presence as ethical or religious 'others'. Both within the matrix of tradition and beyond it, we are set within a context of co-authorship, impinging upon each other's acts of meaning-making. Contemporaneity is, on this view, our participation in Con-text: that is, our conscious or unconscious impingement upon the meaning-making of our co-citizens and interlocutors who draw upon different sources of value and different imaginative articulations of the good. In this sense, we are not "originally" set within conditions of mere simultaneity, but are situated as contemporaries in the development of meaning(s), however remotely involved we might be (a remoteness that is materially lessened by globalisation). For co-citizens within the state or constitutional political community, mutual involvement is necessarily intimate in virtue of shared institutions and social spaces. But, as Benhabib points out, 'discursive communities can emerge whenever and wherever human beings can affect one another's actions and wellbeing, interests or identity.' [384] Across traditions, borders and institutional configurations we act upon and co-shape the meaning-making of others, making us contemporaries in the authorship of meanings, even across the conceptual demarcations of 'religion' and 'secularity'.

At the same time, Ferrara, drawing again on Weber and upon Durkheim, considers another important subdimension to be that of 'vitality', which is set against 'the traditionalism of collective identities which oppose change merely out of their own inertia and symbolic

[383] See Sanjay Subrahmanyam,. "Hearing Voices: Vignettes of Early Modernity in South Asia, 1400-1750." *Daedelus,* 127, no 3 (1998): 75-104.

[384] Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton: Princeton University Press, 2002), 147.

viscosity.'[385] This suggests a contestation of forms within Ferrara's theory of congruence—the 'congruent' identity's necessary vitality counteracts 'coherence' to establish an acceptable tension between divergent instincts. Paradoxically, however, Ferrara takes up Durkheim's thesis on the role of ritual in 'revivifying' identity through generating 'fervour': thus, 'when a group is in a state of communion, its cohesiveness stimulates and enhances the vitality of the cultural identities of the individuals who are members of it.'[386] Without the confirmation of such communion, group identities run into the danger of developing 'endemic anomie', which Ferrara associates with 'a situation of endemic fluctuation of the social meanings linked with the distributive arrangements, the social stratification and the idea of justice'.[387] Thus Ferrara associates the vitality of authentic communion with the availability of constant 'social meanings' that underwrite a shared idea of justice and a strong sense of collective identity. Along with these shared meanings, collective identity needs to command respect and love from its individual constituents, stimulating attachment and loyalty, which translates into vitalised engagement in the processes involved in sustaining the collective identity in question. So, for example, Ferrara cites Tocqueville's assessment of the nineteenth century American 'public', to suggest that in the case of this collective entity 'vitality' presents through energetic engagement in the democratic deliberative process, whereas 'anomie' would be generated through a 'culture of privatism'.[388] Hence vitalisation of the polity—that is, of the 'public'—refers to something like the assertion of cohesion around central shared understandings of civic identity—such as a positive conception of citizenship, or civic patriotism—rather than being primarily a striving after disclosure and a more critical mutuality. These latter aims may be implicit, but they are secondary to the pursuit of coherence.

Ferarra accepts the great variety of possible collective identities: there are 'as many types of collective identity as there are distinct standpoints from which one person can be similar to another.'[389] Generally, however, there are four different kinds of collective identity, suggests Ferrara: cultural, social, psychological and political.[390] Collective identities approached from each of these perspectives come to be defined by different distinguishing features. From a cultural perspective, collective identities are marked by 'common memory or

[385] Ferrara, *The Demcoratic Horizon*., 119.
[386] Ibid., 120.
[387] Ibid., 119.
[388] Ibid., 120.
[389] Ibid., 109.
[390] Ibid., 109.

tradition', by 'internal requisites for the reproduction of cultural forms' (for example, language) and by a future state that adherents desire for the entity, which give it a raison d'etre.[391] On the other hand, to consider a collective identity from the sociological perspective is to look for an account of its origins, history and boundaries. It takes into view those mechanisms by which collective identities manage internally diverging interests, integrating them procedurally so as to hold the identity together.

Having developed this taxonomy, Ferrara immediately acknowledges the porousness of these categories – cultural, social, psychological and political: the distinctions they designate are fundamentally artificial given that 'in all contexts of identity formation…we are bound to find a web of interrelations between these different collective identities.'[392] In recognising this, Ferrara asserts his alertness to the intersection of cultural identities with the identities formed by experience of social stratification or through common formative experiences (for example, war or forced migration).[393] Identity formation takes place at the intersection of a plurality of discourses, which can be inhabited or related to from a great variety of perspectives. All the same, at the level of the subject-specific perspective the instinct toward coherence remains regnant, with the encounter with one's co-adherents beginning with a perception of conformity: 'when I share a cultural collective identity I consider the other person as someone who possesses beliefs and values similar to mine.'[394] Collective identity may be plural in its psychological and political dimensions, but its bedrock coherence is more or less established: one's co-adherents to a particular cultural identity share the same perspective concerning what makes life fulfiling. This initially appears to contradict Ferrara's claim, cited earlier, that identities and value systems are more prone to disintegration than self-reinforcement. Indeed, Ferrara goes about developing his theory of collective identity by seeking sources of unity – that is, looking for shared origins, historical narrative and commonly projected futures. The intersection that Ferrara envisages between the various categories of collective identity reinforces this orientation; thus, although identity might well spread across the cultural and psychological categories, each of these will work to reinforce "identity as unity". Psychologically, the subject finds commonality with those with whom they are in a relationship of 'face-to-face dynamism', which acts to reinforce the paradigm of commonality as "shared possession of beliefs and values". Thus, as Ahmed highlights in the case of Islam, religious

[391] Ibid., 110.
[392] Ibid., 109.
[393] Ibid., 109.
[394] Ibid., 109.

identity is profoundly multi-valent, and intimately intertwined with culture and politics, to the extent that it makes little sense to assess religion as either a historically independent variable, or alternatively as a mere symptom of currently obtaining cultural conditions.[395] Each option would simplify the analytical and hermeneutical approach to tradition necessary for sense-making in the context of ethical pluralism and social complexity. No straightforward coherence can be asserted, for example, in answer to the perplexing question of sources and practices count as 'Islamic' across what Ahmed calls the 'Balkans to Bengal complex'.[396] Rather, the methodological approach sensitive to practice, as Ahmed suggests, traces the forms of hermeneutical relationship between relevant sources and those who wield them, along with the political and material stimuli that shape such usage.

Similarly, Talal Asad suggests that, contra the anthropological theory of "religion" constructed by Clifford Geertz, we refuse the separation of symbols from practices.[397] Religious or ethical subjectivity does indeed rely upon symbols that carry motivational power and implant certain dispositions. At the same time, however, Asad emphasises that the symbol system, when isolated analytically from the manifold practices of the religious subject, is unable to predict 'the "distinctive" set of dispositions for a Christian worshiper in modern industrial society…'[398] The reason for this, suggests Asad, is that it is not simply worship, or the living out of commitments within a particular system of symbols, but 'the social, political, and economic institutions in general' within which subjectivity is formed and which 'lend a stable character' to the religious citizen's activity and 'to the quality of her experience.'[399] While it seems dubiously paradoxical for Asad to assert that this multi-faceted subjectivity produces a stable experiential mode, the important point here is that to view religious subjectivity as formed within a symbol system that can be assessed with reference to its external displays of (positive) coherence or (crisis-prone) dissonance, is to ignore its formative imbrication with a wider complex of practices. Put otherwise, our assessment of ethical subjectivity and "collective identity" should avoid a bifurcated approach that perceives systems of meanings embodied in symbols and then relates these to social or structural phenomena.[400] If, as Asad writes, religious symbols are understood analogically to language, as vehicles for

[395] See Ahmed, *What Is Islam?: The Importance of Being Islamic*, 5.
[396] Ibid., 5-6.
[397] Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: Johns Hopkins University Press, 1993), 118.
[398] Ibid., 118.
[399] Ibid., 118.
[400] Ibid., 128.

meaning, how can their meanings be established independently of the forms of life within which they are used?[401] Under conditions of hyper-pluralism, these forms of life include the array of formative discursive participations through which religious subjects relate their symbolic or imaginative resources to social or political practices including, in some instances, to tension-laden negotiations for belonging and social membership. The relationship established by the ethical subject, or by the 'collective identity', between said resources and the field of socio-political practices is hermeneutical insofar as it involves the re-reading or re-appropriation of such sources towards the re-weaving of political or social identity. Crucially, this is not to be understood as merely an elite practice of directing esoteric texts or sources of religious or ethical meaning to 'speak to the world' – it is not to valorise what Asad calls the 'ambiguous phenomenology' of developing substantive knowledge of the social world via the agent's autonomous hermeneutical perspective.[402] Rather, it is again to assert the mutual dependence of symbols, language, hermeneutical life and social and political experience, the disclosure of which is a key aim of social criticism.

Ss. 5. *Practical judgment—the operation of post-metaphysical phronesis*

Alongside aesthetic judgment stands Ferrara's concept of post-metaphysical phronesis, or 'practical judgment', which he draws from Aristotle (and from Habermas), although stripped of Aristotelian metaphysics. Where aesthetic judgment allows for the discernment of a limited commonality—a 'sensus communis' or common desire for life to go well—post-metaphysical phronesis allows the citizen to make decisions in the context of ethical pluralism. Like Forst, Ferrara works to retain the possibility of cross-contextual commonality, while remaining accommodating towards particular ethical 'constellations'. And while Forst follows more explicitly in a Habermasian mould, Ferrara's development of conjectural reasoning responds to ideas developed in Habermas' more recent work on religion and the public sphere, ideas that emphasise the 'semantic potentials' of religious traditions in the context of a pluralist modernity. The important point of interest here is that, like Forst, Ferrara relies upon a form of 'practical insight' or reasoning which serves in a role complementary to aesthetic judgment, facilitating deliberative praxis amidst hyperpluralism. Although Ferrara resists a purely proceduralist account of deliberative validity, his theorisation of practical judgment aligns

[401] Asad, *Genealogies of Religion*, 128.
[402] Ibid., 128.

notably with Habermas' advancement of 'post-metaphysical thinking', which takes a certain form of self-reflexive reason to fulfil the normative requirements of a 'universalistic egalitarian perspective'.[403] Like Habermas, Ferrara conceives of deliberative or practical reason (phronesis) as 'post-metaphysical' – a practical capacity stripped of reference to higher order goods and designed to negotiate immanent social detail in an ethically non-authoritarian manner. Indeed, in both Forst's and Ferrara's theories, the role of the 'practical' orientation is to hold the ethical in place and to bring about relations of civic respect by placing public discourse on a plane of non-ethical commonality: that is, a commonality other than the product of proselytisation, ethical imperialism or coercion. In Forst's case, the source of such commonality was certain pre-ethical human features that generate moral obligations, while in Ferrara's view the possibility of universal commonality rests upon aesthetic forms common to ethical traditions, namely, 'congruence'. At the same time, the deliberative life of the multi-variate polity is sustained by the kind of self-reflexive, practically oriented, reasoning that Ferrara recommends under the title of phronesis.

Ferrara's deliberative thesis is primarily focussed upon enabling trans-schematic judgment in contexts of ethical pluralism without the 'bannister' of an overall, ordering conception of the good. Ferrara suggests that in light of the modern moral predicament, the Linguistic Turn and the political predicament of ethical pluralism, 'all that can be done…is to isolate enough aspects of a "common vocabulary," sufficiently differentiated and yet accessible from a vast number of historically situated vocabularies, through which to articulate our intuitions regarding which combination of coherence, vitality, depth and maturity constitutes the best approximation of the good that a concrete identity can attain.'[404] The first task of phronesis, then, is the development of a common vocabulary based upon shared premises. Ferrara argues that phronesis, or practical reason, offers a conceptual tool by which to 'formulate a notion of validity capable of embedding some form of universalism while being consistent with the Linguistic Turn and the fact of pluralism.'[405] Being 'consistent' in this case means that phronesis cannot be ethically embedded or, as in the Aristotelian sense, point towards an ethically derived conception of eudaimonia. Instead, Ferrara takes the view that a revised version of phronesis 'seems capable of playing a much broader role if we de-ethicise it and conceive of it as a *general* competence' to be involved in the resolution of '*all*

[403] Allen, *Talking to Strangers,* 140.
[404] Ferrara, *Reflective Authenticity,* 126.
[405] Ibid., 22.

transchematic, transparadigmatic and cross-cultural dilemmas…'[406] In this way the operation of phronesis is intimately connected to Ferrara's aesthetic thesis: it propels a 'practical', post-metaphysical approach to judgment that moves methodologically from 'historically situated vocabularies' to aesthetic forms recognised in common as underwriting a kind of exemplarity that is normatively generative.

In its reference to 'historically situated vocabularies', Ferrara's conception of phronesis implies engagement with the details of another concrete identity as a means of discerning their "optimal" combination. But from the perspective of the practical reconstructivist there are still two interlinked problems: the coherentist conception of collective identity and the way in which practical judgment refers to the congruence of a collective identity as a means of extracting a 'common vocabulary'. Such 'common vocabulary' makes primary reference to the shared perception of exemplary self-congruence, based upon the particular inter-mixing of the sub-dimensions of coherence, vitality, depth and maturity. Ferrara takes it to be implicit in the methodological claim tied to the normative concept of authenticity that 'phronesis can be understood as the judgment that guides us in selecting the combination of values on the various dimensions that best suits who we, individually or collectively, are.'[407] He quickly follows this with the qualification that 'best fit' is not to be taken at a descriptive level, to refer to a conservative traditionalism that seeks convergence with the status quo. Instead, 'best fit' should be understood 'along exemplary-normative lines' as 'the property of bringing the concerned identity…closer to the unique combination of the dimensions of self-realisation which realizes the highest aggregate value while being also the least dispersed.'[408] Judgment about 'best fit' is concerned with more than a selection and combination of static materials; it is a positive effort to "bring an identity closer" to its particular self-realisation with reference to the aesthetic telos of exemplary self-congruence. This implies a hermeneutical posture marked from the first by an acceptance of the gravitational normative power of coherence, with commonality deriving from the reconstructive movement toward self-congruence—towards 'who we, individually or collectively, are'.[409] Citizens are engaged in the project of hermeneutically driven development towards their particular ethical identity's optimisation, a shared but at the same time differentiated enterprise that we undertake within our own ethical traditions. Our reconstructed 'common vocabulary' refers to this experience of emergence and to its aesthetic

[406] Ibid., 26.
[407] Ibid., 12.
[408] Ibid., 12.
[409] Ibid., 12.

contours and forms—to the experience of congruence or dispersal, to coherence or porousness and its attendant anomie. Yet whether this brings us any closer to disclosing what Benhabib calls the 'whoness' of others—their experience of the lived crisis and renewal of their own traditions in encounter with the 'modern horizon'—remains doubtful.

Ss. 6. *Reflexive pluralism and the Multivariate Polity*

The deliberative framework developed out of these theories of subjectivity and judgment that I have discussed presents several important strengths in comparison to liberal theories focussed on producing consensus through public conversational restraint. First and foremost, it introduces what Ferrara calls 'a multiplicity of democratic cultures', according to which deliberation is made to reflect the condition of multiple modernities and the various languages and frameworks that may support democratic participation. Secondly, Ferrara highlights the possibilities of deliberative 'moments of convergence' emerging out of close examination of the details of particular religious traditions. These are illuminating notions, which commendably prompt democratic deliberation toward engagement with ethical particularity. However, Ferrara's theory of conjectural reasoning and the multivariate polity into which it fits are ultimately constrained in their critical-disclosive capabilities by the overarching attachment to 'coherence'.

Ferrara's theorisation of the relation between ethical traditions, judgment and validity within the life of the democratic polity is inspired by the belief that democracy has a greater chance, 'relative to the value of individual autonomy', to 'prove of genuinely universal appeal' if deliberative democrats are open to transforming the polity 'when needed' into a 'multivariate' one.[410] When does such need arise? Ferrara suggests a prior stage of democratic deliberation in contexts of ethical pluralism, which entails 'conjectural reasoning' to support citizens' endorsement of pluralism and tolerance. Conjectural reasoning differs from the instantiation of the multi-variate democracy in that it aims to develop pathways towards support for pluralism out of specific ethical traditions. By way of contrast, Ferrara frames deliberation under the 'multi-variate' configuration as allowing for differing degrees of support for constitutional essentials from citizens of diverse ethical backgrounds. In other words, some citizens will be able to fully endorse the polity's constitutional essentials, while others will do so for different, perhaps less normatively committed, prudential reasons.

[410] Ferrara, *The Democratic Horizon*, 88.

Ferrara's political theory of the multi-variate democracy begins with foregrounding of a conception of reason as operating within and out of the details of a particular social world, as opposed to at an analytic remove. Foundational to Ferrara's argument is the post-Linguistic Turn differentiation of 'reason' into speculative reason and deliberative reason, the latter being 'a kind of reason-in-context, intersubjective, oriented to the standard of reasonability and embedding the insight that context-bound intersubjectivity possesses its own peculiar form of validity'.[411] Whereas speculative reason is unable to 'directly justify and coordinate human action in plural contexts', it can play a part in coordinating and shaping social and moral plurality by inspiring the employment of deliberative reason. According to Ferrara, the reasonable citizen's attachment to deliberative reason occurs out of the exercise of speculative reason, which drives the pragmatic recognition that 'speculative reason can coordinate action only by way of inspiring deliberative reason'.[412] It is this practical or deliberative reason that Ferrara takes to underwrite the possibility of 'multi-variate democracy', which allows for various ethical traditions supplying different foundational principles for the endorsement of pluralism. Thus, for example, Christian tradition may supply principles of brotherhood or hospitality while Islamic tradition accommodates an internal hermeneutical pluralism that might, by analogy, underwrite endorsement of democratic pluralism.[413] At the same time, while embedded in particular contexts of ethical formation, deliberative reason remains attached to a trans-contextual rationality—speculative reason—that acts to calculate where deliberative reason is suitably employed. Thus, the overarching category of 'reason' entails an integration of the particular with the context-transcending. This integration serves in Ferrara's theory to make possible a multi-variate democratic community where citizens of different ethical orientations can endorse political liberalism without their ethical particularity being displaced by universalist moral (as per Forst) or procedural (as per Habermas) imperatives.

The multi-variate democratic community is produced by, and once instantiated goes on to reinforce what Ferrara calls 'reflexive pluralism', a concept introduced in answer to the limitations of two established responses to ethical pluralism. First, the 'pragmatic answer', as Ferrara calls it, makes the argument for stability, suggesting that the only alternative to accepting political liberalism is to subvert or resist it, thus entailing suppression of the

[411] Ferrara, *The Democratic Horizon*, 123.
[412] Ibid., 124.
[413] See Andrew F March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (Oxford: Oxford University Press, 2009). Luke Bretherton, *Hospitality as Holiness: Christian Witness amid Moral Diversity* (Farnham, UK: Ashgate, 2006).

autonomy of one's co-citizens who adhere to different ethical systems. On this view, to curtail ethically imbued contributions to public discussion is to restrain the ethical authoritarianism and coercion that would otherwise characterise the politics of a pluralist polity. The pragmatic answer is therefore tied to a liberalism of fear as advanced by Judith Shklar, which endorses political liberalism out of a Hobbesian aversion to potentially violent moral controversy and as an institutional means of restraining the underlying agonism of politics.[414] The second established response to ethical pluralism, the 'principled answer', which derives from the neo-Kantian view epitomised by Rawls, is articulated differently in the historically-conversant theory of toleration developed by Forst. At the heart of the principled answer lies the directive to develop a non-ethical conception of justice, whether this be characterised as a 'political conception' (Rawls) or as a 'moral imperative' (Forst). Ferrara rejects both of these answers on the grounds that, in spite of their intention to free politics from unjustified coercion and guarantee equal consideration of citizens, they are themselves prone to ethical and epistemological authoritarianism and endorse an unsupportable exclusion and marginalisation of ethical identities, including religious traditions. This exclusion occurs not only at an institutional level, in formal deliberation, but is embedded in the normative justifications offered for the endorsement of pluralism; justification for accepting pluralism can appeal only to those who already accept the ideal of free and equal citizens exercising public and moral autonomy.[415] Such a view amounts to what Ferrara labels liberal 'monopluralism', which insists on the endorsement of pluralism out of a single context-dependent form of ethical reasoning and a particular social anthropology. When asked for a response to the question "why accept pluralism?", citizens whose ethical conceptions of the good depart from such ideals must, in endorsing pluralism, suffer alienation from their ethical sources – they are unable to offer a justification for the acceptance of pluralism with reference to their thick ethical conceptions. Thus, while an institutionally recognised condition of ethical pluralism may accommodate difference, the initial justification of pluralism is itself monist, assuming a deeper level of shared premises that will generate attachment to the disciplinary frameworks proposed by liberal theorists of both the exclusivist and inclusivist schools.

It is at this level of initial justification that Ferrara inserts his theory of 'reflexive pluralism', which, he argues, has a 'non-exclusionary trajectory', embedding in democratic

[414] See Judith Shklar, "The Liberalism of Fear," in *Liberalism and the Moral Life*, ed. Nancy Rosenblum (Cambridge, Massachusetts: Harvard University Press).
[415] Ferrara, *The Democratic Horizon*, 73.

deliberation 'an awareness of being one among several possible ways of arguing for the acceptance of pluralism.'[416] Ferrara's theory seeks to allow for the ethically situated subject to reason from within their particular traditions by developing the Rawlsian concept of 'conjecture' into a theory of 'conjectural reasoning'. Accordingly, we can locate resources within our particular traditions that will validate pluralism, so avoiding the spectre of a 'liberal monopluralism', which assumes a basic endorsement of 'pluralism' itself as a form of the good life. Such an assumption is ethically authoritarian insofar as it demands that pluralism be endorsed for the same reason, namely a recognition of the 'essential' importance of moral autonomy or reasonableness to the good life. For Ferrara, the strength of conjectural arguments is that they do not presuppose shared premises while nevertheless contributing to the reinforcement of public reason by strengthening allegiance to the constitutional foundations of political liberalism.[417] Ferrara argues that conjectural arguments drawn from particular ethical traditions can produce convergence on shared premises necessary to undergird political liberalism or can even 'directly deliver the goods of justifying fundamentals'.[418] Based upon the operation of 'non-exclusionary' reason, Ferrara posits that the ethical sub-groups within the polity do not have to evolve simultaneously to the point of overlapping consensus; a multi-variate polity can rest upon an admixture of principled and prudential considerations that will be endorsed from various ethical perspectives.[419] The point of conjectural reasoning is to demonstrate to one's interlocutors that 'under a plausible interpretation of their [thick ethical] conception an acceptance of pluralism might follow…'[420] Conjectural arguments for pluralism therefore proceed immanently to the ethical tradition in question: for Muslim citizens, for example, this means making reference, as Andrew March outlines in his convergence theory of deliberation, to Islamic theological sources from which it is possible to derive justifications for abiding by the foundational principles of secular democratic polities. March draws upon Islamic Qur'anic and interpretive literature to identify principles internal to the 'Islamic paradigm' that either support or inhibit acceptance of the secular democratic state and its precepts.[421] The aim here is to establish foundations for the support of liberal democracy, which can advance this perspective over and against those less amenable counter-principles—such

[416] Ibid., 73.
[417] Ferrara, *The Democratic Horizon*, 75.
[418] Ibid., 215.
[419] Ibid., 215.
[420] Ibid., 76.
[421] See Andrew March, *Islam and Liberal Citizenship*: *The Search for an Overlapping Consensus* (Oxford: Oxford University Press, 2009).

as, for example, *Dar al-Harb*: the non-Islamic world as the 'House of War'.

In his commitment to conjectural reasoning as a route towards 'political' consensus, Ferrara's approach differs significantly from Forst's, namely in rejecting the notion that "no non-moral reasons can motivate morality." In diverging from Forst on the interconnection between reasons and morality, Ferrara relies upon a two-tier conceptualisation of truth, which he calls an 'integrated, dual "political conception of truth."'[422] Without parsing this theory in great detail, Ferrara seeks to negotiate between a position, which he terms pragmatist, according to which "truth" is indexed to context and reliant upon the functionality of structuring metaphors and 'frames of meaning,' and the 'correspondence' account, which posits truth as reflective of properties or events "in the world," so to speak.[423] Ferrara's synthesis of these two positions moves further in attempting to accommodate the 'pragmatist' position, by thinking of truth according to a '*dual* notion': 'intraparadigmatic' and 'interparadigmatic'.[424] Accordingly, 'truth as correspondence of our representations to the state of the world presupposes that we by and large agree on the concepts through which we segment the continuum of what impinges on our senses.'[425] We may therefore sustain a "political" conception of truth, which admits that 'truth criteria' differ for intra-paradigmatic and inter-paradigmatic questions. Thus, intra-paradigmatic questions—such as, "how many states in the world allow the death penalty?"—'admit of evaluation against "how things are in the world," because they contain no challenge to our conceptual segmentation of the world.'[426] So far, so simple. But when it comes to inter-paradigmatic questions, which shape our 'conceptual segmentation' of experience, evaluating "truth" is, predictably, more difficult. Statements that present as descriptive, such as "all human beings are born free and equal in dignity and rights," play a generative, rather than merely reflective, role, leading Ferrara to acknowledge the world-making role of "descriptive" statements under conditions of contestation. In this sense, there remains a whole class of statement the truth-function of which is interlaced with the positionality and role of the speaking subject. "Truth value", suggests Ferrara, is thereby 'replaced, as a measure of the validity of the utterance, by the appropriateness of the role of the subject uttering the sentence.'[427] The subject-centred contingency of the truth statement levels

[422] Ferrara, *The Democratic Horizon*, 201.
[423] Ibid., 201.
[424] Ibid., 202.
[425] Ibid., 202.
[426] Ibid., 204.
[427] Ferrara, *The Democratic Horizon,* 204.

a challenge to the project of retaining a capacity to measure statements against 'features of the world' that make them true, or not. Ferrara accepts that this introduces a 'semantic complexity' to our reading of even the simplest 'truth statements'. In considering an assertoric statement such as that "all human beings are born free and equal in dignity and rights" we must apply a more complex conception of truth value than the merely reflective or correspondence model, particularly given the normative, world-building character of such statements. At this point, Ferrara admits the 'force of the pragmatist thesis' that truth is indexed to human flourishing, and argues himself that, in cases where assertoric statements fail to 'correspond' to the "world as it is", we may test them differently: 'it is the mass of implications that they generate, in the form of expectations, predictions and other empirically testable hypotheses, that then through the balance of confirmatory observations and anomalies leads us to a *reflective judgment* as to whether considering one or the other as true is more conducive to the flourishing of human life and thus whether we are more justified in holding one or the other as true.'[428] Hence, we understand the truth value of certain normatively suggestive propositions, which constitute they 'keystone' of their attendant paradigms, as 'grounded in the wealth of consequences that descend from it and of the vision it opens up of a possible life of flourishing for humanity.'[429] Ultimately, this embrace of the pragmatist conception of truth as relative to human flourishing leads Ferrara to the position that attaching non-perfectionist political liberalism to a viable account of truth relies upon the adoption of a *political* narrative of secularism, as 'the growth of toleration, religious neutrality or the institutional separation of politics and religion.'[430] This is necessary when other "descriptive" or sociological accounts of secularism—'secularization as the retreat of religion,' for example—are empirically tenuous across political contexts. The measure for whether each of these statements, as framing statements about the condition within which truth claims are made, are themselves "truthful", is 'whether looking at the world through a certain pair of glasses makes our life as humans better, in some sense that remains to be specified, than looking at it through a different pair.'[431] In this sense, the "truth" function upon which the legitimacy of political liberalism turns is dependent upon a narrative rendering of secularism as the instantiation of desirable institutional configurations and subjective dispositions. It relies, in other words, upon a mixture of observational evaluation of current conditions, as well as something akin to an affirmative genealogy of secularism as the primary

[428] Ibid., 206.
[429] Ibid.,206.
[430] Ibid., 207.
[431] Ibid., 208.

causal element in the development of institutionalised political and religious toleration.

To some extent, then, Ferrara integrates the commitment to mixed methods of evaluative criticism emphasised by Bohman, but does so while trying to retain the notion that our 'best reflective judgment' under perspectivally delimited conditions will produce normative power on the basis of truth. We do not 'simply check' the truth of statements about how best to conceive of secularism; rather we match these statements to reflective judgments of 'what makes our lives as human beings better'.[432] Yet, for Ferrara, this alignment of the assertoric or descriptive "truth statement" with reflective judgment works, 'in the case of paradigm-grounding statements,' to make truth '*indistinguishable from justification*.'[433] The convergence between truth and justification depends, however, upon 'agreement concerning what is meant by secularisation or modernisation,' which in turn will orient our reflective judgments about whether certain kinds of reasons 'buttress truth.'[434] At some level, then, one has to prioritise a narrative conceptualisation of 'secularisation' as the linear development of institutional toleration, state secularity and post-metaphysical epistemology, as determinative of the conditions for cross-contextual truth claims. We are to assess truth not only as 'fruitfulness', in the *eudaimonistic* pragmatist sense, within which conception 'the capacity to reflect the world without inconsistencies is certainly present,' but also as involving the demonstration of *'future promise'* and the absence of paradigm exhaustion.[435] What enables the assessment of this vitality, or exhaustion, is once again the kind of aesthetic judgment to which Ferrara cleaves in his theoretical treatment of ethical hyperpluralism. This aesthetic formalism, with its assumed capacity to escape the relationship of interdependence between judgment and textured hermeneutical understanding, intersects with some of the presuppositions involved in the narrative endorsement of secularisation as progressive institutional transformation. This latter narrative is, according to Ferrara, detached from its sociological cousins—such as Taylor's account of the 'immanent frame'—which describe secularisation in more ambiguous, socially textured, terms. Thus, the institutional narrative that Ferrara endorses is freed of the entanglements that secularity's substantive ethical and philosophical genealogy otherwise impose. For Ferrara, 'truth', at an inter-paradigmatic—or trans-contextual—level, depends upon judgment that discerns future promise with reference to an aesthetic paradigm of 'exemplary self-congruence'. To this mode of form-dependent

[432] Ibid., 208.
[433] Ibid., 208.
[434] Ibid., 202.
[435] Ibid., 203.

judgment Ferrara conjoins a narrative depiction of secularisation and modernisation as matters of institutional reconfiguration that, despite their vernacular shape in particular contexts, retain a justificatory power that extends beyond '"mere" convention.'[436] This, once again, reflects the imaginative detachment of concepts, even narratively rendered ones, from a historicity and a specificity of meaning that is significant for their operation, and that ought to effect shifts in the way we negotiate their status as arbiters of a "world shared in common."

Conclusion

This chapter has evaluated the role of aesthetic form in Ferrara's account of normative integration, and deliberative convergence upon constitutional essentials, amidst ethical 'hyperpluralism.' So far, my discussion in this thesis of Habermas and his descendent "formalists", Forst and Ferrara, has explored the role of form as it appears under different guises in their work – specifically, to paraphrase Schmitt, in terms of legal form, technical form, aesthetic form and the idealisation of 'contemporaneity'. In each of the relevant accounts of democratic deliberation, form works to establish commonality across ethical and religious difference; it does so by supplying a cross-contextually recognisable set of features or premises to which individual subjects can refer for practical orientation. Where we recognise the a priori commonality shared on account of our perception of aesthetic form, or where we register the pre-cultural 'grammar' of speech acts, "practically" driven reflection enables action in accordance with the normative rules established by these features. The formalism of the theories already explored is a product of their concern with avoiding Kant's transcendental idealism in favour of developing 'immanent' sources for normative universalism – sources that depend upon trans-contextually constant depictions of inter-subjectivity. Accordingly, inter-subjectivity in these theories takes on a pre-cultural, 'formal,' dimension, exhibiting structuring features across ethical and historical experiences, with culturally specific 'language games' and ethical meanings being ordered and 'segmented' by these "formal" foundations.

What conception of practical interchange, then, might incorporate the critical-hermeneutical dimension missed or marginalised in Forst's and Ferrara's two theories of democratic deliberation? In the chapters that follow I will suggest that we can locate resources for a version of democratic praxis that includes a hermeneutical dimension more critically sensitive to dissonance and to the tense points of intersection within identity and within

[436] Ibid., 207.

discourse. A socially and ethically more embedded reconstructivism situates hermeneutical within the matrix of language and ethical discourse, seeking a dialogically developed commonality through a process of value generalisation. Freed from the framework of ‘coherence’, this also allows also a more critical view of ethical identities in their poly-vocality, and ultimately forges a more pluralistic and resilient basis for shared norms.

Chapter 4 – A World in Common

Introduction

To briefly summarise, in the foregoing chapters I have argued that the mode of commonality envisioned by the Habermasians depends primarily upon the assumed authority of procedural formalism. I have also made the claim that the formal commonality to which social learning processes are indexed by these theories overlays, but does not negotiate, the deliberative challenge of forging *ethical commonalities* and sources of social solidarity amidst non-ideal contingency and hermeneutical blockages. And yet, such blockages are entrenched and practically challenging features of contemporary politics, to which democratic theory undertaken in a pragmatic and critical vein ought to be responsive. On a practical level, a crucial by-product of this idealisation of procedural rationality is a condensing of deliberation to a semantically generalised process of rational argumentation, rather than an exchange that employs diverse methods and practices with a view to realising equally diverse ends some of which may be discerned, in pragmatist fashion, through the work of critical dialogue. Indeed, our concept of argumentation is itself narrowed to the assertion and defense of propositional claims at the expense of expository, diagnostic or hermeneutical activity. This then shapes the way in which we envision political commonality and shared ethical commitment – as formalistically ordained rather than provisionally achieved through critical dialogue.

This chapter develops an account of value generalisation through critical dialogue, drawing upon the philosophical pragmatism of Hans Joas, James Bohman and others. Where legal-rational discourse and the universalism it asserts depends upon a supra-political aspect for its organisational authority, I want now to illustrate the importance of a more pronouncedly political encounter between conceptions of the good and the value traditions from which they arise. My enunciation of 'critical dialogue' in the chapter that follows pursues the pragmatist conviction that we 'find our ends in the world,' as Joas puts it, and that a 'common world' grows out of and is sustained by the *political* practice of critical dialogue across value difference. It is in this political negotiation that values are generated, ethical commonality and

social solidarity developed or undone, and through which social transformation is pursued via the development of shared meanings and principles for collective action.

This chapter begins (***Ss.1***) by highlighting the balancing act performed by Habermasian theory between a form of intellectual high modernism and philosophical pragmatism. This balancing act ultimately collapses under the imperative of establishing normative universality, thereby departing from the pragmatist commitment to discerning 'ends' and reforming values through socially and politically embedded dialogue. I then proceed (***Ss.2***) to elucidate Arendt's account of politics as the effort towards 'a common world' in which subjects 'appear' in their particular identities – religious, ethical or otherwise. This 'common world' of 'appearance' (***Ss.3***), I suggest, depends upon a more thoroughgoing pragmatist notion of 'value generalisation' as a means of developing ethical commonality through critical dialogue between ethical traditions. Such a process is fundamentally hermeneutical, a characterisation I explore with reference to Gadamer's hermeneutical ontology, arguing that value generalisation ultimately allows for more intimate criticism of ethical values and practices. Finally, in (***Ss. 4***) I take as an illustrative case example of value generalisation the 'A Common Word' dialogue launched in 2006 between Christian and Muslim scholars. I explore the manner in which this process exhibits a practice of value generalisation through which exegetical intimacy is developed and motivationally powerful commonality generated.

Ss. 1. *Formality as 'mediational intelligence'*

The aforementioned accounts of moral and political life developed out of the resources of Habermasian theory attempt to hold in balance a modernising orientation with pragmatic underpinnings, which eschew the more nakedly transcendentalist commitments of Kantian metaphysics. In the pursuit of this synthesis the influence of American philosophical pragmatism stands out, particularly insofar as Habermas, Forst, Ferrara and Benhabib present their respective projects as *mediational* rather than violently modernist. Marking themselves off from those more revolutionary modernisms that 'start from zero', these theorists envision the 'project of modernity' as realisable through a process of mediation between 'old' and 'new', rather than iconoclastic rupture or rationalistic dismissal of tradition. This mediational instinct is in large part indebted to the social thought of John Dewey, whose influence upon Habermas and his intellectual progeny is clearly traceable and who proffers an account of social

transformation as the pursuit of 'cultural liberation' through 'organized social planning'.[437] For Dewey, the vision of classical liberalism, whereby individuals converge upon shared interests without any structured coordination mechanism is no longer viable. Instead, he argues, liberalism is forced by the growing power and influence of industry and finance 'to gather itself together to formulate the ends to which it is devoted in terms of means that are relevant to the contemporary situation.'[438] Dewey's instinct is to preserve the means by which to direct these complexes of capitalistic activity towards ends that are determined by the social priorities of liberalism – namely, 'the cultural liberation and growth of individuals'.[439] The ends may remain tied to a conception of the individual as the genesis and bearer of certain rights and duties, but in the context of industrialised modernity such ends must be pursued through social organisation. In advocating the reconsideration of liberal aims in accordance with the means available under the structural circumstances of capitalist modernity, Dewey in turn proposes a conception of 'freed intelligence' that is collective and constitutional, rather than inhering in the unintended consequences of the individual's pursuit of self-interest. Accordingly, the planning that Dewey has in mind, which works to contain and direct the energies of capitalist production, 'demands in turn a new conception and logic of freed intelligence as a social force'.[440]

Developing this notion of a collectively orchestrated 'freed intelligence', Dewey crafts a portrait of social action as oriented towards the repurposing and regeneration of ethical sources in pursuit of 'new' social forms, values and commitments. His account of social transformation driven by 'liberal' political action works with reference to a temporality of trans-epochal progress. Importantly, however, it characterises this progress as a socially driven endeavour rather than one enacted through a transcendentally positioned Reason effecting 'rupture' with tradition or with 'old' value sources. Unlike the 'radical', the liberal pragmatist as Dewey construes her is concerned with 'organising intelligent action' so as to mediate between traditions that contemporaneously co-exist and between historically laden custom and the developmentalism of modernity.[441] Dewey speaks of this mediational function as bound up with a process of continual and provisional integration of 'old' sources with new initiatives,

[437] John Dewey, *Liberalism and Social Action* (Amherst, N.Y.: Prometheus Books, 2000), 628.
[438] Ibid., 627.
[439] Ibid., 628.
[440] Ibid., 628.
[441] John Dewey, *Liberalism and Social Action* (Amherst, N.Y.: Prometheus Books, 2000), 63.

such that 'the values of old experience may become the servants and instruments of new desires and aims'.[442]

What resources furnish us with the mediational 'intelligence' capable of organising the movement of appropriation and re-direction of 'old' sources towards 'new desires and aims'? Notably, as Dewey presents it, political and ethical transformation is a socially driven process, rather than one organised through the construction of an externalist normative viewpoint. While he no doubt conveys a commitment to pragmatically mediated 'progress', Dewey largely avoids the insertion of abstract modernist ideals and methodological commitments into his account of social transformation – its mediational and situationally attentive quality is what sets the form of social action Dewey envisions aside from visions of social transformation that draw upon an abstract universalism as their critical motor. This is of course a contested reading; Dewey may alternatively be read to urge the 'permeation of democracy by scientific values', such that democracy 'becomes identified with a "method" of discussion that assimilates it to science, while science is described in communal terms that make it appear naturally democratic.'[443] Wolin goes on to level the charge that Dewey's key concepts—'experimentation, method and culture'—are 'ways of evading questions about power'.[444] The question of *who* organises the mediational movement from 'old' to 'new' lies open, according to Wolin. Moreover, one might read Dewey's vision of mediation between 'old' and 'new' to introduce a temporality that moves out of historically superseded ethical sources towards qualitatively 'modern' initiatives, rather than between a set of coexistent traditions that develop new 'desires' and 'aims' in relation to each other. Yet this is equally to form an intellectual portrait of Dewey along lines subject to interpretive controversy; others have sought to refute the picture of Dewey as a positivist and present his attachment to 'method' as one dimension of a holistic theory of enquiry that 'gathers emotion, interest, perception and thought together into one cohesive, immediate, expressive whole'.[445] The point that I wish to emphasise here, however, is not that Dewey's account of pragmatically mediated social transformation betrays a formulaic modernism, nor an unacceptably dismissive attitude towards customary practices,

[442] Dewey, *Liberalism and Social Action*, 49.
[443] Sheldon S. Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought* (Princeton University Press, 2004), 517.
[444] Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought*, 517.
[445] James Johnston, 'John Dewey and the Role of Scientific Method in Aesthetic Experience', *Studies in Philosophy and Education* 21, no. 1 (2002): 1–15, 14.

but rather that it prompts us to consider the pressure that modernist organisational instincts place upon pragmatist conceptions of 'mediation' between 'old' and 'new'.

Where Deweyan pragmatism is conjoined with the neo-Kantian 'project of modernity', this delicate balance tips more emphatically in favour of a modernism that promotes form and formalism, not in a revolutionary manner as instruments of absolute rupture with tradition, but as suitably non-invasive mediating instruments and methodologies. The presence of form and 'formalism' in the Habermasian theories so far considered in this thesis is that of a mediating element that rises above the dependencies and (supposedly) exclusivist commitments of particular cultural traditions (recalling that, for Habermas, 'particular' also means 'particularist'). By counter-posing the right to the good and asserting with Weber that 'ultimate value claims' are qualitatively distinct from the framing operation performed by rationally established procedure, these theories aim ultimately at the identification of secular, universalist but non-transcendental 'principles of authority' by which to establish social order. For Habermas and his heirs, it is the formality of rational argumentation, as well as the authoritative laws it generates, which erects a mediational framework within which the interpretive contingencies and disagreements of ethical life may be contained and redirected in the interests of all citizens of the liberal polity. Hence, in Habermas' terms:

> Because no evidence is decisive and no arguments are compelling "in the final instance", because no assertion, however well justified, is infallible, it is only the quality of the discursive truth-seeking procedure that warrants the reasonable expectation that the best attainable information and reasons are indeed available and do "count" in the end.[446]

For reasons to 'count in the end', as opposed to 'in the final instance', is for their rational-argumentative power to supply the means for organising adherence to constitutional norms, which, in turn, are taken to drive the inter-subjective advancement of moral equality. In an age in which no arguments may claim validity 'in the final instance' as Habermas takes pre-modern religious 'arguments' to have done, formalism acts to optimise the authority of arguments composed with reference to 'cognitive contents' freed from parochial formulation in 'the crucible of rational discourse.'[447] Formalism, Habermas holds, facilitates 'intelligent action' at

[446] Habermas, *Between Naturalism and Religion: Philosophical Essays*, 51.
[447] Ibid., 142.

a social level, organising the diachronic practice of appropriation—the 'learning process' by which the coordinating power of the 'sacred' moves onto a post-metaphysical footing—and directing it towards ends that cohere with the 'project of modernity'. This is, Habermas insists in a vein reminiscent of Dewey, an 'open-ended' process, which neither forecloses upon nor 'decides' the rationality of truth claims; rather, it merely inserts pragmatic presuppositions without which argumentation cannot 'count' as 'serious' or compelling. Yet the 'intelligent action' that Habermas envisages as organising social life according to a structure of egalitarian universalism is primarily 'philosophical' in its cognitive dimension. That is, it depends upon a 'philosophical' conception of reason to organise the 'discursive truth-seeking procedure' and the cultural resources it accepts as relevant to the modern self-understanding. The secular abstraction of philosophical reason acts by 'freeing cognitive contents from their dogmatic encapsulation,' thus issuing in a mode of self-reflexive cognition at once genealogically alert but also of sufficient authority to demarcate the border between 'rational validity claims' and their 'opaque' others.[448]

What remains clearly in place, then, is a view of deliberation as culminating in a moment of decision delivered by the 'unforced' force of the rational argument, built upon the 'functionally requisite' mentalities supplied by post-metaphysical thought. Accordingly, the interaction between 'substantial' value articulations culminates in the normatively productive clarity of discursive thought, strengthened against the vicissitudes of the Linguistic Turn by its reflective acknowledgment of its own genealogy. Reason 'appropriates' the contents of 'faith' via the historical learning processes that extract lingering semantic potentials from ethical traditions, while accepting that 'faith' cannot be defended by 'philosophy proper' and that its core, like 'the hermetic core' of aesthetic experience, remains 'profoundly alien' to discursive thought.[449] This is not to say that Habermas adopts a straightforward form of Enlightenment rationalism; on the contrary, his project is to revive confidence in Enlightenment thought by prompting its secular proponents to exercise greater reflexivity via a 'non-reductionist form of post-metaphysical thinking'.[450] Thus, he resists both empiricist and 'mentalist' conceptualisations of reason as the cognition of mind-independent material realities (excluding norms and ideals) and, equally, states his resistance to 'the exclusion of religious doctrines from the genealogy of reason.'[451] Yet Habermas' schematisation of modernity suggests that

[448] Habermas, *Between Naturalism and Religion: Philosophical Essays*, 142.
[449] Ibid., 143.
[450] Ibid., 140.
[451] Ibid., 140.

the norm-constructing contribution made by such 'doctrines'—'the only surviving element of the now alien cultures of the Ancient Empires'—is long past and their *cognitive* substance, though not exhausted, is steadily collapsing into a merely semantic heritage.[452] In other words, they cannot be *active* in the manner of driving reflective reconstruction that constructs and extends values or meanings that are cognitively compelling. Consequently, the trajectory of 'reflective reconstruction' is mediated, for both secular and religious citizens, by the power of secular presuppositions and the Whig meta-narrative—the 'linguistification of the sacred'—from which they arise. 'Discursive thought' can therefore only appropriate the 'old' sources of religious faith on its own terms**,** as no more than semantic potentials that (despite the practice of philosophical theology) cannot amount to a philosophically formed, and therefore 'cognitively compelling', kind of argumentation. That they cannot be included in or 'decisive' for philosophical discourse, the outcome of which determines the constitutive ideal of an empirically unscathed inter-subjectivity, suggests the retention of a commitment to discursive thought characterised by the 'rational causality' of free will 'undetermined by any alien cause'.**[453]** It is true that this form of 'undetermined free will' expressed in the 'discursive truth-seeking procedure' willingly takes on an added dimension of reflexivity, but we might ask whether it does so for the sake of reinforcing its own authority to circumscribe and demarcate the 'opaque' other of reason. Indeed, the genealogical self-awareness that 'philosophical reason' takes on under Habermas' guidance appears to introduce little if any uncertainty about the direction modernity might take under the influence of pluralised discursive practices.

For Habermas, then, the 'mediational intelligence' that works to organise the discursive habits by which 'old' sources are collectively re-appropriated and transformed in pursuit of 'new' ends, is exemplified by the 'freed' cognitive action of philosophical reason. The conditions by which the 'new' may be pursued are set by a 'philosophical' (and therefore methodologically secular) conception of reason in concert with 'the perspective of a specific normative self-understanding of modernity'.[454] This self-understanding dictates that for ethical sources to count as cognitively relevant they must be released from the traditions in which they receive 'dogmatic' enunciation, along with its attendant background meanings. Although Habermas' efforts at making modern secularity reflexive in relation to its own genealogy are laudable, the confluence of this method (philosophical reason) with this self-understanding

[452] Habermas, *Between Naturalism and Religion,* 142.
[453] Korsgaard, *The Sources of Normativity*, 97.
[454] Habermas, *Between Naturalism and Religion,* 144.

(modernity as a fractured but reflectively secular phenomenon) suggests deliberative 'ends' that are largely set, rather than discerned through creative action.

Ss. 2. ***A Common World***

Where are we to look for alternative resources with which to envisage a form of creative mediational action by which ethical sources may be turned towards collectively discerned ends, even amidst the fissures of contemporary value pluralism? What supplies resources for thinking about a space of encounter in which there may be a creative exegesis of values across ethical difference, such that citizens develop critical intimacy with each other's ethical traditions and, with it, a 'common world' of equal political agency and shared sources of solidarity? In what follows I turn to Hannah Arendt and to those working within the pragmatist tradition, especially Hans Joas, as a means of developing an answer. First, a different conception of the 'common world' towards which democratic deliberative engagement should be oriented; second, an attendant conception of the aims of deliberative engagement that refocuses deliberation upon the negotiation of value difference in ways that disclose the ethical identity and agency of one's interlocutor.

Arendt, in her account of the 'public realm', describes it as a domain in which 'everything and everyone are seen and heard by others'.[455] Being seen and being heard are the two qualities that Arendt takes to be essential to the life of the 'public', but this seeing and hearing takes on a particular quality: 'being seen and heard by others derive their significance from the fact that everybody sees and hears from a different position.'[456] Within the common world of the public realm 'reality is not guaranteed primarily by the "common nature" of all men' but by their attendance to or concern with the 'same object'.[457] Crucially, the loss of a common world in which we appear to each other as particular subjects, without being imprisoned within a purely singular subjectivity, can be eroded from two directions: it can occur under conditions of 'radical isolation' or mutual incomprehension, where 'nobody can agree any longer with anyone else' and it can occur under the conditions of modern mass society, by which 'we see all people behave as though they were members of one family, each multiplying and prolonging the perspective of his neighbor.'[458] To be subsumed beneath the

[455] Hannah Arendt, *The Human Condition*, 2nd ed. / introduction by Margaret Canovan. (Chicago: University of Chicago Press, 1998), 77.
[456] Arendt, *The Human Condition*, 57.
[457] Ibid., 57.
[458] Arendt, *The Human Condition*, 58.

homogeneity of the social represents, for Arendt, the loss of creative agency that marks specifically political *action*. Yet the private sphere as a space for particular self-realisation and expression is equally futile in its solipsism and its imbrication with the mundane demands of material need. In both cases Arendt finds an absence of creative agency that exhibits what she thinks of as *action* or the capacity, in Calhoun's words, 'to give form and establish connections' so as to 'transcend mere intimate subjectivity and mere responses to necessity'.[459] Indeed, Arendt suggests that *in both instances* 'men have become entirely private', being 'imprisoned in the subjectivity of their own experience'.[460] To be 'imprisoned' within subject-centered particularity is to be without a common world that affords the possibility of *appearance as particular human subjects*, laden with affiliations, histories and the perspectives and goods they recommend to us: the 'end of the common world has come', Arendt writes, 'when it is seen only under one aspect and is permitted to present itself in only one perspective.'[461] Arendt's view of commonality forged out of political action is therefore set against the procedural diminishment of plurality—including the plurality of ultimate value claims—and in favour of a view of the 'common world' as a space in which perspectives are relativised and renewed *in contact* with alterity; it thereby aims to resist the politically dulling multiplication of perspectives while at the same time building a form of commonality born out of contact between particular identities. This is equally an end prioritised in Habermas' more recent work, where he discusses the importance of 'complementary learning processes' between 'secular' and 'religious' citizens. Such learning entails the 'adaptation of religious consciousness to the challenges of an environment that is becoming progressively secular' and, along with it, a self-reflexive registration on the part of secular citizens that overcomes a 'rigid and exclusive secularist understanding of modernity' and a 'scientistically truncated conception of reason'.[462]

One of the key questions raised here is that of *how* we are to appear in public in such a way as to overcome the solipsism of mass society, which *prolongs and multiplies* perspectives, rather than regenerating them. What kind of public action or 'appearance' could foreseeably succeed in sustaining ethical particularity *and* collaborative attention to concerns held in common? To 'appear', in Arendt's terms, is to appear in our ethical and social particularity,

[459] Craig Calhoun, 'The Problematic Public: Revisiting Dewey, Arendt, and Habermas', in *The Tanner Lectures on Human Values*, ed. Mark Matheson, vol. 33 (Salt Lake City, UT: University of Utah Press, 2014), 65–107, 84.
[460] Arendt, *The Human Condition*, 58.
[461] Ibid., 58.
[462] Habermas, *Between Naturalism and Religion : Philosophical Essays*, 138, 140.

but within the common world of the public realm, as distinct from Aristotle's envisioned sphere of purely private or domestic life with its concern for material sustainment. Proceeding cautiously, we may well hesitate before Arendt's dismissal of 'the social' and of 'civic society', as well as question her attachment to the classical conception of the public/private dichotomy, materially hierarchical and exclusionary as that binary separation is in its presentation in classical thought. And while Arendt herself recognises and treats critically the Greek banishment of bodily function and material sustenance to the private domain, she nevertheless continues a fixation with the common world of the self-determining polis as a space of encounter in which people have selves that are *political* in the classical sense –hence non-private. In drawing on Arendt, we therefore need to establish and assert the political relevance of the body, of affect and the 'passions', of domestic ritual and of customary ethics, while holding to the fruitfulness of her conception of a 'common world' into which 'private' languages and particular experiences are transported. More specifically, I emphasise a common world worked out and sustained by "world forming" action out of perspectival difference, through which difference is itself made into the object of political discourse and negotiation. As Kristeva suggests, the central idea of Arendt's conception of the public and of politics more broadly, is 'to be able to *appear,* with one's own history, before the plurality of human bonds'.[463] The assembly of 'appearances' therefore discloses the plurality of ethical voices, traditions and sources that constitute the political community, making the nature and constitution of this diversity into the object of common attention and concern. Yet such plurality does not dissolve or undo the 'common world' that citizens and ethical interlocutors might share, precisely because they participate in the act of addressing themselves to each other *as particular others* – that is, as others with an identity that merits attention on its own terms. The 'common world' is sustained through the appearance and consideration of particular perspectives, which avoids the assertion of a singular 'aspect' under which commonality must be seen in order to be sustained through regularised forms of deliberative practice.

The 'public' space forged out of this plurality is fundamentally a *political* creation, rather than a normative-legal framework of a formal nature. It is not the structure of argumentative justification, aesthetic exemplarity, or the 'facticity' of law that establishes the Arendtian 'common world'. Rather, as Zerilli rightly emphasises, the common world that Arendt envisions depends upon myriad acts of judgment, hermeneutical engagement and

[463] Julia Kristeva, *This Incredible Need to Believe*, trans. Beverley Bie Brahic (New York: Columbia University Press, 2009), 71.

dialogue, which are usually enacted in the midst of disagreement and tension. As a space of 'public' appearance, the common world is laden with the tensions that attend our addressing difference, rather than procedurally deferring or delimiting it. Yet these tensions, which occur in the process of contact between distinct ethical subjectivities, are what make for the 'publicness' of the common world that Arendt envisages – as Calhoun states, 'its publicness comes from its performance as a space between people' in which public action takes place, 'always forming and reforming that space and arguably the people themselves'.[464] There is, then, a very different view of both the space in which action occurs *and* the nature of action that develops and sustains that space. To return to Danielle Allen's terms cited earlier in this thesis, Arendt's conception of political encounter facilitates a view of commonality as public action that strives towards 'wholeness' rather than 'oneness', implying the retention of orientations towards emancipation and the political achievement of justice, without insisting that these be realised via the formalised "singularity" of rational procedure.

Perhaps more importantly, however, the Arendtian common world is the *outcome* of public action; it is therefore an inversion of Habermas' theory of deliberation, whereby 'public' action is shaped a priori by an account of normative structure or, in the domain of 'informal' deliberation, by the socio-historical process of secularisation designated by the 'linguistification of the sacred'.[465] This highlights a key difference I have aimed to shed light on throughout this thesis, between a view of public action as an effort towards conclusive stabilisation—or as occurring within preemptively stabilised spheres—and an account of 'publicness' as the exercise of creative political agency. Calhoun articulates the distinction, 'whereas Habermas's response [to the conditions of capitalist modernity] was to try to protect a space for deliberation and argument from intrusions, Arendt's was to stress public action that could be creative and culture forming.'[466] Against the homogenising social *habitus* produced under the conditions of mass society, Arendt can be read to insist upon 'the capacity of action in public to create the world that citizens share in common'.[467] Consequently, Arendt's account of public action dictates a different approach to the relation of action with the quality of 'publicness' and particular ethical languages. Whereas for Habermas the liberal project of developing an 'intelligent' normative order depends upon the categorical differentiation of

[464] Calhoun, 'The Problematic Public: Revisiting Dewey, Arendt, and Habermas', 86
[465] Jürgen Habermas, *The Theory of Communicative Action*, vol. 2, 2 vols (Cambridge: Polity Press, 1989),
[466] Calhoun, 'The Problematic Public: Revisiting Dewey, Arendt, and Habermas', 77.
[467] Ibid., 86.

spheres, Arendt's commitment to 'appearance' in public prioritises *political* action unbound from a logic of spherical differentiation and discursive stabilisation. Habermas is willing to countenance multiple 'publics' in which different forms of appearance occur, but he retains a commitment to discursive rationality that prioritises secular argumentation, along with a requirement of translation out of ethical idioms. Hence, the kind of creativity promoted by Habermas' theory is primarily that of translation within pre-established parameters; as with Forst's structure of 'autonomous morality' and the framework of discursive duties it establishes, the distinct and settled 'publics' that Habermas constructs frame "action in public" as concerned with forging routes toward a discursively secular convergence.

At a practical level a foreseeable consequence of this differentiation is foreclosure upon the possibility of equitable transformation of one vocabulary by another through a process of creative interchange; public 'secular' language, with its veneer of methodical self-discipline, accepts the affective or imaginative articulations of non-secular value systems only as tributary sources, rather than level interlocutors. One may, in terms that echo Dewey, make an argument in defense of this arrangement in terms of 'intelligent organisation', which calls for functional differentiation in pursuit of liberal ends. That is, that the language of rational argumentation supplies the vocabulary with which to achieve 'decisive' arguments that force rationally driven commitment to normative rights and duties, whereas 'ethical' languages unsuitably depend upon non-rational support structures of affect and unreflective habituation. Or, to envision this in a more structural sense, public secular language demarcates a domain of deliberative 'formality' that remains purposefully insulated from the arbitrary and non-generalizable character of 'ultimate value claims'. Viewed either way, the translation requirement of Habermas' deliberative theory, along with the notion of 'learning processes' in which modern subjects take note of the 'semantic potentials' concealed from the secular eye within ethical traditions, evinces a practice in which the terms of engagement, and the angles of reception and learning, are established without challenge by the presuppositions of the secular or post-metaphysical world. The issue, as Zerilli emphasises in her reading of Arendt, is that our practices of justification may entail 'a strong tendency toward compulsion, which, in turn, destroys the particular qua particular and the very space in which political speech (including arguments) can appear.'[468] In the search for 'decisive' arguments by which normativity, and so constitutional legitimacy, may be established, the content of ethical traditions is made to appear

[468] Linda M. G. Zerilli, '"We Feel Our Freedom": Imagination and Judgment in the Thought of Hannah Arendt', *Political Theory* 33, no. 2 (April 2005): 158–88, 160.

in a non-political light, cleared of its potential for argumentative force—of its capacity for 'rational' persuasion—while remaining of value to the project of modernity in a merely semantic way.

Against this model, Arendt's account of the political common world in which 'appearance' is made possible suggests the importance to a critical public space of sustaining particularity *as particularity*. 'Appearance' out of social and ethical particularity fulfils a vital *critical* function by calling into question identities or normative languages that, by masquerading as general and accessible across ethical perspectives and experiences, develop a hegemonic status that replicates and multiplies a specific point of view. 'Appearance' entails deliberative exchange in which one communicates as a particular ethical subject, formed out of traditions, narratives and experiences (collective or individual) that give shape to one's social and political concerns. Only in so doing can we disclose what is *actually at stake* in our efforts at developing or renewing political commonality. Thus, for example, in recent debates in the United Kingdom about the nature of citizenship, or the priority of social integration, we find interlocutors self-consciously speaking out of specific histories of exclusion that significantly shape their perceptions of what is at stake, or what remains to be resolved, through deliberative exchange and the enactment of new legislation. In the contested public discussion of section 26 of the 2015 *Counter Terrorism and Security Act*—commonly known as 'Prevent'—those who resisted the relevant measures referred to the historical exclusions, social, semiotic and institutional, experienced by British Muslims; their arguments depended for their persuasive force upon the enunciation of specific details illustrative of the experience of marginalization.[469] The experience of Muslim communities in the United Kingdom (and other Western states) in the post-2001 era has been shaped deeply by political mobilisations of law as well as by the steady intertwining of 'security' and 'migration' discourses from the late 1980s.[470] Prevent, despite its deliberately 'neutral', secular, and generalised legal language, ought to be read, then and now, with this historical backdrop in sight.

The effects generated by Prevent included the imbrication of religious and racial optics, securitising a select set of migrant communities and positing them as a threat to ethically

[469] U.K. Parliament, 'Counter-Terrorism and Security Act 2015', accessed 9 January 2020, http://www.legislation.gov.uk/ukpga/2015/6/part/5/enacted?view=plain.

[470] See Karma Nabulsi, 'Don't Go to the Doctor', *London Review of Books*, 17 May 2017, https://www.lrb.co.uk/the-paper/v39/n10/karma-nabulsi/don-t-go-to-the-doctor. Imran Awan, '"I Am a Muslim Not an Extremist": How the Prevent Strategy Has Constructed a "Suspect" Community.', *Politics & Policy* 40, no. 6 (2012): 1158–85.

"moderate" citizens. That this entailed a discursive construction of British Muslim identity that conflated racial and religious elements seems clear, or at least it was registered as such on the anecdotal evidence available from affected schools and communities.[471] By proposing a view of extremism and its roots that tacitly posed the 'Muslim' and the 'migrant' as prone to the effects of violence-bent indoctrination, 'Prevent' worked to 'recode' British Muslim identity into a cultural threat embodied by racially distinct migrant communities; and this despite the language of legal 'neutrality' which suggested the un-targeted nature, and controllable outcomes, of the legislation. Its *political meaning* was therefore built upon its emergence out of colonial histories, the categories they supplied and the presence these established in contemporary discourses of 'threat' and securitisation. Whether it be the positing of the post-colonial migrant as potential threat to cultural stability or to a home-grown *sensus communis*, or their conflation with the figure of the 'religious fundamentalist', the *Counter Terrorism and Security Act* drew its political and social accent from meanings to which it gave only tacit expression, but which it nevertheless made present in the discourse it drew into being. Critiquing such a legislative and policy program—and the arguably corrosive consequences of this meaning for the project of developing a 'common world' inclusive of undiminished ethical particularity—therefore demanded reference to the *particular* meanings, tacit and historical, made present through its implementation. Precisely because a hinterland of social and political meanings was brought into deliberative view by Prevent, and because these meanings and their effects were at the heart of the public debate over the legislation, it demanded 'reasons' forged with the material supplied by particular historical experience, memory and affect. As Fernando emphasises in light of her survey of contemporary European constructions of Islamic identity, the 'figure of the Muslim' is produced by way of a European 'culture concept' that 'combines race, religion, and culture', tying these elements to 'descent and phenotype'.[472] If a major issue with Prevent was that it drew from, referred tacitly to, or inadvertently reinforced this configuring of 'the Muslim', then deliberative engagement over its implications required a process that interpreted and disclosed these discursive connections. In other words, it called for 'appearance' out of ethical particularity, with reasons that made particular forms of experience plain, so that *what was actually at stake* might be clarified.

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[471] Rights Watch (UK), "Preventing Education? Human Rights and UK Counter-Terrorism in Schools" (London, July 2016), http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3.compressed-1.pdf.

[472] Mayanthi L. Fernando, *The Republic Unsettled: Muslim French and the Contradictions of Secularism* (Durham, NC: Duke University Press, 2014), 138.

Arendt's conception of the politically forged 'common world' suggests that without the 'appearance' of the ethical stranger in their concrete personality, the multiplication of a 'universal', ethically monochrome, perspective appears all the more probable. If we are to replicate each other's expressions of semantic generality in the course of democratic reasoning, and if those concepts or registers of speech taken to be suitably 'general' are predetermined according to an autonomous normative structure, then there appears to be little room for "working out" in the course of critical dialogue the relative strength and adaptability of values. Alternatively, Arendt's view suggests that if 'public' action is a performance in 'the space between people' of the kind that renews and reforms the relations that obtain between interlocutors, that generates sources of social solidarity, it is also a process by which they creatively reconfigure the 'world' they share in common.

My purpose in what follows is, taking inspiration from Arendt's discussion of the political common world, to offer an account of 'creative action' through value generalisation. Once we overcome the compulsion to establish a singular and stable source of normative authority over the political domain, we are able to think through the process of value exchange and dialogue in such a way as to achieve plural democratic and critical aims, including those of disclosure, understanding, and reform. Our aim, to turn to Kaviraj's phrasing, will be to develop at each deliberative juncture a 'configuration of commonness' that is grounded upon sources worked out through political dialogue and directed towards ends that are discerned in the course of encounter between particular ethical identities. By 'particular' identities I simply mean those identities that do not pretend to a culturally autonomous and 'abstract' integrative role, even while they may indeed be repositories of ethical and imaginative universalisms. This is to take more seriously, and with less deference to the regularising instincts of neo-Kantianism, the import of pragmatist ethics, which avoid construing conceptions of "the good" as necessarily exclusivist, or regressively dependent upon Aristotelian metaphysics in a post-metaphysical age. Instead, taking pragmatist ethics seriously entails developing an account of deliberation as a process of *creative action* that forges a 'common world' in which shared values are generated, sustained and renewed. Excavating the work of Hans Joas and others I will set out a pragmatist theoretical framework, and a deliberative practice, that allows for the comparison, extension and adjustment of particular values to form a basis for commonality across difference.

Ss. 3. ***The claim to universality***

The Habermasians, I suggested earlier, signal their pragmatist instincts and attempt to fold these into a synthesis with neo-Kantianism; ultimately, however, their pragmatist commitments are placed under strain by the regularising and singularising demands of formal universalism. But does the pragmatist instinct for placing the 'old' at the service of the 'new' necessarily reinforce a construal of 'tradition' or custom as unlikely to open 'new initiatives' without the assistance of formal universalism or secular developmentalism? In the context of competing claims to universality, what would allow for a *collaboratively* worked out re-deployment of extant sources towards ends discerned in light of new experience? A form of deliberation driven by the commitments of pragmatist ethics should perform three tasks: the first is to allow different conceptions of the good to 'appear' without our pre-emptively consigning their articulations of value to the category of 'private', 'non-rational' or 'non-generalisable'. The second is for the disclosure and comprehension of claims and vocabularies resident within these traditions in their 'articulating-constitutive' character, rather than as static representative claims or propositional assertions (I will explain this distinction later). The third is for citizens to develop a diagnostic capacity that unveils the genealogical dependencies of their own traditions, while also discerning whether these might be generalised to form a basis for common action and shared commitment.

In contrast with the Habermasian fixation upon the mediational power of 'form' and 'formalism', the pragmatist theory of Hans Joas insists that, in receiving and asserting claims about 'universality', we are never free from the need to interpret *values* and the meanings they bear.[473] As suggested in prior chapters, for Habermas the particularity of values means the *particularism* of values, such that, in Joas' words, 'the only hope of universalisation…lies in the spheres of law and normative morality'.[474] The universalism available to us under the aegis of neo-Kantian democratic constitutionalism is an ordering and framing device that relinquishes its own claim to establish the 'good'. Because of this substantive "emptiness" it can accommodate a plurality of democratic cultures, as Ferrara argues, precisely by allowing for multiple justificatory routes towards doctrinal and philosophical (if not affective) acceptance of the social condition of value pluralism and the secular constitutional order to

[473] Hans Joas, *The Sacredness of the Person a New Genealogy of Human Rights* (Washington, D.C: Georgetown University Press., 2013).
[474] Joas, *The Sacredness of the Person a New Genealogy of Human Rights*, 176.

which it ideally tends. If we reason formally rather than historically, and 'rationally' rather than affectively, we can lean upon the stable universality of normative and legal formalism while tipping our hats in passing to the historical deployments and entanglements upon which it depends. By way of contrast, Joas' treatment of universality and particularity proffers a less dichotomous picture, on the one hand by historicising claims to universality and on the other by discerning seeds of universality within 'ethically' particular traditions. In so doing he paves the way for a theory of deliberation that countenances engagement between particular articulations of values, which may be productive of ethical commonality – that is, of *shared* values and understandings.

Following Joas' lead, the first step in outlining a deliberative mode developed out of pragmatist ethics is to reset our account of 'universalism' along lines more sensitive to modernity as a *conjunctural* phenomenon; to do so is to insist on the relevance of 'universalisms' as they operate politically, asserting ideals of political and social order and making claims marked by the assertion of context-transcending validity. To grapple with the 'universalisms' present in pluralist societies will, from a pragmatist perspective, be less an exercise in 'neutral' mediation between doctrinally exclusive truth claims (though strains of theological, soteriological and racial exclusivism are of course alive and well) and more akin to the hermeneutic negotiation of shared values out of different historical and ethical trajectories.

The experience of inter-cultural impingement—or in Ahmed's terms the sharing of 'Con-text'—along with the developing recognition of 'multiple modernities', suggests a need for translation and negotiation not simply between 'ethical' commitments and 'moral' concepts, but between differing experiences of encounter with 'the modern' and between the claims to universality that give shape to these encounters. Indeed, we might cast a glance at the manner in which transformative experiences of 'modernity' in the post-World War Two twentieth century occurred through formative encounter with newly confident political 'universalisms' asserted as programs of emancipation or stabilisation.[475] Not only have these encounters been curated by the legacies and contemporary processes of colonisation and globalisation, but also by the manner in which ethical and religious traditions have responded to the characteristics of 'modernity', characterised by Habermas in terms of the extension of complex systems—the law, the economy—into the 'private' and 'civic' domains. There are

[475] Odd Arne Westad, *The Global Cold War: Third World Interventions and the Making of Our Times*, 1st pbk. ed. (Cambridge: Cambridge University Press, 2007).

multiple routes to 'modernity' taken by different traditions, which themselves contribute to the formulation of those canonical aspects of "the European modern", such as human rights discourse, constitutional declarations of human dignity and the assertion of democratic processes as indispensable to the realisation of liberal ideals.[476] Modernity, to return to Subrahmanian's phrasing, is a 'conjunctural' phenomenon, which entails interaction between competing claims on universalisation.[477] And, if 'modernity' is defined by conjuncture, so are the traditions out of which ethical and imaginative responses to social transformation are composed. Indeed, as my discussion of Ahmed's depiction of Islamic tradition set out, the values and self-understandings of ethical and religious traditions within an unfolding experience of 'modernity' are less stable, centrally ordered and self-contained than liberal political theories have tended to assume. 'Particularism' is not *only* particularism but, when viewed with an eye to ethnographic detail, entails meanings and values that are deeply intertwined with other traditions, displaying in all but the most insulated cases a cosmopolitanism of influences.

This is not simply to re-assert that we should problematise coherentist accounts of tradition, but rather to emphasise the relevance to democratic theory of the dynamic *encounter* between the experiential trajectories and intellectual genealogies of 'old' traditions and the secular preoccupations of European modernism, 'revolutionary' or 'liberal'.[478] Heaping soil upon the grave of the secularisation thesis, the social world—the hinterland of ethical and imaginative formation—continues to be coloured by ethical 'universalisms' that, while moulded and reformed by the strictures of secular positive law, nevertheless advance meanings, claims and ethical practices that powerfully resource political action. The politics of contemporary democracies, in turn, feature the interaction between extant traditions and emergent circumstances, which produce renewals of *doxa* and practice, or adaptations of customary commitments to the transformed social and ethical composition of societies. Despite Habermas' historiography of the 'linguistification of the sacred', "pre-modern" universalisms that structure exploration of and adaptation to 'modernity' retain their power, co-constituting

[476] (See Moyn; James Chappel; Jonardon Ganeri etc)

[477] Sanjay Subrahmanyam, 'Hearing Voices: Vignettes of Early Modernity in South Asia, 1400-1750.', *Daedelus* 127, no. 3 (1998): 75–104. Judith Butler, Ernesto Laclau, and Slavoj Žižek, *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left*, Radical Thinkers (London: Verso, 2011). 163.

[478] See Tamir Moustafa, *Constituting Religion: Islam, Liberal Rights, and the Malaysian State*, Cambridge Studies in Law and Society (Cambridge: Cambridge University Press, 2018),

modernity through their social imaginaries and ethical practices. In the temporal process of social transformation, by which 'old' sources are directed towards 'new' ends, ethical values (as much as an abstract social intelligence) perform the critical mediational role.

With the political and historical dimensions of claims to universality in view, Joas questions Habermas' assertion of a normative architecture that works to license his philosophical commitment to the 'decisive' nature of argumentative rationality. Following the insight that particularism is not *only* particularism, Joas tugs at the structure of Habermasian normativity, namely its bifurcation of 'ethics' and 'morality', arguing that it is inaccurate and philosophically tendentious to suggest that 'ethics' aims at what is good "for me" or for "us" in the parochial sense, while 'morality' aims at what is right for "us" at a universal level (for humans qua humans). On the contrary, ethics that accommodate universalistic imaginaries—such as the ethics formed within religious traditions—may also drive us to break with egocentrism and reshape interpersonal and social relations along morally expansive and inclusive lines.[479] Movements for social reform, such as the anti-slavery movement in eighteenth century England, the civil rights movement in the twentieth century United States, the Solidarity movement in 1980s Poland and the contemporary gay rights movement, have depended upon affectively and imaginatively rich vocabularies supplied by particular ethical and religious traditions. Such vocabularies have, in their capacity to effect *cognitive* shifts, proved crucial to the re-constitution of a civic imaginary in which the identities of 'moral personality' and 'citizen' were made available to the historically excluded, or by which the status quo was called radically into question. On the other side of the Habermasian equation, 'morality' or 'legality' that casts itself as 'universally valid' or eschatologically promising has, as I have emphasised throughout previous chapters, interacted closely with structures of domination, which prioritised and strengthened its preferred means of claim-making. Thus, the authority of secular law is in part dependent upon a supersessionist colonial discourse that imagines secular legal rationality displacing customary parochialism and, concurrently, the power of "rational argumentation" overcoming the authority of narrative, myth and ritual (ritualistic and customary as the practice of secular law undoubtedly is).[i] 'Ethics' are therefore not only or inevitably particularist. Equally, 'morality' cannot be un-problematically construed in terms of context-transcending universality, even by means of argumentative rationality and procedural formalism. Instead, 'universality' viewed through a pragmatist lens amounts to a specific kind of claim, or scope of referential ambition, made possible by semantic and

[479] Hans Joas, *The Genesis of Values* (Cambridge, UK: Polity Press, 2000), 183.

cognitive resources drawn from the sediment of tradition, or from what Joas calls its historical 'genealogy'.[480]

A foreseeable rejoinder to such a levelling of morality and ethics is that it simply misses the nature of both Habermasian and Forstian normativity. After all, each propose a theory of normativity as structurally 'autonomous' from cultural particularity and the 'ethics' it generates, refusing the attribution of contextual specificity to the methodological formalism from which they draw foundational norms. Or, at the very least, they each refuse the notion that such specificity inhibits the transposition of political and methodological concepts across cultures, traditions and contexts of practice. However, following Joas' lead in registering the *political* nature claims to universal validity—claims that take their 'meanings' to be universally established or available—implies that we also register the assertion of universality *as a specific style of claim*. The historical specificity of the claim to universality is drawn out in the developing literature on axiality and the Axial age, the defining characteristic of which is the opening of a 'cosmological chasm' between the transcendental and the mundane.[481] The notion of an axial period in which several traditions developed concepts of transcendence has been taken up by thinkers such as Robert Bellah, Charles Taylor, Matthias Jung and others to ground a series of enquiries into the emergence of 'universality' within religious traditions as they began to develop into a theologically and practically established component of human culture. The 'axial' thesis, initially developed by Karl Jaspers, refers to the structural and semiotic developments that made possible 'new forms of symbolisation in which the contrast between universal aspirations and particular contexts generates a previously unknown dynamic of change.'[482] In the traditions considered under the axial thesis new conceptual resources open up the construction of transcendent realms of meaning, a process concurrent with the development of what Ong calls 'technologies of literacy' that allows for the development of meanings that extend their reach beyond contextually specific sites of articulation.[483] This points to the manner in which assertions of universality, including those that depend upon

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[480] Joas, *The Sacredness of the Person a New Genealogy of Human Rights*. Iza R Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: University of Chicago Press, 2016).

[481] Bellah and Joas, *The Axial Age and Its Consequences*, 13. Robert Neelly Bellah , *Religion in Human Evolution: From the Paleolithic to the Axial Age*, *From the Paleolithic to the Axial Age,* (Cambridge, Mass.: Harvard University Press, 2011),

[482] Bellah and Joas, *The Axial Age and Its Consequences*, 78.

[483] Bellah and Joas, *The Axial Age and Its Consequences*, 79. Walter J Ong, *Orality and Literacy: The Technologizing of the Word* (London: Methuen, 1982).

theory and its 'principles and taxonomies',[484] are at a structural level tied to historically specific developments; precisely by way of *particular* trajectories of narrative, myth and affect, the axial transformation facilitated the attribution of meanings to speech, action and imagination that overcame the boundaries of contextual immediacy. The situation presented by the axial thesis, then, is that of symbolisation coming to facilitate the transmission of concepts, however inchoate, across contexts of particular linguistic or expressive practice, even while depending upon and referring to those contexts. To register the insights of this thesis in a contemporary sense is, as Joas insists, to accept the dependence of symbolic or conceptual forms upon specific *meanings* that require hermeneutical attention for their intelligibility and justifiability; thus, 'symbolic meaning, in establishing reference by creating inferential patterns between symbols horizontally, introduces the possibility of transcending local and historical limitations', but nevertheless 'can never rid itself of corporeal relations to the world in the form of qualitative situations and local interactions'.[485] Claims to universality, therefore, are always made with reference to values, for the reason that values extend themselves to every corner of the cognitive situation.[486] There is no possibility of expressing 'claims' without also expressing historically formed, culture-laden values, just as with assertions of 'fact'.[487] Consequently, deliberation envisaged along pragmatist lines entails engagement with values articulated out of specific lineages and against ever-changing social backgrounds, even where modernist or 'freestanding' claims to universality are present.

Ss. 4. *Hermeneutics as 'freed intelligence'*

To restate the point, 'public' action, including that which entails claims to universality, depends upon language and meanings developed out of particular contexts, so demanding interpretive attention to contextual specificity. This is a notably Gadamerian insight in its insistence that the condition out of which universal claims are made is defined by particular prejudices or 'pre-judgments'. In making claims or seeking understanding we begin, inevitably, from the 'fore-meanings' that we have at our disposal.[488] Indeed, Joas' account of value generalisation clearly

[484] Charles Taylor, *The Language Animal: The Full Shape of Human Linguistic Capacity.* (Cambridge, MA: Harvard University Press, 2016), 76.
[485] Bellah and Joas, *The Axial Age and Its Consequences*, 79-80.
[486] Hilary Putnam, 'The Fact/Value Dichotomy and Its Critics', in *Stanley Cavell and the Education of Grownups* (New York: Fordham University Press, 2012), 37–54. (Putnam, Fact /Value Dichotomy)
[487] Putnam, 'The Fact/Value Dichotomy and Its Critics'.
[488] Gadamer, *Truth and Method*, 302.

entails a commitment to hermeneutical action, being premised upon the hermeneutical ontology set out by Gadamer. But when we replace Habermasian formalism with Gadamerian hermeneutics, are we simply replacing one kind of abstract universality with another? Is there a meaningful difference between Habermasian 'universal pragmatics' and the hermeneutical ontology asserted by Gadamer to be universally relevant? For Gadamer, all understanding proceeds from a particular perspectival position characterised by what Gadamer calls 'prejudices'; understanding progresses towards an appreciation of 'the whole' only via a constitutive relationship with 'the parts,' and only from within a specific 'horizon' that delimits the initial perception of the individual subject.[489] This view of the 'situation' or ontology in which we are cast includes a conception of consciousness as 'being affected by history', so that the reflexivity to which a critical introspection should strive is 'primarily consciousness of the hermeneutical *situation*.'[490] Reflexive consciousness does not stand outside of particular language contexts in an objectifying stance, but rather entails one becoming aware of the inevitability of expressive and conceptual dependence; it involves recognition of the finitude of consciousness and of understanding. Thus, on the Gadamerian view, 'all self-knowledge arises from what is historically pregiven,'[491] so that our attempts at reflective 'illumination' are destined to fall short of completion. This incompletion is not due to a 'deficiency in reflection', but to 'the essence of the historical being that we are'.[492] Gadamer's hermeneutic ontology therefore insists upon a view of the subject as historically and contextually embedded, with no way of achieving a perspective that interrupts history or that achieves a 'complete' self-knowledge. Instead, the 'thinking mind' may gradually expand the range of its vision, 'throwing light' upon the situation in which one stands while always falling short of 'objective knowledge' of it.[493]

This distinguishes the Gadamerian notion of self-knowledge from the aspiration to what Hegel calls 'absolute knowledge' by which history, or in the neo-Kantian case 'reason', becomes 'completely transparent to itself', elevating itself to the level of a concept.[494] We are set within a hermeneutical situation, as Gadamer puts it, which reflects the reality that 'every finite present has its limitations'.[495] Accordingly, we may define the concept of a "situation"

[489] Ibid., 302.
[490] Ibid., 312.
[491] Ibid., 313.
[492] Ibid., 313.
[493] Ibid., 313.
[494] Ibid., 312.
[495] Ibid., 313.

by saying, replete with ocular metaphor, that it represents a standpoint from which one looks out at a horizon that delimits the extent of one's vision. The concept of the *horizon,* working in concert with that of the perspectival *situation,* refers to 'the range of vision that includes everything that can be seen from a particular vantage point'.[496] The horizon, therefore both extends and delimits the range of 'the thinking mind'; implying an expanse open to view that extends well beyond what is immediately in front of us, it nevertheless suggests that our perspective is embedded in a cultural landscape that offers no prospect of an extra-mundane Olympian viewing platform, so to speak. Joining Gadamer, Habermas also refuses the Olympian viewing platform of transcendental reason, preferring instead to locate an immanent logic inherent in the nature of human communicative practices, from which we might extrapolate an intra-mundane rather than transcendental normative universalism. Unlike Gadamer, however, Habermas strives to protect by means of formal abstraction the 'decisiveness' delivered by argumentative rationality, as distinct from an 'understanding' made critically reflexive by knowledge of its own incompleteness and dependence for extension upon encounter with other perspectives.

One of the accusations levelled at Gadamerian hermeneutics is that it lacks a critical dimension, subjugating individual autonomy to an ontology that privileges the authority of tradition.[497] Certainly, Gadamer's major elucidation of his theory in *Truth and Method* does not directly discuss the implications of his hermeneutical ontology for political and social critique. Indeed, his characterisation of the conditions of understanding and of self-knowledge rejects the structure of Kantian critical reason, along with the notion of an unencumbered rationality that objectifies the inheritance of tradition – thus, 'understanding is to be thought of less as a subjective act than as a participating in an event of tradition, a process of transmission in which past and present are constantly mediated.'[498] Yet the 'tradition' to which Gadamer alludes here is not that of the 'comprehensive doctrine' that political liberalism sets out to restrain in light of its arbitrary structures of authority and its exclusive truth claims. It is, rather, the 'situation' in which all stand as subjects attempting to extend our understanding of those who operate out of cultural and historical alterity and, through the comparison this brings about, our self-knowledge. 'Tradition', with the 'pre-judgments' and 'fore-meanings' that it affords, is prerequisite for attempts at reflexive understanding for the reason that it supplies the

[496] Ibid., 313.
[497] See, for example, *Habermas and Modernity*, ed. Richard J. Bernstein (Cambridge, Massachusetts: MIT Press, 1985).
[498] Gadamer, *Truth and Method*, 302.

semantic and imaginative resources with which the effort at understanding begins, even where it does so in acts of explorative resistance or counter-action to hegemonic idealisations; traditions demarcate our 'horizon', to introduce another more famously Gadamerian term.

A tradition, as Gadamer addresses it in *Truth and Method*, is, in large part a verbal phenomenon; it includes components that are written down as well as being carried by linguistic practices, in both cases taking the form 'not of something left over, to be investigated and interpreted as a remnant of the past', but rather a 'continuity of memory' to which new meanings are conjoined.[499] That we are situated in close relation to traditions out of which we reason is one of the ontological presuppositions of Gadamer's hermeneutical theory, suggesting, in turn, that 'reason exists for us only in concrete, historical terms.' There can be no 'reason' without the meanings born out of historical consciousness by traditions, meaning that 'reason is not its own master but remains constantly dependent upon the given circumstances in which it operates.'[500] Enlightenment thought, says Gadamer, bears the conviction that reason may 'safeguard us from all error', yet despite its demand for the 'overcoming of all prejudices', it too proves itself to be laden with prejudices (including the 'prejudice against prejudice') and resources borne by what Habermas calls 'ethical' traditions.[501] The possibility of reasoning with a view to developing a more expansive 'horizon' is therefore tied to the resources supplied by traditions, which frame the context in which we pursue knowledge of the hermeneutical situation in which we, and our interlocutors, are set.

This imbrication of reason with contextual resources may equally be attributed to the 'pragmatics' of speech and of understanding, even though it delivers theoretical and practical conclusions divergent from Habermas' 'universal' pragmatics. On Gadamer's construal, 'tradition' functions in a fashion similar to the contextual pragmatics that inhere in ordinary speech situations—those conventions, tacit assumptions and background understandings that organise what makes sense in the context of a conversational exchange. 'Pragmatics' as a subfield of linguistics refers to the features of communication in context – that is, the way in which communication is shaped by, and assumes certain things about, the contexts into which we are speaking. In offering such a definition, I am using the term somewhat differently from Habermas, whose theorisation of 'universal pragmatics' concentrates on speech-act theory, referring closely to J. L. Austin and to the inferential semantics of Robert Brandom.

[499] Ibid., 408.
[500] Ibid., 288.
[501] Gadamer, *Truth and Method*, 288.

'Pragmatics' are not categorically 'universal', though this is how we encounter them in Habermas' theory of communicative action. Indeed, pragmatics as readily indicate the dependence of linguistic meanings upon a longer 'chain of equations' that are both historical and context-specific—that depend upon precedent, or 'tradition'. To take one example, an 'anaphor' is a concept within linguistic pragmatics that refers to an expression that depends for its meaning upon antecedent or postcedent expressions.[502] In ordinary speech we assume the intelligibility of meanings in one sentence with reference to an already articulated sentence or in expectation of further articulation. Any possible novel language use is developed out of a prior lexical field – linguistic innovation must work out of the semantic range already available.

Against the suspicion that this amounts to a restrictively conservative framework, we ought to recall that it is also within the pragmatics of speech that meanings are destabilised and renewed, and alternatives brought into use. Just as speech depends upon an existing semantic field, it equally moves to constitute new meanings via the slippages and modifications made through elucidation, interpretation and narrative with its metaphorical and metonymic richness. Ethical and normative renewal is realised in and through language; meanings are adjusted as speech is retrained upon newly discerned problems, generating new values in turn. The emergence of transformed meanings (and with them values) is therefore akin to, as Taylor puts it, the 'open-ended process of extension and alteration' central to the life of a 'language-in-use', by which we are constantly 'straining the limits of expression'.[503] Thus the scope for a more or less unlimited linguistic innovation within ethical traditions; a wide range of subtle adjustments, stimulated by the act of speech, can be made to meanings. Given this dynamism, it is impossible to be made a 'prisoner of language', locked inextricably within existing patterns of use. So, argues Taylor, 'our language is always more than we can encompass; it is, in a sense, inexhaustible.'[504] It can, in Taylor's Gadamerian rendering, only be deployed against a 'background which we can never fully dominate' but that never fully dominates us either, given our capacity for expressive and interpretive creativity.

The development of a 'critical' or reflexive form of understanding, which includes 'self-knowledge', occurs in and through these conditions in which we are 'situated'. Yet

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[502] 'Anaphor, s.v. "Anaphor"', in *Lexicon.Com*. https://en.oxforddictionaries.com/definition/anaphor; See also Kent Bach, *Anaphoric Reference: Grammatical or Pragmatic?* (Oxford: Oxford University Press, 1994).

[503] Charles Taylor, *The Language Animal: The Full Shape of Human Linguistic Capacity.* (Cambridge, MA: Harvard University Press, 2016).

[504] Ibid.

Gadamer's conception of reflexive self-knowledge keeps open room for a critical stance towards the tradition(s) in which the individual subject is set, or upon which they depend for their initial 'fore-meanings'. Moreover, by accepting perceptive finitude and the ongoing and unfinished nature of self-knowledge', this self-reflexivity contravenes attempts at philosophical and political finalism (the post-ideological "end of history") and the Enlightenment's 'abstract contrast between myth and reason'.[505] Gadamerian self-knowledge seeks out a reflexive alertness to the nature of the 'hermeneutical situation', an alertness that, although it is self-reflexive, does not thereby overcome contextual limitations or dependencies. Crucially, says Gadamer, 'the consciousness of being conditioned does not supersede our conditionedness'.[506] With this in mind, developing a critical self-consciousness that registers the hermeneutical situation and that mediates intelligently between its own perspective and the ethical alterity it encounters, 'means acquiring the right horizon of inquiry for the questions evoked by the encounter with tradition'.[507] To suggest that the priority assigned by Gadamer to 'tradition' requires a relinquishment of critical aspirations is therefore to miss the critical possibilities inherent in the dialogical exchange between worldviews in which perspectives drawn out of different situations develop a shared understanding that is inter-perspectival. This inter-perspectival stance is drawn out of the dialogical act, rather than being 'structurally mandated' in the manner of the 'egalitarian universalism' to which Habermas attaches 'only a forma-pragmatic meaning.'[508] Nevertheless, it does not relinquish 'cognitive purpose' or critical potential by detaching itself from structurally mandated formalism: rather, its ends are set and its critical aims renewed through the expository act of dialogical encounter. Thus, as Bohman puts it, 'the cognitive act typical of social criticism is the joining and crossing of social perspectives.'[509] The 'freed intelligence' (to return to Dewey's phrasing) made possible by Gadamer's hermeneutical ontology is a reflexive intelligence that perceives the finitude of its own perspective and thereby discerns the means by which to engage in critical enquiry *out of* the hermeneutical situation. It is therefore readily open to social (and critical) learning processes unmediated by the idealised 'pragmatic presuppositions' of rational argumentation.

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[505] Gadamer, *Truth and Method,* 286.
[506] Ibid., 448.
[507] Ibid., 313.
[508] Habermas, *Between Naturalism and Religion: Philosophical Essays*, 49.
[509] Habermas, *Between Naturalism and Religion: Philosophical Essays*, 48-9. Ulf Bohmann, 'Introduction to the Book Symposium on The Language Animal by Charles Taylor', *Dialogue* 56, no. 4 (2017): 613–20, 91. Bohman, *Public Deliberation: Pluralism, Complexity, and Democracy*, 91.

Ss. 5. ***Value Generalisation as a horizon of enquiry***

There is no 'universality' free from particular values and meanings, just as 'particularity', even of the kind that makes metaphysically 'thick' truth claims, is the seedbed of values from which a common world may conceivably be composed. We are left, therefore, with the issue of discerning how different ethical values are either promising—offering resources for the development of ethical commonality or social renewal—or threatening to the composition of a *political* common world. This is, quite clearly, a situation of non-ideal practice in which we are dealing with claims made under contingent circumstances and out of particular histories of experience. Registering that such contingency presses upon how we theorise 'public' action, Joas insists that engagement across value difference will always fall short of the 'purely rational discourse' envisaged by Habermas as an orienting ideal for deliberation.[510] If, as I join Joas in assuming, such a 'pure' discourse is both impossible and of limited practical guidance as an ideal, then the question arises of whether the only alternative is unmoderated decisionism and antagonism.[511]

The answer proposed by Joas is that we can overcome this paralysing bipolarity by preparing to deliberate about values in the politically tense, interpretively contingent and power-laden contexts in which they are mobilised and articulated. Pragmatism maintains that we 'find our ends in the world', in Joas' words.[512] We find those ends through negotiating value difference as it arises in contexts of action; but the ends change as values are applied anew in novel action contexts or through the kind of contact with ethical alterity that shifts our self-understanding along with the manner in which we relate this understanding to other traditions. The process by which values are addressed, evaluated and renewed in line with newly uncovered 'ends' is, in Joas' language, one of 'value generalisation'. Value generalisation offers an opportunity to evaluate and negotiate the values—including *claims to universality*—operative in contexts of value pluralism; to see where they may intersect and promise commonality or to address injustices they may have produced. It is, in Joas' words, to move beyond a paralysing historical relativism 'without breaking with the insight that even universalistic validity claims are not founded in "reason" as such, but have a contingent history

[510] Joas, *The Sacredness of the Person a New Genealogy of Human Rights*, 175.
[511] Ibid., 175.
[512] Joas, *Pragmatism and Social Theory*, 130.

of emergence that is not irrelevant for their evaluation.'[513] Value generalisation, says Joas, is 'neither a consensus achieved through rational argumentation' nor an agreement to tolerate differences registered as insurmountable. Rather, it is at once 'more and less than rational discourse', being oriented toward the achievement of a 'dynamic mutual modification' of different traditions along with the development of sources for their transformation and renewal.[514] Because it engages values in their cognitive *and* affective dimensions, along with the histories out of which they develop, it is distinct from the rational procedure envisioned in Habermas' theory of discourse ethics. Moreover, value generalisation aims at a provisional understanding between ethical subjectivities and the traditions out of which they speak**;** it aims beyond the formation of 'overlapping consensus' or a 'multivariate' convergence upon liberal premises, toward a shared process of exegesis, disclosure and ethical adjustment. In this sense, its aims are less to do with convergence upon a principle of structuration or a principle of authority.

This is not to deny that democratic political life—at the heart of which lies the effort to sustain a common world—demands principles of structuration to which it can refer; it is not to assert that *any* form of generalisation amounts, in Laclau's terms, to an unacceptable 'structural aprioristic limitation', nor is it to subscribe to a view of 'concrete' (rather than 'abstract') social material as defined only by 'indeterminate contingent variation'.[515] It is rather to resist the ontological and 'quasi-empirical' historical commitments that Habermas makes under cover of a merely prudential attachment to proceduralism. In their place, it is to assert that the commonality—the shared values and ends—advanced through democratic deliberation will be dialogically formed without reference to an abstract or ideal inter-subjectivity, but through hermeneutical engagement between conceptions of the good. Contra Forst, it is to insist on the primacy of judgment amidst contingency and contestation and on the development of shared premises from *within* the domain of ethical values, which includes the social practices and traditions through which they are articulated and within which they are formative of identity.

The practice of value generalisation implies that we locate and develop values from standpoints that remain 'situated' in relation to ethical and religious traditions and the horizons they demarcate. The notion here is not that we mobilise the merely affective power of the non-

[513] Bellah and Joas, *The Axial Age and Its Consequences*, 24. .This is, in fact, Joas' characterisation of Karl Jaspers' theoretical orientation in the development of his notion of 'axiality'.
[514] Joas, *The Sacredness of the Person a New Genealogy of Human Rights*, 181.
[515] Judith Butler, Ernesto Laclau, and Slavoj Žižek, *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left*, Radical Thinkers (London: Verso, 2011), 187.

secular and non-formal in an instrumental manner (perceiving its usefulness to the project of an unprejudiced secular mediation), but rather that we treat with at a deliberative level the historical, affective and non-propositional nature of values. We then develop an understanding of these values as they operate dynamically within the background understanding of a particular tradition and its attendant social imaginary. This is necessarily a process the outcome of which will itself be delimited by a horizon; where new value articulations are generated by a process of ethical interchange, they will, like any articulations of value, be relevant to and appropriate for those to whom their meanings are available. This means that, while certain articulations of value may be cast as 'universal' in any given historical moment or social context, their universality is maintained through political action, by continuing acts of modification and ongoing transfiguration of values into shared commitment. Their 'universality' remains alert to its own genealogical and deliberative dependency, rather than claiming an abstract authority that brings about a finalist resolution via a capacity decisively to conclude or curtail discourse on fundamental values or premises. This amounts to what Joas calls a 'more reasonable' universalism, which is equivalent to the hermeneutically driven universalism supplied by Gadamerian hermeneutics: that is, the 'fusion of horizons'. The Gadamerian fusion of horizons entails an act of transposition through which the particularity of another's identity remains fully particular and free from the imposition of external standards or rubrics imposed under the guise of neutral arbitration. Thus, Gadamer writes on the historicity of understanding, that 'transposing ourselves consists neither in the empathy of one individual for another nor in subordinating another person to our own standards; rather, it always involves rising to a higher universality that overcomes not only our own particularity but also that of the other.'[516] The 'higher universality' involved in the fusion of horizons does not abandon consciousness of the limits of one's view – the notion of a horizon entails both expansiveness of vision and its limitation. What Gadamer calls 'hermeneutical understanding' aims towards the development of a 'superior breadth of vision', which entails a specific kind of development of one's sensitivity to the alterity of one's interlocutor; as Gadamer puts it, 'to acquire a horizon means that one learns to look beyond what is close at hand, not in order to look away from it but to see it better, within a larger whole and in truer proportion'.[517] A process of value generalisation that seeks to generate an expanded horizon for its participants entails creative exegesis and reworking of the ethical traditions so engaged; this, in turn, can

[516] Gadamer, *Truth and Method*, 305.
[517] Ibid., 305.

be expected to stimulate conceptual modification and ethical renewal in the face of newly considered dilemmas and newly developed relationships. Such a process moves with one eye to the past, the other to the present and its contingent details—it entails 'reinterpretation of historically embodied meaning' paired with a simultaneous diagnostic move by which such meaning is refitted in accordance with the details of the present—the newly discerned 'ends' to which Dewey refers. Hence, doing justice to those values that we wish to assert as 'universal' in their relevance depends upon achieving 'a realistic picture of present conditions for the realisation of historically generated ideals and their unfulfilled potential'.[518]

Ss. 6 (i). '*A Common Word Between Us and You*'

How does value generalisation work in practice? Joas notes that between a 'purely rational' discourse and arbitrary decisionism lies a 'third way', which forms the basis for 'the praxis of interreligious dialogue'.[519] As an example of this 'third way' in which to establish a common world of shared values and attention, I wish now to offer an assessment of the *A Common Word* dialogue between Christian and Muslim scholars, initiated in 2007 and continued through various avenues since. This dialogue, I argue, achieved three things: it diagnosed the nature of contemporary tensions between Christians and Muslims against the backdrop of raised tensions and inflammatory public discourse that resounded with commentary on the "clash of civilisations" and the incompatibility of Islamic and Western values. The process charted here entails the identification and development of values that, rather than proceeding conjecturally toward acceptance of secular constitutional order as a mediating form, emerge out of the hermeneutical encounter between traditions and the 'horizons' they occupy. The point of this is not for values to be remolded along justificatory routes already stipulated by a theory of formally 'autonomous' morality, as per Forst, or a theory of optimally rational discourse, as per Habermas. Rather, it is for the creative action undertaken through a process of value generalisation only to develop new norms, understandings and values suited to action in common.

This pragmatist conception of deliberation as 'creative action' amidst value difference accepts that concepts will be reworked or adjusted in contact with ethnographic complexity. Accordingly, the principles, values and interpretive devices that we bring to the deliberative

[518] Joas, *The Sacredness of the Person a New Genealogy of Human Rights*, 135
[519] Ibid., 176.

exchange will be subjected to revision as light is shed on the meanings present in the ethical lifeworld of one's interlocutor, destabilising the preunderstandings brought to the dialogical encounter. Beyond this potential for self-revision, the possibility of value generalisation is developed through creative exegesis of the articulations of value drawn under deliberative consideration. There are therefore three elements that make this pragmatist conception of deliberative exchange appealing. Firstly, its openness to the revision of values in contact with other articulations of value. Secondly, its potential for the development of shared values that may be worked, through comparative exegesis, into bases for common ethical commitment. Thirdly, the possibility of *critical* intimacy with interlocutors of different ethical and religious traditions of the kind that avoids, and even overcomes, ethical chauvinism while sustaining room for critique. This latter, in turn, introduces the possibility of communication about values which 'explores deep-seated feelings and experiences' making it potentially 'more sophisticated than rational argument'.[520]

In 2006 Pope Benedict XVI gave a lecture in Regensburg, Germany, on 'faith, reason and the university', in which he quoted the medieval Byzantine emperor Manuel II Comnenus (Manuel II Palaiologus). The quotation provoked widespread discord and unrest in Muslim communities across the world. The offending paragraphs of the Roman Catholic Pontiff's speech referred to a dialogue recorded by the Greek emperor in the late fourteenth century, while Constantinople lay under siege, between the emperor and an 'educated Persian', who remains unnamed. In following the dialogue format it can be situated within a tradition, alive also throughout the early centuries of Islam in Syria, Iraq and Egypt, of dialogical disputation between Muslims and Christians (with Zoroastrians and other sects playing a role) over Christological ideas and the supersessionist nature of Islamic claims.[521] The Pope deployed excerpts from the emperor's text as part of an academic discussion of the way in which violence was antithetical to a reason-oriented religious faith. The Pope took the medieval emperor to be making a decisive statement against forcing religious conversion through violence, a position based on the belief that 'not to act in accordance with reason is contrary to God's nature.'[522] In his exegesis of the text of the dialogue between the emperor and the unnamed Persian, Pope Benedict cited one

[520] Joas, *The Sacredness of the Person a New Genealogy of Human Rights*, 176.
[521] See Sidney H. Griffith, *The Church in the Shadow of the Mosque: Christians and Muslims in the World of Islam* (Princeton, NJ: Princeton University Press, 2008).
[522] Benedict XVI, 'Lecture of the Holy Father: Faith, Reason and the University – Memories and Reflections', 12 September 2006, http://www.vatican.va/content/benedict-xvi/en/speeches/2006/september/documents/hf_ben-xvi_spe_20060912_university-regensburg.html.

particular statement, made by the emperor, against the convergence of religion and violence, a statement made with reference to Islam: 'show me just what Mohammed brought that was new, and there you will find things only evil and inhuman, such as his command to spread by the sword the faith he preached.'[523] The Pope qualified this citation by referring to it as 'forceful' and expressed with a 'startling brusqueness, a brusqueness that we find unacceptable'.[524] He proceeded to a citation of Lebanese theologian Theodore Khoury, which compared the integration of Greek philosophy and Christian theology to a reading of Islamic theological tradition in which "un-reason" does not contradict God's nature or commands; even if divine command were deeply unreasonable, it would nevertheless demand adherence.[525] Pope Benedict followed these citations with a more lengthy discussion of the vital convergence of reason and faith, which would characterise 'that genuine dialogue of cultures and religions so urgently needed today'.[526]

The aforementioned citations, in particular the citation of Manuel Comnenus, provoked profound anger in Islamic communities across the world, drawing condemnation from governments and religious leaders. The lecture elicited responses from the Palestinian Authority and the Egyptian, Pakistani, Indian, Malaysian, Indonesian, Turkish, Iraqi and Iranian governments, amongst others. In the course of this reaction it became clear that, for many, the words of Manuel Comnenus had been taken to express the Pope's own views, a misreading that led to particularly strong condemnations and anger. Protests were held outside Westminster Cathedral in London (at which violently anti-Christian slogans were employed), mass protests were held outside Al-Azhar University in Cairo, German, American and Israeli flags were burnt in Basra, Iraq, and an apology was demanded by various governments and Islamic community organisations.[527] Some translated their anger at the Pope's reported views into violence, with Christian churches being fire-bombed in Iraq and the Palestinian Territories and an Italian nun being shot dead in Somalia.[528] In response to this widespread outrage, the

[523] Ibid.
[524] Ibid.
[525] Benedict XVI, 'Lecture of the Holy Father: Faith, Reason and the University – Memories and Reflections'.
[526] Ibid.
[527] See "The Pope's Message of Greater Dialogue Achieves the Opposite," accessed on March 14, 2015, http://www.telegraph.co.uk/comment/personal-view/3632287/The-Popes-message-of-greater-dialogue-achieves-the-opposite.html
[528] "Violence Against Christians Grows in Iraq," accessed on March 3, 2015, http://www.ekklesia.co.uk/content/news_syndication/article_060929iraq.shtml

German Chancellor Angela Merkel defended the Pope's lecture, which she argued had been misinterpreted; then Italian Prime Minister Romano Prodi emphasised the lecture's theme of 'dialogue' and the European Commission warned against reading quotes in isolation from their context in the speech as whole. Moreover, the Commission stated that 'reactions which are disproportionate and which are tantamount to rejecting freedom of speech are unacceptable.'[529] Thus, as with recent debates triggered by the murder of Charlie Hebdo cartoonists in Paris, the public exchange—local and trans-national—crystallised around the apparent opposition between 'free-speech' and 'respect'.

Clearly the Pope's speech was widely misinterpreted and his citation of the Byzantine emperor read out of context. Yet there is a critical argument to be made about the Pope's use of a fourteenth century source in the source's contemporary context. The absence of strong and empathetic qualification suggested blindness to the possibility of the lecture communicating a reductive account of Islamic tradition and its relationship to the idea of 'reason'. Similarly problematic was the construction of a binary opposition between reason and its opposites. Whereas medieval Christian scholastic and theological traditions were positioned as accommodating of 'reason' in their theological methods, the operation of Islamic tradition was posited as prone to the exclusion of reason (with its "unforced force") and the deployment of its opposite, brute force. This was on any reading a gross reduction even if a merely insinuated one. It represented a failure to acknowledge the poly-vocality of Islamic traditions and their multiple forms of reasoning and 'rational argumentation'. Additionally, the speech did not offer interpretive attention to detail in its treatment of the Islamic concept of 'jihad', making reference to Islam in order to support a tendentious argument of immediate political resonance (the year being 2006, with violence surging in Baghdad), but without making counter-observations about the diversity of interpretive traditions within Islam, which complicate the application of Sura 9:5, the Sura concerned with 'spiritual struggle' and violence. As such, although much of the reaction to the lecture was based on misreading (or lack of reading the text altogether), the text was nevertheless alienating in its failure to demonstrate interpretive sensitivity to the complexity of another tradition. In September 2006, Pope Benedict issued an apology in which he stated that he was 'sorry' for the offence that the lecture had caused, and that the citation of Manuel Comnenus was in no way designed to express his own views.[530] His

[529] "Brussels Defends Pope's Freedom of Expression," accessed on March 2, 2015, https://euobserver.com/political/22438

[530] "Muslim body welcomes Pope's apology," accessed on March 2, 2015, http://news.bbc.co.uk/1/hi/uk/5352040.stm.

apology, though accepted by many, including for example the Muslim Council of Britain, was considered to be insufficient by others, considering the deep feelings of alienation that the Pope's lecture, and the public reporting of it, had caused. The lingering anger and resentment implied that a more sustained engagement was required, not only in order to assuage the immediate alienation felt in many Muslim societies, and amongst Muslim citizens of Western democracies, but to set in train more durable and sensitive relations between religious traditions. One year after the Regensburg lecture, such engagement was initiated from within Islam, and it is this engagement that offers a case study for the illustration of the practice of value generalisation and the commonality that it forges.

In October 2007 one hundred and thirty eight Muslim scholars penned a letter to Christian leaders, entitled *A Common Word Between Us and You* (ACW) in which they called for dialogue based on the recognition of two core principles operative in the lives of both religious traditions: love of God and love of neighbour: 'thus in obedience to the Holy Qur'an, we as Muslims invite Christians to come together with us on the basis of what is common to us, which is also what is most essential to our faith and practice: the Two Commandments of love.'[531] These two commandments amount to value articulations with scope for transfiguration into shared principles for common action; in both traditions, the principles of 'love of God and love of neighbour' uphold the moral equality of one's contemporaries by acknowledging them as 'neighbours'. At the same time, they direct subjects toward the practice of 'neighbourliness', making this moral status into something that calls for respect and consideration. The principles for common action so generated depend upon paradigm instances resident within each tradition, along with stories, images and the detail of each tradition's history of self-interpretation. They therefore require interpretive and translational exchange in order for the contours (and limits) of their commensurability to unfold.

The original letter has a strong scriptural emphasis, seeking to trace in the written sources of the two traditions commensurable themes that might underwrite the pursuit of shared understanding and common action on the part of Christians and Muslims. The letter elicited a variety of responses including from the Holy See's Secretary of State, Cardinal Tarcisio Bertone, and from a group of over three hundred Christian scholars who cooperated to write what became known as the 'Yale Response'. The Yale Response, written in November 2007, begins by asking

[531] "A Common Word Between Us and You," in *A Common Word Between Us and You: Five Year Anniversary Edition,* 51-101 (Amman, Jordan: The Royal Aal Al-Bayt Institute for Islamic Thought, 2012), 54.

forgiveness from 'our Muslim neighbours' for any historical mistreatment of Muslim communities by Christian populations.[532] The Christian scholars then proceed to join their Muslim counterparts (the signatories to the original ACW letter) in asserting that *political* concord—peace between peoples and within societies—will be easier to attain if 'religious peace' is achieved.[533] The letter then acknowledges and endorses the 'common ground' identified by the Muslim scholars and leaders, based on the two principles of love, while at the same time recognising significant differences: 'that so much common ground exists…gives hope that undeniable differences and even the very real external pressures that bear down upon us can not overshadow the common ground upon which we stand together.'[534] A longer, more detailed and more critical response was penned by the then Archbishop of Canterbury Rowan Williams after consultation with Christian leaders and scholars from across the different denominational traditions.[535] Williams' response written in a more reserved tone than the Yale Letter, engaged in a closer reading of the details of the ACW letter, as well as a more detailed explication of Christian theology and Christian perspectives on the relationship between the two traditions. Christian leaders from a range of denominations endorsed his response; it was therefore taken to offer a Christian voice drawing insight from beyond the Anglican Communion.

The initial exchange that gave rise to the continuing ACW dialogue featured an interchange of letters that pay close attention to the sources within each tradition that might underwrite concord and collaboration. The letter from the Muslim scholars entails textual citation from the Qur'an and from the Bible as a means for establishing the commonly held 'two principles' of love, thereby enacting interpretive discernment of commensurability. The citation of the 'alien' text is generally qualified and the tone is exploratory; phrases such as 'as we understand it', or 'perhaps' invite response, or correction, where necessary. The resources of Islamic scripture and interpretive tradition (*hadith*) are then related to those tenets of Christian religious tradition that appear to offer scope for commensurability. Notably, the focus of the initial ACW letter is primarily on the resources for commonality offered by sacred texts (rather than lived experience), which may in part be due to the different roles of authoritative texts within the two traditions. As Williams points out in his letter of response, the Qur'an is understood by

[532] "The Yale Response," in *A Common Word Between Us and You: Five Year Anniversary Edition,* 143-162 (Amman, Jordan: The Royal Aal Al-Bayt Institute for Islamic Thought, 2012), 144.
[533] Ibid., 144.
[534] Ibid., 144.,
[535] Rowan Williams, 'A Common Word for the Common Good', in *A Common Word Between Us and You*, Five Year Anniversary (Amman, Jordan: The Royal Aal Al-Bayt Institute for Islamic Thought, 2012), 187–212.

Muslims to contain the words of God, received by Mohammed. This may be one explanation for the strong textual focus of the letter from the Muslim scholars and leaders and its deployment of scripture as a means of identifying channels for co-existence and co-operation. In contrast, the various traditions of Christological thought understand the figure of Jesus Christ to represent the *logos*—or Word of God—made incarnate, the New Testament acting as the authoritative witness to Christ's life and the transformations in human possibility that, according to the Christian imagination, it effected. By highlighting in his written response to the original letter this distinction in the operation of sacred texts, Williams offers the kind of corrective note that assists the process of mutual learning – he addresses perceived deficiencies in the mode of interpretation used by the authors of the original *A Common Word* letter**.**

Behind the formal exegetical element with its scriptural reasoning the initial ACW exchange exhibits the attempt to discern and clarify the intentions of the letter writers, and to establish relations of trust in a context of political tension and widespread interpretive reduction – that is, desire for mutual understanding and peace unaccompanied by a proselytising or self-valorising agenda. In responding to the original letter, the staff of the Pontifical Institute for Arabic and Islamic Studies emphasised that they were 'pleased to see that the biblical and Gospel quotations used in this document come from the sources and that explanations given are on occasion based on the original languages: Hebrew, Aramaic and Greek. This is evidence of deep respect and genuine attentiveness to others, while at the same time of a true scientific spirit'.[536] For the members of the Pontifical Institute, such attentiveness to interpretive complexity demonstrated sensitivity to their tradition and its linguistic diversity (even if only at the textual level). It acknowledged that learning through translational and interpretive activity, though arduous, is essential. The openness to engaging in difficult interpretive activity on the part of the Muslim letter writers, and the significant explanatory discussion in their own text, where scriptural and interpretive reasons are given to clarify the resources that they rely on to substantiate their commitment to the 'principles of love', acts to develop trust.

What we can see is reciprocal interpretive movement beginning with scriptural reference—both to Islamic and Christian texts—and interpretation. This is followed by response, in this case from Christian leaders, which clarifies possible deficiencies in the interlocutor's interpretation before posing new questions or setting out different perspectives. This quite clearly reflects a process close to the Gadamerian view of hermeneutical understanding; the interlocutors

[536] "Appreciation of An Open Letter and Call from Muslim Religious Leaders," accessed on March 3, 2019, http://chiesa.espresso.repubblica.it/articolo/173941?eng=y

first pose their 'prejudgments'—the way in which the other tradition's commitments appear to them from within their own hermeneutical situation—which are then subjected to correction or adaptation, before new questions or interpretive issues are posed. The outcome is the establishment of what Bohman calls an 'inter-perspectival stance', which is 'fully dialogical, giving inquirer and agent equal standing as agents in a shared practice (whatever the goals of that practice may be)'.[537]

Ss. – 7. *In Conclusion: The problem of understanding*

For Gadamer, 'the real problem of understanding obviously arises when, in the endeavour to understand the content of what is said, the reflective question arises: how did he come to such an opinion? For this kind of question reveals an alienness that is clearly of quite a different kind and ultimately signifies a renunciation of shared meaning.'[538] There is no simple methodological formula that might be applied to develop this understanding – yet as Taylor and Dreyfus remind us, the one indispensable ingredient is engagement with those who deploy the terms in question, or for whom the terms articulate a horizon of concern. In order to 'penetrate their discourse', we simply have to begin by holding discourse with them, one which will be initially primitive—focused on 'equally accessible things'—but will then move towards the development of more sophisticated exchanges that disclose how their 'human meanings' are constituted.[539]

In its identification of the two 'principles of love', the *A Common Word* project exemplifies a process by which generalisable values are identified, alongside the explicit acknowledgment of difference and incommensurability: 'whilst Islam and Christianity are obviously different religions—and whilst there is no minimising some of their formal differences—it is clear that the Two Greatest Commandments are an area of common ground and a link between the Qur'an, the Torah and the New Testament.'[540] The same recognition is offered by Williams, who states that those on whose behalf he speaks—other Christian leaders across the denominational spectrum—had read the original letter as an invitation towards finding 'a way of recognising that on some matters we are speaking enough of a common

[537] Bohman, *Public Deliberation: Pluralism, Complexity, and Democracy*, 95.
[538] Gadamer, *Truth and Method*, 187.
[539] Dreyfus and Taylor, *Retrieving Realism*, 124.
[540] *A Common Word between Us and* You, 68.

language for us to be able to pursue both exploratory dialogue and peaceful co-operation with integrity and without compromising fundamental beliefs.'[541]

In identifying values that might be generalisable across traditions, the participants in the ACW dialogue had first to overcome the problem of understanding the meanings operative within another tradition, without assuming the kind of conceptual transposability that, I argued, Habermas attaches to the term 'public'. To assume the transposability of key terms is to read them in a representative sense, as 'corresponding' to phenomena, which they then reflect in language. Yet this would be to overlook the way in which a 'language in use' constantly works to generate new meanings; thus, says Gadamer, 'from language we learn that the subject matter is not merely an arbitrary object of discussion, independent of the process of mutual understanding, but rather is the path and goal of mutual understanding itself.'[542] Gadamer's point here is that language does not operate in a merely descriptive sense by corresponding to mind-independent phenomena, but rather works in an 'articulating-constitutive' manner, which generates and mediates new possibilities of expression and, with them, ways of seeing and understanding.[543] Language is 'the medium of hermeneutic experience' and the medium, as McLuhan's phrase goes, is inseparable from the message.[544] Consequently, to grasp what terms mean in their representative function—in their reference to phenomena—we have to understand what they mean in their articulating-constitutive function.[545] That is, what meanings the terms are articulating and what frameworks of meaning they (re)constitute by doing so.

To illustrate, take the term 'conscience'.[546] Our understanding of 'conscience' as a noun draws, rather like 'soul', upon a background understanding and vocabulary that refuses materialism in its view of the psycho-spiritual composition of the individual subject. Understood according to its 'representative' meaning, 'conscience' would be taken to correspond to a spiritual reality, which those moving in lockstep with scientific or philosophical materialism might wish to deny. Even when taken in a more secular sense, it depends upon an "inside-outside" structure according to which the innermost sanctum of selfhood is associated with a site of 'interiority' to which the individual mind may remove itself for reflective

[541] Williams, "A Common Word for the Common Good", 188.
[542] Gadamer, *Truth and Method*, 187.
[543] See Taylor, *The Language Animal: The Full Shape of Human Linguistic Capacity.*
[544] Gadamer, *Truth and Method*, 401.
[545] Taylor, *Retrieving Realism*, 124.
[546] Paul Heck, "Conscience Across Cultures: The Case of Islam," *The Journal of Religion* 94 (2014): 293. Paul Heck turns his attention to conscience in light of a dialogical encounter with Moroccan Muslim students.

purposes.[547] But whether or not we accept an account of human reality inclusive of a spiritual dimension that surpasses material causality, we might wish to understand *how* the term 'conscience', so central to contemporary moral and political language, functions, along with the background against which it is intelligible. This background includes a range of assumptions about the structure of human cognition and the metaphysical context in which mind, body, 'soul', 'conscience' and, indeed, 'self', play their parts. Taylor calls this a 'footing' on which speech proceeds under certain assumptions. These may be assumptions about the kinds of relations established by certain forms of expression. So, for example, the nature of the term 'oath' or 'promise' suggests a footing upon which statements such as "I will return the book to you undamaged" amount to a commitment that cannot go unmet without social consequences (which Taylor thinks of in terms of 'shock' or 'violation').[548] Or, alternatively, they may be assumptions about the *kind of function* performed by a particular form of statement or concept given the background against which it works.

When it comes to discerning whether values or meanings might be shared across traditions in such a way as to form generalisable values, the challenge is most fundamentally to understand terms in their articulating-constitutive dimension. Consider Paul Heck's exploration of whether something akin to 'conscience' is operative within both Christian and Islamic traditions and to gauge whether this concept functions in a similar or commensurable manner within each tradition. The question is whether two different terms communicate the same meanings – do, 'conscience' and the Arabic term '*damir*' refer to the same kind of moral dimension, with the same cognitive and affective structure? Heck begins by asking whether the 'dynamics of conscience', so different across the Christian denominational traditions, are equally diverse across Sunni, Shi'i and Isma'ili Islam, finding, perhaps predictably, that there are a great many descriptions and imaginative understandings of conscience within Islamic tradition.[549] He finds that the concept of *'damir'* may indeed be commensurable with Christian conceptions of conscience in the sense of 'the psyche being exposed' to external judgment or scrutiny, but that it is 'not a voice admonishing you in advance to adhere to moral truths written on the human heart' as described by St. Paul in his Letter to the Romans.[550] That is, *damir* may well *function* differently from 'conscience' by depending upon different tacit meanings and assumed structures, cognitive, metaphysical or otherwise. After a substantial comparative

[547] Taylor, *Sources of the Self,* 111.
[548] Taylor, *The Language Animal,* 267.
[549] Ibid., 315.
[550] Ibid., 315.

examination of 'conscience' and *'damir'*, Heck concludes that across the two traditions broadly conceived—the Christian-Kantian and the Islamic—there is shared recognition of 'a mechanism that exists within humans to compel them to adhere to moral duties.'[551] Across Islamic and Christian traditions there are various linguistic and expressive resources for describing a moral functioning that holds the individual in interrogative relationship with the divine and with the demands of moral duty as understood by their respective tradition.

The differences at work here are important and need to be taken into account so as to avoid an over-hasty assumption of commensurability, particularly of the kind that Ahmed warns us against, which inappropriately applies a Protestant Christian view of 'the religious' to other traditions, such as Islam.[552] While recognising the significant divergences between the two tradition-based languages with which 'conscience' and *damir* are articulated, Heck asserts that the overlap between the traditions is such that Muslims and Christians can 'recognise the importance of conscience for the moral good of society even when disagreeing about the content of the moral good and even when conceiving of conscience in language specific to their respective traditions'.[553] Conscience' and *'damir'* are not commensurable in the sense that the terms 'represent' or designate precisely the same object, made intelligible against the same set of background assumptions. Yet they nevertheless offer scope for generalisability across traditions because of the 'dynamics' that they introduce, by which subjects are made answerable to a source of authority that stands outside, but acts upon, the individual will.

What is clear, therefore, is that in discerning the scope for value generalisation we ought to begin by pursuing an understanding of available principles and meanings *as they function* within the tradition with which they are engaged. For value generalisation to be possible, we must be able to develop an understanding of meanings in their articulating-constitutive function, rather than in their static or codified form. This implies treating meanings not as single axioms that might be apprehended by means of correspondence with meanings available in one's own tradition, but rather, as Wittgenstein puts it, as 'a system in which consequences and premises give one another *mutual* support'.[554] Reflecting this insight in his contribution to the initial ACW exchange, Williams urges further examination of the extent to which 'the Christian conviction of God as Love and the all-important Islamic conviction that God is "the

[551] Heck, "Conscience Across Cultures," 322.
[552] See Ahmed, *What Is Islam?: The Importance of Being Islamic*.
[553] Heck, "Conscience across Cultures," 324.
[554] Ludwig Wittgenstein, G. H. von Wright, and G. E. M. Anscombe, *On Certainty* (Oxford: Blackwell, 1974), 145.

Compassionate, the Merciful" (*ar-rahman ar-rahim)* represent common ground, and to what extent do differences need to be spelled out further?'[555] If articulations of the envisaged nature of the divine amount to premises, this imaginative meaning must be spelt out so that its 'consequences' may be clarified – that is, the value commitments such premises may bring into being and the 'ends' discernible amidst contemporary social life. In the initial ACW exchange, the search for generalisable values begins, then, not with the location of common propositional commitments but with an examination of the language employed to characterise the nature of divinity, the 'hypergood' that Islam and Christianity pose as the source of all other goods.[556] It represents an effort to understand the range of meanings available in the moral imagination of another tradition, where the defining reality is the subject's relation to the divine. This is, necessarily, an entry into the space of theological reflection, but it is also to enter an interchange of historical and ethical meanings with which efforts at theological articulation are interwoven. Where these traditions present ethical life as, fundamentally, an effort at participating in the 'economy' of divine love through mimetic and ritual enactment, interpreting 'values' demands attention to ritual and narrative practice and to the background this gives to linguistic meanings. Such complexity reflects Joas' argument regarding the comparative sophistication of value generalisation – the ACW exchange entails engagement with values articulated in non-propositional form, in terms of allowing for expression of affective attachment and narrative power. For the purpose of understanding *how values function* in the ethical life of another tradition, exploration of values in terms that extend beyond the propositional dimension is vital. As Joas points out, our commitment to values stems from more than a cognitive recognition of their validity claims. Rather, we 'have' values and live them as commitments, in such a way as to make them more than mere 'assertions'.[557] We do not arrive at a deeply held attachment to values through a process of rational discursive persuasion, but rather are constituted cognitively and affectively by the 'hermeneutical situation' in which we move—thus, 'values cannot simply be discussed in an atomistic way, as if they were no more than discrete, self-contained opinions.'[558] Rather, value judgments point to histories, as Joas insists, having been constituted out of lived experience as well as the languages by which these experiences are mediated.

[555] Williams, "A Common Word for the Common Good," 197.
[556] The term 'hypergood' coming from Taylor's account of the valuing of goods in a moral framework. Charles Taylor, *Sources of the Self* (Cambridge, MA: Harvard University Press, 1989), 63.
[557] Joas, *The Sacredness of the Person a New Genealogy of Human Rights*, 177.
[558] Ibid., 179.

Hence 'biographical, historical, and mythological narratives are no illustrations to didactic ends but a necessary feature of communication about values.'[559]

Recognising that value articulations are developed at different levels and by various means within a tradition, Williams insists that a dialogical exchange that seeks to understand, and to develop shared value commitments, cannot remain a merely intellectual enterprise. His insistence here fuels the diagnostic perception that the ACW exchange is fundamentally political, with political ends in sight—those of sustaining a space of common ground otherwise threatened by certain strains of political discourse and theological controversy. Thus, Williams suggests that 'opportunities for lived encounter with people of different faiths, both within and across national boundaries, need to be multiplied and developed in an atmosphere of trust and respect.'[560] In so doing he echoes the original ACW letter in which the engaged scholars emphasise the urgent political nature of developing 'meaningful peace' between the world's two largest religious traditions, where 'our common future is at stake.'[561] The ACW letter urges that in securing a 'common future' amidst social conditions that 'intertwine' Christians and Muslims everywhere, dialogue between Christianity and Islam cannot be confined to a formal interchange between scholars: 'finding common ground between Muslims and Christians is not simply a matter for polite ecumenical dialogue between selected religious leaders.'[562] Rather, dialogue as they envisage it requires mutual learning taking place at various levels of engagement and certainly beyond scholarly textual exegesis.

In order to retain a non-esoteric social and political relevance as per the instincts of philosophical pragmatism, value generalisation ought to entail discerning novel ends established with reference to the specificities of political and social context. In practice, following the Gadamerian description of the conditions of understanding, ACW participants operate out of distinct hermeneutical horizons—locational, political and ethical—though they are, from different angles, commonly exposed to specific meta-discourses (the 'clash of civilisations', 'Christian/Muslim antagonism'). In the case of the ACW dialogue, methodologically refined textual exegesis becomes politically purposive when set in train alongside a diagnostic effort that foregrounds and acknowledges political context. In so doing it establishes a deliberative encounter that registers the pressure placed upon traditions and their adherents not at a formal theological level but at the level of social and political exclusion

[559] Ibid., 178.
[560] Williams, "A Common Word for the Common Good," 17.
[561] "A Common Word Between Us and You," 15.
[562] Ibid., 72.

or everyday reduction to caricature; it implies attention not only to esoteric Christological or Qur'anic arguments, but also to the political and social circumstances that led to the original dialogical outreach by the authors of the *A Common Word* letter. This includes the recognition that 'peace' and concord in contexts where traditions rub up against each other requires the adaptation of values to new circumstances, thereby suggesting the importance of diagnostic practices to the process of value generalisation. Diagnostic practices, as evidenced here, include the perception and description of the contemporary and historical circumstances that establish the need for a new articulation of values; the participants each give an account of the political background against which a new value horizon is to be formed. Implicit in the address of the Muslim scholars to their Christian counterparts is the urgency of 'new' political imperatives – namely, the political and social cross-pressures of the 'global war on terror' and the reductive construal of Islam. The Christian respondents equally diagnose the imbrication of theological hermeneutics with political imperatives – particularly those of sustaining 'commonality' or 'common ground' upon which relations of equal agency may be maintained. Thus, the Christian scholars who responded to the *A Common Word* letter note the complex interweaving of political and religious influences in the history of Christian-Muslim antagonism: 'though tensions, conflicts, and even wars in which Christians and Muslims stand against each other are not primarily religious in character, they possess an undeniable religious dimension.'[563] With this diagnosis in mind, the ACW dialogue is, on the view of these scholars, called to address the religious dimension of conflict *in concert with* an awareness of its imbrication with ostensibly secular political and social discourses; the dialogue resists the conceptual positing of 'religion' as an independent variable while also asserting the need for the adherents of the involved traditions to take responsibility for the manner in which their resources are mobilised. It therefore answers the challenges of hermeneutical reduction – the essentialisation of 'religion' by the secular or 'Protestant' gaze, or the reduction of either Islamic or Christian tradition from a hermeneutical standpoint that conceals their multivalence. At the same time, the ACW exchange renders a portrait of contemporary social and politically inflected antagonisms as more complex than allowed for by the readily available designation of 'religious extremism', or the discourse of "irremediable civilisational conflict".

In diagnostically acknowledging the backdrop of discursive antagonism, reduction and mistrust against which it works, the ACW exchange sets out the importance of reconstructing what Bohman calls a '*political* relationship of equal agency [italics mine]' between alienated

[563] "Yale Response," 144.

subjects.[564] The agency in this case is interpretive rather than assertoric. There is an interpretive mutuality at work here that allows space for difference, disagreement and correction, while nevertheless orienting all of these towards the search for common ground; the different participants are able to propose their own particular readings of the contemporary conjuncture and the 'ends' to which it should orient interlocutors deliberating with goodwill. In the case of *A Common Word,* 'mutuality' is developed through the forging of relations of reciprocal attentiveness that allow individual subjects—citizens—to *appear*, as Arendt would put it, through the articulation of their histories, ethical sources, and diagnostic perception of the present moment and its political salience. In this sense, mutuality retains the commitment to reciprocity invoked by Forst but avoids indexing deliberative life to the practice of—and "methodologically neutral"—argumentation. Mutuality moves above and beyond reciprocity at the level of formal procedure, or formalist normativity, by involving hermeneutical engagement with the potential to generate more sensitive and solidaristic relationships, along with new value articulations with which disparate ethical subjects may feel a motivationally strong affiliation.

Nevertheless, that the relationality thereby established between participants remains *political,* drawing upon an undiminished particularity, is demonstrated by the assertion of difference throughout the exchange—the ongoing registration of particular, rather than formal, subjectivity. In general, the Christian respondents enthusiastically accept the claims by the Islamic letter writers to some commensurability between Islamic and Christian injunctions to neighbourly care and concern.[565] But, as Williams makes clear, the possibility of discerning common ground depends upon the exploration of difference; hence, in the initial ACW exchange there is the recognition that subjecting each other's traditions to an ongoing process of reciprocal translation and interpretation will be vital in developing an understanding of distinct descriptions of superabundant divine love and of the meanings that lend the values of 'neighbourly' consideration their intelligibility within each tradition. Intelligibility, an important precursor to discerning shared premises, is therefore intimately tied to an acknowledgement of difference, of the reality of 'hermeneutical situations' beyond our immediate grasp and therefore accessible only through an interpretive unsettling of our own horizon.

[564] Bohman, *Public Deliberation: Pluralism, Complexity, and Democracy*, 95.
[565] See Williams, 'A Common Word for the Common Good.'

The *A Common Word* dialogue satisfies the pragmatic presuppositions asserted by Habermas as necessary for a practice to 'count seriously' as argumentation. It (a) practiced publicity and inclusiveness, (b) gave all who wished to the opportunity to speak, (c) ostensibly excluded deception and illusion, the participants having 'meant what they said'.[566] In place, however, of a structurally mandated acceptance of the 'rules of egalitarian universalism', the participants foregrounded contextually formed principles of neighbourliness that mandated not only 'equal consideration', but that offered the affective and motivational depth to generate dialogical commitment under adverse circumstances.[567] The ACW dialogue represents a deliberative process that sets aside Habermas' dichotomous assertion of 'the difference between the certainties of faith and publicly criticisable validity claims' (the inter-subjective markers of egalitarian universalism),[568] so as to assess politically resonant values in their 'articulating-constitutive' dimension. In Sluga's terms, a 'conceptual laboratory' is established, in which we 'achieve new interpretations' through 'an interpretive, hermeneutic enterprise'.[569] In more socially incarnate terms we might also think of this 'laboratory' as a dialogical community: that is, a community formed out of those processes of attention to values and meanings (translation and critical interpretation), which in turn acts as a context 'within which language grows'.[570] In its attention to its own constitutive differences it works to establish a 'common world' in which reciprocal acts of acknowledgement and attention prise open the values of one's interlocutors, making them legible against the backdrop of both 'old' tradition and 'new' experience.

How does this relate to the need for establishing a legitimate constitutional order or, more generally, a 'principle of authority' by which ethical commitments, such as those that enable the codification of human rights, may be asserted beyond specific contexts? The process exemplified by the ACW dialogue does not establish a singular principle of authority, nor does it achieve a constitutional structure the legitimacy of which is both visible and legible to all who live under its eaves. Value generalisation cannot be presented as a process that, on its own, establishes and legitimates a democratic constitutional order. It does not, I should emphasise, displace argumentation—the exchange of reasons—as a means of bringing about legitimate

[566] Habermas, *Between Naturalism and Religion: Philosophical Essays*, 50.
[567] Ibid., 50.
[568] Ibid.,143
[569] Hans Sluga, *Politics and the Search for the Common Good* (Cambridge, UK: Cambridge University Press, 2014), 35.
[570] Charles Taylor, "Language and Human Nature," in *Human Agency and Language* (Cambridge: Cambridge University Press, 1985), 234.

legislative frameworks that may coerce citizens in the form of positive law, without doing so in an arbitrary or un-mandated fashion. Yet it does effect important shifts in the mode of argumentation—and what count as reasons—as well as its relation to ethical traditions and the sources, narratives and memories they encompass. As evinced in the ACW dialogue, value generalisation models a form of argumentation that critically mines the genealogies and dependencies that stand behind value articulations, that accepts perspectival finitude and that acknowledges value articulations as potentially persuasive in their affective, narrative and expository capacity, rather than in merely cognitive or 'rational' form. Recalling the pragmatist agenda of opening up democratic possibilities beyond those set by the organisational drives of the narrower versions of liberal constitutionalism, we might see value generalisation as part of a multidimensional framework of critical argumentation. Indeed, value generalisation as a hermeneutical enterprise provides ground for the incorporation of reflexive genealogy and diagnostic attentiveness *into* the universal validity claim, making that claim one that acknowledges its own historical dependency but that nevertheless, through a process of diagnosis and value adaptation, remains capable of enabling ethical commonality.

Conclusion

Ss. 1. *Summarising the argument of this thesis*

The theories countenanced in this thesis set out to mediate between history, normativity and the contemporary sociological reality of value pluralism, which includes the diversity of practice exhibited by religiously and ethically pluralist societies. The theorists in question – to whom I have attached the label 'formalists' – retrain the resources of the Frankfurt School upon what Kant calls 'the greatest problem for the human species to which nature compels it to seek a solution', namely 'the achievement of a civil society which administers right universally.'[571] This Kantian project, I have argued, sets out to develop a 'universalism' that avoids entanglement with specific conceptions of the good, or ethically laden "pictures" of the social world, even while it depends upon a highly particular historical genealogy – for example, the history of declarative articulations of rights, the shifts in particular ethical discourses that facilitate a language of inviolable individual dignity, the conceptual developments that posit the political community as a 'body' formed out of a 'general' will, the 'sacralization' of the person.[572] In the re-developed form in which we meet it in this thesis, the Kantian 'project of modernity' focuses upon reconciling the 'inter-subjective turn' in critical democratic theory with the perceived need to retrieve and sustain a strong normative basis for constitutional settlement and social integration. The instrument developed to meet these two imperatives is, as I have argued, methodological formalism.

I have, divergently from Habermas, Forst and Ferrara, set out to pursue a pragmatist account of 'normative commonality' that eschews reliance upon post-metaphysical formalism as an instrument of rationally non-rejectable normative universality. This departure has, in part, been driven by the argument that formalism, deployed as an 'immanent' replacement for Kantian metaphysics, is insufficiently detached from the heritage of philosophical rationalism, tied as it has been to imperial projects and the practice of intellectual and ethical chauvinism. And while the theorists identified in this thesis as 'formalists' have committed themselves to

[571] Kant, "Idea for a Universal History from a Cosmopolitan Perspective," in Immanuel Kant, Jeremy Waldron, Michael Doyle, and Allen Wood. *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*, 8.
[572] See Joas, *The Sacredness of the Person,* 37.

developing normativity from an inter-subjective basis - thus overturning an atomistic sociology of individual "minds in the world" - their adherence to formalist models of normative ideation depends upon presupposing the functional independence of concepts from narrative, memory and genealogy. In this respect, I have argued, the 'project of modernity' conceived of as an 'inter-subjective continuation of Kantianism' suffers from a limited self-reflexivity and from a finalism that delimits the possibility of social and ethical natality driven by critical hermeneutical dialogue.

In ***Chapter 1***, I examined the interaction in Habermas' work of methodological formalism – encountered initially in the ideals of aesthetic modernism - and social contract theory, which together set the contours to his 'project of modernity.' Where social contract theory orients political theorising towards questions of constitutional settlement and normative integration, formalism offers a route by which theorists receptive to criticisms of 'rationalism' or 'ethical chauvanism' set out to pursue a culturally diminutive basis for normative order. I argued that the appeal of methodological formalism in political and social theory, reminiscent of its counter-part in modernist aesthetics, is a commitment to the freestanding authority of the 'rule', derived from its 'lawlike' characteristics, rather than its reflection of particular conceptions of the good. This intersects with the modernist and equalising orientation of the secular state, with its concentration of power and its penchant for standardisation, enumeration and legal universality (within the bounds of the national community, and increasingly beyond them) engages critical and utopian hopes for social transformation (Scott) - the hopes to which Habermas holds in his effort to further 'the project of modernity.' The modernist horizon is not easily dismissed, even for those convinced that the power of the secular state and its primary instrument, 'rationally' authored law, acts forcibly to redefine social and ethical life in ways that assert 'acceptable' cultural forms under the guise of methodological neutrality. My aim here, it is important to emphasise, has not been to expel emancipatory or eschatologically intoned hopes - and their attendant political, social and aesthetic genealogies - in favour of a romanticised traditionalism. It is, as subsequent chapters set out, to envision a more committedly pragmatist view of mediation between ethical traditions - one that facilitates 'commonality', ethical natality and social transformation without resort to the singularity of modernist 'form'.

In ***Chapter 2*****,** I examined and critiqued the normative theory of Rainer Forst, which interacts significantly with Habermas' own theory of constitutional order, and though different, may plausibly be characterised as a descendent theory. Forst, I argued, sets out, like Habermas, to forge a synthesis between ethical particularity and a Kantian command universality. His

goal, ultimately, is to sustain a form of de-transcendentalised Kantian normativity, even while integrating a more ethnographically nuanced picture of ethical life. I argued that, once again, a visibly formalist strategy is pursued, by which a 'basic insight' into the condition of inter-subjective responsibility for others as moral personalities gives rise to an 'autonomous' morality defined by a 'higher level internalism.' The idea of an 'autonomous' morality that depends only upon formal moral presuppositions, rather than ethical value articulations and genealogies, is, I think, blind to its own ideological distinctiveness, and therefore limited in its reflexivity. As Kompridis notes, 'arguments that fail to disclose the background, only presume it' and 'failing to respect their dependence on that background, they fail critically to engage with it, to illuminate it.'[573] Moreover, this position, I suggested, downplays the importance of hermeneutical practices of enquiry, which are otherwise vital in disentangling the ethically and historically rooted meanings implicit in any articulation of 'the common interest' and the norms that bind us to it.

In ***Chapter 3*****,** I turned to a discussion of a third strategy for reconciling ethical value pluralism with normative universality – the theory of aesthetic judgment set out by Alessandro Ferrara, and developed within a general theory of 'multi-variate democracy.' My claim, here, was that Ferrara's deployment of aesthetics to generate a context-transcending commonality, continued to deploy formalist dichotomies, namely between form and content, to which Habermas, with his interest in aesthetic modernism, also cleaved. This leads Ferrara to rely upon aesthetic forms, such as 'exemplary self-congruence', to establish a common mode of judgment that he then transposes onto the social world and its ethical traditions. Again, I argued that a formalism that relies upon eluding hermeneutical encounter with ethical meanings, in favour of discerning 'autonomous' and ethically non-substantive forms, suffers from a lack of reflexivity *and* a practically salient hermeneutical deficiency. It remains unable to supply resources for individual subjects to generate commonality without avoiding the interpretive challenge of articulating values shared in common, rather than merely deriving them from a formally established 'insight' or 'judgment.'

Throughout the preceding chapters my critique of formalism was staged from a theoretical perspective that draws upon practical reconstructivism conjoined with philosophical hermeneutics. Each of these theoretical orientations, I argued throughout, supplies reasons and resources for challenging the 'inter-subjective continuation of Kantianism' to which Habermas, Forst and Ferrara apply themselves. In ***Chapter 4*****,** I turned aside from critical exegesis to

[573] Kompridis, *Critique and Disclosure*, 122.

develop an assessment of the possibilities of methodological pragmatism in relation to deliberation amidst value pluralism. I argued for that critical democratic theory ought to envisage social integration as, in Arendt's terms, the socially embedded negotiation of 'a common world.' I then explored the notion of value generalisation as a genealogically reflexive process that facilitates the introduction and development of novel meanings, and the renewal of ethical resources in pursuit of commonality. As an illustration of value generalisation, I referred to the *A Common Word* dialogue, which evinces a critical hermeneutical exchange in which participants, and many of those they represented, recognised the need for novel value articulations that might redress a perceived injustice and redevelop ethical commonality. The *A Common Word* dialogue, I argued, represents an instructive attempt to develop 'a common world' out of the experience of alienation and interpretive inscrutability. It points towards the centrality of critical hermeneutical interchange that, rather than sidestepping ethical meanings or assuming commonality at a "merely formal" level, generalises values without denying the specificity of their background articulations. Such value generalisation works in practice to expand the community of 'moral equals' in line with Habermas' hopes for a post-metaphysical modernity, but does so without establishing a formalistic and a-historical, or selectively historical, universality to which ethical traditions must tend in order to remain cognitively relevant. Indeed, the dialogue substantiates Joas' argument, which stands against the formalist diremption of norms from ethical culture, that 'biographical, historical and mythological narratives' are not mere 'illustrations to didactic ends', but 'a necessary feature of our communication about values.'[574] Whereas formalism looks to the separation of normativity from 'subjective ends' and from narrative context, the practical reconstructivism espoused in this thesis understands these elements as inextricably bound up with articulations of the common interest. Lastly, *A Common Word* demonstrates that engaging with the specificity of value articulations offers a route towards a normative commonality that addresses itself to the practical challenge at hand, and that remains open to revision through ongoing deliberation about what the common interest entails.

Ss. 2. *Aims of the thesis*

This thesis has made three key contributions: *firstly*, it has set out to highlight, in exegetical detail, a strain of contemporary critical social and political theory that, while

[574] Joas, *The Sacredness of the Person,* 178.

internally plural in its methods, is unified by its commitment to formalism as an instrument for developing post-metaphysical normative orders amidst value pluralism. My aim has been to identify this strain of theory as a distinctive ideological position and to highlight the specific intellectual influences to which it is indebted. I have set out to show that formalist presuppositions, including those drawn from particular ideological movements such as aesthetic modernism, play a key role in shaping the strategies pursued in the theories to which I have given critical attention.

Secondly, I have criticised the formalist strain of critical democratic theory for its commitment to the notion that 'merely formal' presuppositions can mediate in a non-impositional way between different value articulations without themselves relying upon, or tacitly expressing, meanings drawn from ethical culture. I have argued that the relation between normative concepts and meanings is more tightly woven than the formalists presuppose, which in turn points to the importance of a model of deliberation that works to engage and amend the ethical meanings available. Once we engage with ethical meanings, moreover, the need for a model of deliberative engagement, and practical reason, that registers ethnographic complexity becomes paramount. With this in mind, and with reference to Ahmed's work on Islam as a 'complex of meaning-making', I have highlighted the manner in which values, and the ethical languages that carry them, take their shape within traditions that are marked at once by shared meaning-making and internal contradiction. This, in turn, points to the need for a hermeneutically enriched practical disposition that does more than subsume particulars beneath universals or discern the formal demands of a given discursive context.

Thirdly, with the preceding insight in mind, I have argued positively for a more thoroughgoing pragmatism in critical democratic theory, which takes up the insights of both practical reconstructivism and philosophical hermeneutics to develop conceptions of both critique and of value generalisation, which operate without resort to formalist conceptions of ethically freestanding normativity. A pragmatic approach such as this, I have argued, (i) makes tangible the recognition of perspectival finitude, (ii) recognises the centrality of interpretive practices to pursuing arguments about and offering reasons for the validity of norms, and (iii) allows for a conception of critical dialogue across ethical or cultural traditions, which is capable of producing the renewal of existing values and the interpretive development of normative commonality.

It is equally important to be clear about what this thesis has *not* set out to achieve. I have not set out to develop a comprehensive social theory of constitutional settlement, or indeed to develop a "complete" model through which to resolve the 'validity problematic' faced by

constitutionally ordered, ethically pluralistic societies. Such a project is well beyond the scope of this thesis. Moreover, the pragmatist perspective that I have taken up and developed calls this kind of theoretical enterprise into question, at least where it is posited as an instrument for developing the resources and instantiating the commitments of Frankfurt School critical theory. Thus, Bohman, to whom I have returned throughout, makes the critical assessment that 'instead of searching for practical transformations of epistemological problems, critical theorists (such as Habermas) have sought to ground their form of social inquiry in a comprehensive social theory.'[575] He goes on to suggest that this effort has, on balance, failed and that the key reason for abandoning the attempt at generating 'the best comprehensive social theory as providing the warrant for good social criticism' is that there are a plurality of methods and practices that develop critical insight into the normative organisation of society.[576]

I argued for a mode of deliberative engagement that takes seriously the challenge of forging normative commonality without the certainty of principles insulated by a 'higher level internalism', or by their reflection of 'what follows normatively' from pre-cultural, trans-contextual constants in the human condition. Instead, I have integrated Taylor's recognition that, even if we identify 'basic' conditions that unify us at a foundational experiential level, 'what follows normatively' is less certain and is determined, always without finality, through the interaction of plural ethical meanings. Even subject to the confines of a singularising 'modernity' narrative or a confidently 'Whig' history of social rationalisation and modernisation, norms designed to serve as bases for the 'common world' of social life remain bound to value articulations made out of specific genealogies. This, then, gives rise to the challenge – both practical and epistemological in character – of negotiating the 'jackals and vultures' of partial understanding that beset consociates attempting to define the contours of a 'common world.'

This thesis has argued for an account of social criticism driven by pragmatist concerns and oriented in its method of social criticism by the commitments of philosophical hermeneutics. I have argued that, practically speaking, critical hermeneutical dialogue offers resources for the negotiation of ethical value pluralism that are practically more fruitful and, I think, less prone to cultural imposition than those proffered under the aegis of methodological formalism. As Ferrara recognises, this 'fruitfulness' is the standard by which pragmatism measures its

[575] James Bohman, *Public Deliberation: Pluralism, Complexity, and Democracy* (Cambridge, MA.: MIT Press, 1996), 97.
[576] Ibid., 97.

success; that is, by an orientation towards human flourishing and the resolution of particular problems in accordance with a *eudaimonistic* understanding of truth and its functional, rather than architectonic, role.[577] In this sense, the pragmatist approach to value generalisation that I outlined in the final chapter of this thesis, oriented towards dialogically renewing ethical value articulations and developing 'a common world', is one that measures its success by the extent to which it effects the 'practical transformations' to which Bohman refers.

None of this is to argue that an account of liberal constitutionalism, of shared rights and duties undergirded by democratically authorised law, is beyond the scope of critical democratic theory. Rather, it is to suggest that the value articulations that underpin democratic constitutionalism are themselves specific, and that their cross-contextual resonance requires development 'through the incorporation of a relevant narrative' that evolves dialogically and with sensitivity to the alterity it encounters.[578] Nor, as Joas suggests, does the concept of deliberatively developed value generalisation displace the pursuit of the universal validity claim altogether; it rather transforms the nature of that claim from a formally ordained, conceptually transposable, proposition to an inductively produced articulation of ethical commonality. This, certainly, makes normative 'universality' more provisional, insofar as its sources are spatio-temporally located and in need of revision and re-articulation. But, if critical democratic theory of the Frankfurt School wants to pursue an emancipatory 'project of modernity' further, it must, I would argue, find methods of criticism that deal more effectively with historicity, with the social embeddedness of values, and with the inter-relation between norms and value articulations.

[577] Ferrara, *The Democratic Horizon,* 198.
[578] Joas, *The Sacredness of the Person,* 190.

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