Reflections on the Foundations of Human Rights

Thomas M. Besch
Department of Philosophy
The University of Sydney
Sydney, NSW 2006, Australia
thomas.besch@sydney.edu.au

Unpublished manuscript; feedback welcome.

Abstract: Is there an approach to human rights that justifies rights-allocating moral-political principles as principles that are equally acceptable by everyone to whom they apply, while grounding them in categorical, reasonably non-rejectable foundations? The paper examines Rainer Forst's constructivist attempt to provide such an approach. I argue that his view, far from providing an alternative to "ethical" approaches, depends for its own reasonableness on a reasonably contestable conception of the good, namely, the good of constitutive discursive standing. This suggests a way in which constructivism about human rights might be able to coherently and plausibly negotiate the tension between the scope, the depth and the strength of discursive inclusion: the justification of rights-allocating moral-political principles needs to be premised on an "ethical", perfectionist defense of the good of constitutive discursive standing.

Reflections on the foundations of human rights

1.

Is there a constructivist approach to human rights that justifies rights-allocating moral-political principles as principles that are, in some qualified sense, equally acceptable by everyone to whom they apply, while grounding them in categorical, reasonably non-rejectable foundations? Constructivist views that aspire to meet the three-fold aim of *equal* and *inclusivist* acceptability on *reasonably non-rejectable grounds* face many challenges, including the following. This aim, it has been claimed, reflects different sides of an important idea of moral respect – an idea that requires us not only to include in the scope of the justification of our principles on equal footing indeed everyone to whom our principles apply, but also to look to their acceptability as a source of their authority and, to ensure their equal acceptability, to avoid building them on reasonably contestable grounds. Yet how, we may wonder, can this idea give us a coherent grounding of human rights if the very requirements it is said to give rise to are the subject of reasonable controversy – as arguably they are? If they can be rejected reasonably, moral respect, it seems, asks us not to avoid, but instead to *invoke*, grounds that can reasonably be rejected – at least if and where the idea of respect is one of the justifiers we need to draw on in accounting for the authority of our principles. But how can we then achieve equal and inclusive acceptability? Would we not need to sacrifice the goal of equal acceptability, or else include in the scope of justification only people who can accept these requirements? The promise of a constructivist approach to human rights depends in part on how well it can meet, if not steer clear of, this challenge.

It is in the light of this challenge that I want to examine in that follows Rainer Forst's recent views. In a series of books and papers, he has outlined an approach to human rights that aspires to be constructivist in standards, inclusivist in scope, and categorical in foundations.[1] His approach seeks to provide an alternative to a wide array of attempts to ground human rights, but especially to "ethical" approaches that locate the grounds of human rights in needs, interests, aims, valuations, or, more generally, conceptions of the good, widely conceived, that, as they can reasonably be rejected, do not provide categorical foundation of human rights – or so Forst and others insist who take the right to have justificatory priority over the good.[2] For Forst, there is a deep moral right at the

---

[1] See especially Forst, "The Justification of Human Rights and the Basic Right to Justification: A Reflexive Approach", in *Ethics* 120 (2010) and "The Basic Right to Justification: Toward a Constructivist Conception of Human Rights", *Constellations* 6/1 (1999). Key components of this view are worked out in Forst, "The Limits of Toleration", *Constellations* Vol 11/3 (2004)'; Forst, "Toleration, justice and reason", in C. McKinnon and D. Castiglione (eds), *The culture of toleration in diverse societies* (Manchester: Manchester University Press, 2003); Forst, *Contexts of Justice* (Berkeley: University of California Press, 2002); Forst, *Toleranz im Konflikt* (Frankfurt am Main: Suhrkamp, 2003); Forst, *Das Recht auf Rechtfertigung* (Frankfurt am Main: Suhrkamp, 2007).

[2] Forst takes issue in particular with the ethical views of James P. Griffin, see Griffin's *On Human Rights* (Oxford: Oxford University Press, 2008) and John Tasioulas, see his "The Moral Reality of Human Rights", in Thomas Pogge (ed.), *Freedom from Poverty as a Human Right* (Oxford: Oxford University Press, 2007). He offers his approach as an alternative also to "political-legal" views that anchor human rights in contingent national or trans-national political, legal, or other institutions or conventions, such as advanced in

foundations of human rights, namely, a "basic right to justification." In his view, this right, which he takes to reflect the moral status of people as autonomous moral agents, needs to be seen in light of a requirement of general and reciprocal acceptability – this requirement, which marks Forst's version of the constructivist acceptability standard, answers to the validity-claims of moral-political principles. In conjunction, Forst argues, the right to justification and the requirement of generality and reciprocity mark a basis of a justification of human rights that does not need to rely on reasonably contested conceptions of the good.

This ambition, however, is mistaken. As I shall argue, Forst-type constructivism, far from providing an alternative to "ethical" approaches, depends for its reasonableness on a reasonably contested conception of the good. Both the moral status that the right to justification refers to and the justificatory rank of Forst's requirement of general and reciprocal acceptability need an "ethical" defense of the good of constitutive discursive standing, as I will call it. This defense cannot be required to avoid reasonable controversy or to meet the requirement of generality and reciprocity, each plausibly understood. This result, in turn, is inescapable if the discursive standing that a right to justification calls for is as deep and as inclusive as it would seem to be. Forst-type constructivism about human rights, then, is self-undermining: it calls for a kind of discursive inclusion that it cannot accommodate. This problem is instructive. It points to a way in which constructivism might plausibly meet the challenge sketched above. To mediate the tension between the scope, the depth and the strength of discursive inclusion, I shall suggest, constructivism about human rights should not seek to avoid, but build on, an "ethical" defense of the good of constitutive discursive standing.

My argument proceeds as follows. After some reconstructive work in sections 2 and 3, section 4 addresses a first, republican reading of Forst's approach. On this reading, the requirement of generality and reciprocity grounds the right to justification and other human rights, while being itself grounded in the validity claims of moral-political principles. I argue that this requirement cannot be so grounded as this would have to already suppose that it is unreasonable to reject it. Sections 5 and 6 then turn to a second, liberal reading. On this reading, to accord to others a right to justification is to show them moral respect, while this right grounds the relevant requirement and other human rights. Matters here depend on whether we are to view moral respect as something that asks us to accord to others constitutive discursive standing, or discursive respect. But that we are to view it in such terms, I argue, is reasonably contested, and constitutive discursive standing itself is best seen as a reasonably contestable conception of the good. The liberal reading thus draws on reasonably contested foundations. Section 7 finally considers the constructivist idea of reasonableness in the background of Forst's case. I argue that this idea needs to give way to a different, more inclusive one to avoid dogmatism and to accommodate the inclusivism of the right to justification. As section 8 concludes, then, this constructivism is caught up in a tension between the depth, the scope and the strength of

---

John Rawls, *The Law of Peoples* (Cambridge (MA): Cambridge University Press, 1999), or in Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009). What is relevant for my purposes is Forst's opposition to "ethical" views as it most clearly brings out the kind of grounding he takes human rights to need; it also reflects well how he interprets the search for categorical grounds, namely, as a search for grounds that cannot reasonably be rejected.

discursive inclusion. A plausible response to this problem is not to replace "ethical" foundations by constructivist arguments, but to premise the justification of right-allocating principles on a non-constructivist, "ethical" defense of the good of constitutive discursive standing.

2.

As a point of departure, let us ask in what sense, if any, the "basic" right to justification indeed is basic.[3] Forst's approach oscillates between two lines of answer to this question, each revolving around three ideas, namely, (i) an idea of what moral respect for other people calls for, (ii) a view of the kind of justification that properly redeems the validity claims of the moral-political principles that allocate human rights, and (iii) a view of the kind of standing that we accord to others in publicly justifying things to them. As to (i), Forst follows political liberals like Rawls and Larmore and argues that moral respect for others requires the moral-political principles that apply to them to be publicly justifiable to them, or, as he puts it, it requires these principles to be generally and reciprocally acceptable (I will return to this view of public justification later). To the same effect, (ii) reflects the influence of Habermas' views on Forst-type constructivism: Forst takes it that these principles raise validity claims that call for their public justifiability to everyone affected by them. Finally, (iii) is often in play when Forst outlines the moral implications of a practice of public justification: in sharing a practice of public justification, we accord each other a special moral status or worth, and possessing this status just is what having the right to justification consists in.

On a first line of answer to the question just asked, then, the right to justification is "basic" in the sense that it both grounds other human rights and dictates the form that a justification of such rights is to take in the first place, namely, public justification. One implication here is that the moral authority of this right could not depend on, but would have to be prior to, public justification, or, on Forst's view of public justification, the requirement of general and reciprocal acceptability. Thus, he insists that this right is "the basic right" and that "it is not a specific, intersubjectively established and recognized human right, but rather the basis of a justification of concrete rights itself."[4] For want of a better label, we might call this a liberal strand in Forst's approach, at least in the sense that there is a fundamental moral right at its core that is assigned authority prior to public justification. This line of answer comes to the fore when Forst writes:

> The moral basis for human rights (...) is the respect for the human person as an autonomous agent who possesses a right to justification, that is, a right to be recognized as an agent who can demand acceptable reasons for any action that claims to be morally justified and for any social or political structure or law that claims to be binding upon him or her. Human rights secure the equal standing of persons in the political and social world, based on a fundamental moral demand of respect.[5]

---

[3] Forst, "The Basic Right to Justification", p. 41.

[4] Ibid.

[5] Forst, "The Justification of Human Rights", p. 719.

What is identified here as the foundation of human rights is an idea of moral respect. To morally respect others requires us to recognize them as agents who possess a right to justification, or who are "worthy of being given adequate, justifying reasons in matters that affect them",[6] or who "can demand acceptable reasons for any action that claims to be morally justified and for any social or political structure or law that claims to be binding upon him or her".[7] Now, Forst appears to imply, reasons for moral-political principles duly answer the right to justification, and so qualify as adequate and justifying, only where they justify publicly. Thus, this right is basic in relation to public justification as it asks us to engage in such justification in the first place; it is hence basic, as well, in relation to other human rights, as these depend on the public justifiability of the moral-political principles allocating them. The validity claims of these principles might here play a supporting role, but this role is not crucial in relation to the grounding of the right to justification. On this reading, therefore, this right has a foundational status.

Not so according to a second line of answer. Here, the right to justification is basic relative to other human rights, but not relative to public justification. On this reading, the validity claims of moral-political principles plus the view that these claims require public justification are fundamental, while the right to justification is reconstructed as entailed by a practice of public justification. Call this a republican line of answer, as the authority of this right would depend on the authority of public justification. It comes to the fore when Forst writes:

> We need not resort to a metaphysical or anthropological foundation for [human] rights. [They] are to be regarded as constructions (...) that have an intersubjectively non-rejectable "reason." They are justified constructs the respect of which moral persons, who see no good reasons to deny them, owe to each other. The basic right to justification reveals itself in a recursive reflection combined with a discursive explanation of what it means to justify individual actions and general norms in a moral context. Any moral norm that claims to be generally and reciprocally valid must be able to prove its validity to those to whom it is addressed according to these criteria. Consequently, it must be able to be the subject of a practical discourse in which, in principle, all arguments for or against the norm can be presented. Thus, if one begins with an analysis of claims to moral validity and asks further for the conditions of their validity, one finds the "simple" principle of justification [i.e., the principle that their justification is a matter of their general and reciprocal acceptability].[8]

> [S]ince any moral justification of the rights of human beings must be able to redeem discursively the claim to general and reciprocal validity raised by such rights, then such a justification presupposes the right to justification of those whose rights are in question. They have a qualified "veto right" against any justification that fails the criteria of reciprocity and generality and which can be

[6] Forst, "Toleration, justice and reason", p. 76f.

[7] Forst, "The Basic Right to Justification", p. 44.

[8] Ibid.

criticized as one-sided, narrow, or paternalistic, as the case may be.[9]

The validity claims of rights-allocating moral-political principles require their public justifiability, while the right to justification "reveals" itself as entailed by a practice of public justification. This combines several ideas. First, such principles, as they claim authority for everyone to whom they apply, must be suitably acceptable by everyone to whom they apply – and, for Forst, a commitment to justifications that properly redeem our validity claims is part of what characterizes us as reasonable.[10] Next, where we accord a justificatory rank to the issue of what others can or cannot accept, we ascribe to them a special moral status – i.e., we recognize them as beings worthy of being given adequate, justifying reasons in matters that affect them. Yet, third, to accord to others this status just *is* to ascribe to them, or to recognize them as having, a right to justification. This right hence is identified "recursively", or is "reconstructed", in the sense that it is identified by examining moral commitments that come with participation in a practice of public justification – a practice, moreover, that we cannot reasonably refuse to engage in if we raise the relevant validity claims, and that hence promises a categorical, reasonably compelling grounding of human rights.

Before I move on, let me note that the republican line of answer, which often is at the center of Forst's attention, fits well to the project of a constructivist view of human rights. For the idea of public justification at its center is constructivist (I will return to this shortly). It also promises to attach good sense to the project of a categorical grounding of human rights. However, it does not reserve much of a grounding role for the right to justification – at least not in relation to other human rights. True, Betty's claim that Paul has a right to justification might express a demand to the effect that Paul be fully included in our practice of public justification. And if that demand finds suitable support, our practice of public justification might become more inclusive – and this can affect what principles can count as suitably acceptable by everyone included in public justification's then-extended scope. In an empirically mediated, indirect way, then, changes at the level of the policies by which a group governs the allocation of a right to justification can affect what other rights can count as publicly justifiable from the point of view of that group. However, by themselves, such indirect effects mark matters of descriptive ethics that fall well short of constituting a systematic, justificatory dependency between the right to justification and other human rights. As far as such dependencies go, therefore, the republican reading of Forst's approach has it that claims to the effect that an agent has, or ought to be accorded, a right to justification stand or fall depending on whether that agents is, or ought to be, included in the scope of public justification – and not the other way around, as the liberal reading would suggest.

3.
Can Forst's approach provide a categorical grounding of human rights? I shall address both readings of this approach, starting with the republican reading. This reading, we have seen, turns on two views:

---

[9] Forst, "The Justification of Human Rights", p. 719.

[10] See Forst, *Contexts of Justice*, p. 81 and Forst, "Toleration, justice and reason", p. 80f.

F1 Where we claim moral-political principles to be correct, or to have epistemic-practical authority, we commit ourselves to their public justifiability, or their general and reciprocal acceptability.

F2 Where we claim moral-political principles to be publicly justifiable to others, we accord to them a right to justification, or the moral status that this right refers to.

The following must be true for Forst's approach to reach its goal:

F3 Public justification can without appeal to reasonably contested views establish human rights.

For our purposes, we may concentrate on F1, as it carries most systematic weight. And to assess F1, it is best to first consider the idea of public justification that it invokes, namely, the requirement of generality and reciprocity. This requirement is far from innocuous: it is doctrinally rich and normatively selective. By itself, this is not a problem; it might even be desirable if indeed this requirement is to select a rich and interesting set of substantive moral-political principles. It is not clear, however, whether its doctrinality and selectivity sits well with the attempt to build human rights on categorical, reasonably uncontestable grounds.

     Consider first the meaning of this requirement. Principles and reasons are *general* in the sense of this requirement only if they are suitably acceptable by everyone to whom they apply, or, as Forst also puts it, by everyone affected by them. Thus, generality calls for a form of justificatory universalism[11] – and this, of course, is something particularists are committed to reject. *Reciprocity* is more difficult to pin down:

> Reciprocity means that no one may make a normative claim (...) he denies to others (call that reciprocity of content) and that no one may simply project one's own perspective, values, interests, or needs onto others such that one claims to speak in their "true" interests or in the name of some truth beyond mutual justification (reciprocity of reasons).[12]

It is not clear just how much normative content is built into the two aspects of reciprocity. Still, "reciprocity of content" minimally requires us to treat like cases alike, and so calls for a form of impartiality, or universalizability. As to "reciprocity of reasons," at a minimum it imports a demand of equal acceptability, or non-rejectability. A view is acceptable reciprocally in this second sense only if it is equally acceptable by those who propose or act on it and those who are on its receiving end. Thus, reciprocity of content calls for a discursive, higher-order form of equality.

     The requirement of general and reciprocal acceptability, then, is universalist and egalitarian, each term suitably understood. As noted already, it is also constructivist in taking acceptability, or some form of acceptability, to be something that constitutes, rather than flows from, the correctness, rightness, validity, or the epistemic-practical authority, of moral-political principles, or their reasons. This, of course, is a contested view: anti-

---

[11] See Forst, "The Justification of Human Rights", p. 720.

[12] Forst, "The Justification of Human Rights", p. 719.

constructivists, such as perfectionists, Platonists, or moral realists,[13] do not take acceptability to have a justification-constitutive status, even though they might accord considerable value to it. E.g., they might see it as a desirable by-product of moral-political justifications, or as a non-justificatory, substantive constraint on the legitimacy of moral-political principles. And they might (if not must) concede the existence of a necessary non-moral link between the epistemic-practical authority and the acceptability of such principles. For if such principles are based on reasons that are intellectually accessible at all – as most anti-constructivists would assume – these reasons must be the *possible* object of acceptance by people who can access and appreciate them, and by others under the counterfactual condition that they possessed and exercised that capacity. Accordingly, non-constructivists can require reasons and principles to be the (possible) subject of what Nagel called "ideal unanimity" – i.e., a kind of agreement about S that would occur if the relevant others grasped S's epistemic merits (where these merits are not seen as flowing from S's acceptability).[14] However, anti-constructivists reverse the constructivist order of dependency: rather than construing the authority of principles or their reasons as a function of their reasonable acceptability, they see the reasonableness of accepting these principles as a function of their independently constituted authority. In other words, anti-constructivists construe reasonable acceptability as a justification-consequential property, rather than a justification-constitutive property.

4.

To return to F1, namely, the view that where we claim moral-political principles to be correct, we commit ourselves to their public justifiability, or their general and reciprocal acceptability. We have seen that the requirement of general and reciprocal acceptability is *universalist*, *egalitarian* and *constructivist* . If that is so, is F1 true? Evidently, the answer turns on how we construe of the validity claims of moral-political principles in the first place. Forst's "recursive" approach purports to build on a reconstructive view of generic features of the practice of raising such claims. On his view, this practice commits us not just to the view that these principles must be justifiable to the relevant others, but to the view that their justification is a function of their acceptability. But may we reconstruct that practice in terms that from the outset tie it to a form of constructivism?

Much depends here on how inclusive in doctrinal diversity the reconstructive basis of a view of moral-political validity claims is allowed to be. Let us note again, then, that there is controversy about the role of acceptability in justification that arises between *prima facie* competent and reasonable participants in the practice of raising such claims – "competent and reasonable", that is, as understood prior to settling the truth about moral-political

---

[13] On the difference between constructivism and these anti-constructivisms, see Onora O'Neill, *Toward Justice and Virtue* (Cambridge: Cambridge University Press, 1996), pp. 54ff; O'Neill, *Bounds of Justice* (Cambridge: Cambridge University Press, 2003), pp. 13-28. See also O'Neill, "Constructivisms in Ethics", in her *Constructions of Reason* (Cambridge: Cambridge University Press, 1989).

[14] See Thomas Nagel, *Equality and Partiality* (Oxford: Oxford University Press, 1991), pp. 33f. David Estlund refers to this kind of unanimity, or consent, as 'normative consent' i.e., consent we would have given had we accepted what we were morally (or otherwise authoritatively) required to accept. See his *Democratic Authority* (Princeton: Princeton University Press, 2008), p. 10. Plato thought such consent to be of important value when he took unanimity to be a component of the perfection of an ideal polity: see Plato, *The Republic*, trans. Desmond Lee (London: Penguin Books, 2007), p. 136 (432a).

justification, and thus understood in terms that do not from the outset commit us to constructivism, or any other contested philosophical doctrine of such justification. Now, I take it, a reconstruction of the practice of raising validity claims can be fully adequate only if it is true at least of all competent and reasonable instantiations of that practice – including, as it were, cases where agents raise such claims while rejecting constructivism. But then Forst's approach runs into a problem that recursive arguments for normatively selective, critical conclusions often face. To see what the problem is, suppose that R is an alleged generic feature of a given practice, P, and that P has two sub-types, P1 and P2. Suppose, as well, that we want to argue that P2 should be abandoned in favor of P1. Recursive arguments, then, often take a form like:

(i)   P commits us to R (e.g., P involves, presupposes, entails, requires, R).

(ii) R, properly understood, commits us to P1.

(iii) Thus, P2-adherents must change their ways to become P1-adherents (say, by pain of performative self-contradiction, unintelligibility, incoherence, or some other allegedly authoritative kind of unreasonableness).

E.g., let P be the practice of claiming moral-political principles to be correct, P1 pro-constructivist stretches of that practice (e.g., as it is exercised by constructivists), and P2 con-constructivist stretches of that practice (e.g., as it is carried out by Platonists). Not least, let R be a conception of the validity claims of moral-political principles. The argument would thus run that the relevant discursive activity involves the raising of validity claims which, understood properly, commit us to accord to acceptability a justification-constitutive role (and so commit us to constructivist public justification); by implication, con-constructivists must change their ways to become pro-constructivists (by pain of unreasonableness).

Alas, if R commits us to P1 rather than P2, there is reason to believe that R, or our conception of R, does *not* reconstruct generic features of P. To initially arrive at a reconstructively adequate view of a given practice, equal charity must be extended to all its competent and reasonable participants – and, by hypothesis, these include both pro-constructivists and con-constructivists. But this would ask us to reconstruct the practices of participants of P1 *and* P2, or pro-constructivists and con-constructivists, in ways that maximize, rather than selectively decrease, their coherence. Hence, we would have to reconstruct P – i.e., the raising of the relevant validity claims – in terms that are *neutral* between P1 and P2. Accordingly, our conception of R would have to be abstract, thin, or, in fact, trivial, enough to be consistent with both P1 *and* P2. And this disables the case. For if R commits us to P1, our reconstruction of P *fails* to be neutral and there are reasons to reject premise (i), above, as reconstructively inadequate. But if our reconstruction of P *is* neutral, then (i) might be adequate, but (ii) will not hold, and P2-adherents will escape the conclusion. Expectably, then, inclusive scope and reconstructive adequacy here comes at the expense of critical force. An inclusive and adequate reconstruction of our validity claims will not commit us to constructivist public justification, while a view that might commit us to such a thing can at most claim to reconstruct pro-constructivist stretches of the practice of raising such claims. By implication, whatever grounds human rights, it is not our raising of the relevant validity claims, but whatever it is, if anything, that makes it reasonable to redeem them through constructivist public justification. And this seems to be the most plausible stand to take on this matter in the first place.

This conclusion is inevitable if – in fact, *especially* if – we aim at a view of the foundations of human rights that is equally acceptable by everyone to whom the relevant moral-political principles apply, as opposed to, say, the much smaller set of people who already endorse a commitment to constructivism. And it seems to be this very inclusivity that marks the point and emancipatory core of Forst's republicanism – which, however, has a tragic aura about it. For in widening the scope of inclusion so as to accord full discursive status – that is, a right to justification – also to people who reject the doctrine of constructivist justification that underpins this emancipatory narrative, the offered rationale for inclusion collapses. The republican strand in Forst's approach thus is self-undermining: if indeed (i) everyone to whom moral-political principles apply is to have a right to justification, and if this entails, too, (ii) that our account of the validity claims of moral-political principles must be equally accessible and acceptable by all of these people, then we have reasons *not* to construe of these validity claims in terms that would enable them to provide a justificatory basis of this and other rights.

5.

This brings us to the liberal strand in Forst's views. Perhaps we *may* restrict our attention to pro-constructivist stretches of the practice of raising the relevant validity claims as only pro-constructivist exercises of that practice are competent or reasonable – yet not in virtue of what it means to raise such claims, but on more substantive grounds that have to do with what it takes to bring to bear a proper understanding of moral respect on our attempts to redeem our validity claims. And, of course, that moral respect commits us to some form of public justification is a theme that has some currency in recent discussion, especially in political liberalism.[15] Does Forst's approach, on the liberal reading, allow for a categorical foundation of human rights?

On this reading, the right to justification grounds public justification; ascribing to others that right, in turn, is a matter of morally respecting them as beings who, given their capacity for autonomy, "can demand acceptable reasons for any action that claims to be morally justified and for any social or political structure or law that claims to be binding upon him or her",[16] or that are "worthy of being given adequate, justifying reasons in matters that affect them".[17] However, this will enable a categorical grounding of human rights only if the link between the commitment to respecting others and the commitment to including them in the scope of constructivist public justification is not dependent on views that are the subject of reasonable disagreement. Now, we shall see, it is implausible that such views can be avoided here altogether – and this for reasons related to those that already undermined the republican reading of Forst's case. Even if there are good reasons to accept a view of moral respect that commits us to constructivist public justification, such a view will invite reasonable disagreement, not least because our reasons to adopt such a view in the first place (if there are any) are likely to involve a reasonably contested

---

[15] Exemplary here is Charles Larmore: see his *The Morals of Modernity* (Cambridge: Cambridge University Press, 1996), p. 13, and *The Autonomy of Morality* (Cambridge: Cambridge University Press 2008), chapter 6.

[16] Forst, "The Basic Right to Justification", p. 44.

[17] Forst, "Toleration, justice and reason", p. 76f.

conception of the good. Let me use this and the next section to spell out in more detail why this is so.

It is best to begin by distinguishing between two familiar types of moral standing. Consider the difference between the view (i) that a being, X, has moral significance, and the view (ii) that the grounds (reasons, principles, standards, and so on) that we act on in responding to X's moral significance should be acceptable by X. Evidently, there are distinct kinds of moral status in play here. If we accord a status that corresponds to (i), we include others in the scope of what is sometimes called moral concern.[18] To invest moral concern in a being involves a non-instrumental willingness to protect or support it, or its good. If we accord a standing that corresponds to (ii), by contrast, we accord a more demanding standing; this is the form of moral status that matters now: we might call it discursive standing. To accord to X discursive standing involves the commitment that activities that affect X be governed by grounds that X could accept. Now, we can accord to others different kinds of discursive standing, depending on the relationship we take to hold between the goodness and the acceptability of our grounds. Taking up an idea that has surfaced above already, then, we can identify our grounds as good depending on their acceptability, or else identify our grounds as good on some acceptability-independent basis. Accordingly, there are what we might dub *constitutive* and *consequential* forms of discursive standing. Where we accord constitutive standing, we believe not only that actions that affect others should be based on grounds they could accept (or share, or follow), but take it, too, that the authority of these grounds is at least in part constituted by their acceptability by these others. Where we accord consequential standing, in turn, we in effect reverse the order of dependence: rather than seeing the goodness of our grounds as depending on their acceptability, we take the acceptability of our grounds to (at least ideally) flow from, or be a consequence of, the proper appreciation of their goodness. To mark the difference between these forms of standing, let me henceforth speak of discursive respect where we accord the stronger, constitutive form of discursive standing.

The phenomenology of discursive standing is complex: while its constitutive and consequential forms seem to be located on opposite ends of a sliding scale, thus allowing for degrees and intermediate forms,[19] many people seem to accord both forms of standing to others. Prior to systematic reflection and doctrinal streamlining, for instance, we might accord consequential standing to others whose judgment we take to be impaired or not reliable, while showing full discursive respect to trusted peers. At the level of theory, practical constructivism typically requires that discursive respect be accorded to (some) people in (some) important moral or political matters. Accordingly, constructivist views of justice typically build on ideas of justification that construe (some form of) acceptability as constituting the epistemic-practical authority of principles of justice. By contrast, if we require the relevant principles to be based on grounds that claim an authority not constituted by their acceptability, we can still value acceptability – as noted earlier, we might hold that it is an element of the human good that people be able to accept the principles that apply to them, or that their free support is necessary for the stability of a just

---

[18] What I refer to here as moral concern is what Stephen R. Darwall calls (moral) recognition respect; Marry A. Warren calls it moral status. See Darwall, "Two Kinds of Respect", *Ethics* 88 (1977), p. 40; Warren, *Moral Status* (Oxford: Oxford University Press, 1997), p. 5.

[19] I shall in effect return to the matter of degrees of such standing later (sections 6 and 8).

regime, and so on – yet we would not include the relevant others in the scope of discursive respect in relation to the grounds of these principles.

To bring this back to Forst. For Forst, moral respect in the first instance requires discursive respect: in respecting others, the assumption is, we are to accord to them a form of constitutive discursive standing – this being the sort of status a Forst-type right to justification refers to. But why understand moral respect in such terms? Prior to further argument, moral respect might be taken to ask us to accord to others any of the noted types of moral status. Perhaps this is the least plausible where others are accorded moral concern *only*. Still, there is nothing wrong conceptually with the view that moral respect requires moral concern only – that is, even where its beneficiaries have a capacity for discursive standing, and even if moral concern is not premised on a conception of the good that places a premium on discursive standing. Normatively, of course, moral respect might call for much more than that – and that it does call for much more is part of the point of Forst's view we are to accord to others a right to justification. But just *how much more* may we build into our conception of moral respect before it fuses with, and starts to depend on, normative content that is the subject of reasonable disagreement? There is reasonable controversy about the justificatory status of acceptability; and there is more than one form of discursive standing. Thus, we can agree that moral concern is not enough – at least where people and moral-political principles are concerned – while disagreeing reasonably about the sort of discursive standing that we should accord to others. If this is right, to understand moral respect as discursive respect effectively is to endorse a conception of moral respect that is the subject of reasonable disagreement.

6.

We can substantiate this further by considering the relationship between moral concern and discursive respect. What, then, does it take for a being, X, to have a capacity for inclusion in the scope of moral concern and of discursive respect, respectively? While these forms of moral standing are not always clearly distinguished, there is much disagreement as to what features constitute these capacities – prominent candidates include sentience, 'being the subject of a life', consciousness, personhood, agency, or, as in Forst's case, autonomy. At an abstract level, though, it seems innocuous enough to say that X is a possible beneficiary of moral concern only if the two-fold assumption is in place that X has a good and that this good can negatively be affected by us (while we can with some accuracy tell when it is being affected thus). This leaves open what doxastic attitude, if any, beneficiaries of moral concern must be able to sustain toward the grounds we act on in relating to them. This is as it should be, as beings can intelligibly be regarded as beneficiaries of moral concern (whether or not we ought to actually include them in the scope of moral concern) even if they lack a capacity for such attitudes – e.g., on a pathocentric conception of moral concern, non-human animals are in this category. Not so in the case of discursive standing. Focusing now on constitutive forms of that standing and supposing, as well, that discursive respect builds on moral concern, the following seems self-suggesting: X is a possible beneficiary of discursive respect only if the two-fold assumption just referred to and at least one more assumption is in place, namely, that X has an epistemic-practical perspective such that X can have views on, e.g., the goodness or badness of reasons for action. Insofar as a capacity for such views is found only in humans, discursive respect, but not moral concern, is contingently anthropocentric.

All this is fairly obvious, and so is the fact that moral concern and discursive respect are not necessarily co-extensive. That they can come apart is plain in the case of beings that are possible beneficiaries of moral concern, but not also of discursive respect – such as non-human animals. But it also holds in the case of people. As we have seen, many moral doctrines include people in the scope of moral concern but do not accord to them discursive respect, such as non-constructivist doctrines, or doctrines that do not take acceptability to have justification-constitutive rank. Yet also forms of constructivism accord constitutive discursive standing to specific subsets of people only, without accordingly restricting the scope of moral concern. For example, consider political liberalism. Arguably, political liberalism accords discursive respect only to people who are reasonable in a normatively rich sense, but it prescribes that moral concern be accorded to the unreasonable (in fact, some political liberals in effect prescribe that the unreasonable be accorded discursive standing, though of the consequential variety).[20] Thus, even where beneficiaries of moral concern are seen to be capable of constitutive discursive standing, they often are not accorded that standing. Logically (but perhaps not ethically), this is unobjectionable. The views (i) that we ought to protect Peter, or his good, and (ii) that Peter can have views on the goodness or badness of reasons for action, do not entail that (iii) we should act toward Peter on grounds that he could accept (construed in terms of discursive respect). Since (i) and (ii) leave open how we are to respond to the presence of the relevant capacity in Peter, (iii) does not follow unless we add some view to the effect that the presence of the relevant capacity in Peter is, or ought to be seen as, a reason to include him in the scope of discursive respect – some view, that is, through which the consideration that Peter has this capacity acquires the property of counting in favor of his inclusion in the scope of discursive respect.[21]

What views can play this role? How does moral concern, if conjoined with the recognition of the presence of the relevant capacities in others, yield a commitment to discursive respect? To have any determinacy, moral concern must draw on some notion of what it takes to duly protect or support people, or their good. A self-suggesting source of the link between moral concern and discursive respect, then, are conceptions of the good that place a premium on constitutive discursive standing: moral concern commits us to discursive respect where we take it to be an important good not only that we be interacted with on grounds we could accept, but also that we interact with others on grounds they could accept (where the goodness of these grounds is seen as function of their acceptability). For just one example, take Postema's view that people desire to be recognized as "robust" moral selves, or as people who are governed by an "ideal of reasonableness" and so are interested in pursuing not just aims "that they *judge as worthy*, but (...) in pursuing aims that *are worthy*".[22] Even though he does not use these terms,

---

[20] E.g., Macedo prescribes that unreasonable people be 're-engaged' after the principles of justice are established to persuade them to accept these principles. See Macedo, *Liberal Virtues*, pp.61ff. Likewise, Rawls has the unreasonable addressed by arguing "from conjecture" in order to help them to see that they do not need to reject reasonable principles that claim authority even if the unreasonable cannot accept them. See Rawls, "The Idea of Public Reason Revisited", *The University of Chicago Law Review* 64 (1997).

[21] See Scanlon's reasons 'in the standard normative sense': Thomas Scanlon, *What We Owe to Each Other* (Cambridge (MA): Belknap Press, 1998), p. 19.

[22] Gerald F. Postema, "Public Practical Reason: An Archeology", in Fred D'Agostino and Gerald F.

Postema argues that this desire asks us to accord to one another discursive respect and, accordingly, that this commits us to "robust", constructivist public justification. Lesser recognition, he insists, is "partial and radically inadequate" for us.[23] However, this latter claim holds only if and to the extent that people actually attach great importance to being seen by others as getting moral-political matters right (rather than other matters) and so it depends on how deeply invested they are in such matters in the first place and on how much room they are willing to give to them in relation to their other aims, commitments, or attachments. Of course, it also depends on whether sharing a practice of "robust" public justification is, and is seen to be, a suitable means to the end of securing that recognition – which it would not be if such justification is not, or is taken not to be, capable of establishing that things really "*are* worthy". Plainly, the numerous comparisons, rankings and value judgments these things call for, and the view of justification that goes with it, invite reasonable disagreement. Whatever its attraction, then, robust moral selfhood is best seen as a reasonably contestable view of the good.

I hasten to add that while conceptions of the good that place a premium on constitutive discursive standing are reasonably contestable, the same does not seem to be true of views like these:

> RC   It is an important good that I (or we) be interacted with on grounds I (we) could accept.

> AC   It is an important good that I (or we) interact with others on grounds they could accept.

RC and AC mark recipient-centered and author-centered views of the good of discursive standing. As they do not discriminate between consequential and constitutive forms of that standing, all they might call for are actions that are based on grounds that are good and consequently acceptable (say, at least by the right-minded). Now, it seems that acting on grounds that are good is something we are committed to anyway if and insofar as we are reasonable. Understood as views about consequential discursive standing, then, RC and AC seem to reflect different sides of the good of interacting reasonably – which would be a good that, it seems, reasonable moral agents cannot coherently reject.

Another observation is in place. What kind of good discursive respect is, or what ethical purchase it has, varies significantly depending on what we take it to require for views to be suitably *acceptable* by others. Any view of discursive respect must attach some interpretation to the idea of acceptability at its core, and especially the modal element in this idea; different interpretations, in turn, will yield views of discursive respect that differ in strength and value. Discursive respect has significant purchase for you if I am to regard the fact that you are actually committed to reject my principles, given what you now believe, as showing that my principles fail to be suitably acceptable by you – suitably acceptable, that is, in the way called for by discursive respect. It has very little purchase for you if I may take my principles to be suitably acceptable by you so long as there is reason to believe that you would not reject them if you considered them in what I take to be the proper light – even if it is, and, for all that you can tell, will remain, unacceptable from

---

Gaus (eds.), *Public Reason* (Aldershot: Ashgate, 1998), p. 464.

[23] Ibid.

your point of view to accept my principles or to consider them in that light. And there is much middle ground between an actualist view that takes a simple rejection as showing that the needed kind of acceptability does not obtain, and a strongly counterfactualizing view that ends up neutralizing the impact of even well-considered rejections where they fail exclusivist threshold-tests of some sort or other. Part of what we do in calibrating the idea of acceptability at the core of discursive respect, then, is to settle what normative impact, if any, people's actual views and perspectives have on the grounds that, we take it, may govern interactions with them – and we thereby encapsulate in our conception of discursive respect a view of the extent and reach of a person's entitlement to influence the normative texture of her environment. Arguably, we thereby also link discursive respect to some view of the minimum degree of epistemic-practical competency that, we believe, others must have for their rejections of our grounds to constitute positive reasons to doubt our grounds, or to even exercise, as Forst sometimes puts it, a "veto".[24]

It hence seems impossible to accountably adopt an interpretation of the notion of acceptability at the core of discursive respect without drawing on considerations that invite reasonable controversy – be these about the merits of the justifications and practices that different such interpretations would allow for, or about the desirability of the forms of life the corresponding views of discursive respect would enable, or about the plausibility of the ideas of epistemic-practical competency that they are intertwined with. This substantiates further that a construal of moral respect as discursive respect is reasonably contestable, so that attempts to ground human rights in moral respect *so construed* cannot yield a categorical basis of human rights. As it is tied to constructivism, construing moral respect in terms of discursive respect will be the subject of reasonable disagreement. Beyond this, I suggested, discursive respect, if it has determinacy and purchase, will pack considerations of the sort that Forst, like others who were inspired by political liberalism's pursuit of neutrality, has taken to be prime examples of what can reasonably be rejected, namely, conceptions of the human good.

7.
This brings us to the matter of reasonableness – which evidently has been central all along. My discussion assumed that constructivist public justification, and with it the good of constitutive discursive standing, can be rejected reasonably. That it can be so rejected, I have taken it, is both plausible and available to us even if we agree that moral-political principles should be publicly justifiable and that constitutive discursive standing is an important good. Forst, however, disagrees. On his view of reasonableness, the following holds:[25]

> F4   Reasonable people are committed to providing reasons for moral-political principles that are reciprocally and generally acceptable (or that publicly justify).

---

[24] Forst calls the right to justification a right to "veto" principles that apply to one: see his "The Justification of Human Rights", p. 719, and "The Basic Right to Justification", 44.

[25] For what follows: see Forst, "Toleration, justice and reason", p. 81; Forst, *Contexts of Justice*, chapter 4. See also Besch, "Diversity and the Limits of Liberal Toleration", in Duncan Ivison (ed.), *The Ashgate Research Companion to Multiculturalism* (London: Ashgate, 2010), pp. 84ff.

F5 Reasonable people recognize Rawls-type burdens of reason and the existence of reasonable disagreement; and they seek to avoid such disagreement in moral-political justification.

F6 Reasonable people accord to everyone affected by their moral-political principles a right to justification (or accord to them discursive respect).

On a constructivist conception of reasonableness line this one, the republican and the liberal strand in Forst's approach might escape failure. A reconstruction of the validity claims of moral-political principles might be unobjectionable even if it is true only of pro-constructivist stretches of the practice of raising such claims once only such stretches of that practice count as reasonable. And discursive respect might provide a categorical basis of human rights if disagreement about the good of constitutive discursive standing does not count as reasonable.

  Now, there are reasons not to premise moral-political justification on such a view of reasonableness. To start with, it would be dogmatic, and in this sense unreasonable, to from the outset draw the line between the "reasonable" and the "unreasonable" in terms of a constructivist conception of reasonableness – for any such conception is the subject of reasonable disagreement if constructivism is, and this, if anything, puts its content in need of justification. Beyond this problem, it seems fundamentally incoherent to premise the justification of human rights on a constructivist conception of reasonableness if – i.e., *especially* if – we are committed to accord a right to justification, or discursive respect, to everyone to whom our moral-political principles apply. That is, if this commitment requires, too, that the justificatory *grounds* of human rights be reciprocally acceptable by everyone on the receiving end of these principles, including people who cannot coherently accept constructivism, then a constructivist conception of reasonableness will not be reciprocally and generally acceptable, and so will fail to meet the requirements of discursive respect. In a sense, then, we have come full circle: in essence, the problem at hand here is the one that already undermined the republican reading of Forst's account. The intended inclusivity of this account – as reflected in the view that all recipients of the relevant principles ought to be accorded a right to justification, or discursive respect – seems self-undermining. Again, if everyone to whom these principles apply is to be accorded that respect, and if this requires, as well, that the justifying foundations of these principles be suitably acceptable by them, then we should *not* to construe of reasonableness in the reasonably contested, constructivist terms of F4, F5 and F6.

  It is better aligned with the inclusivist spirit of the view that people ought to be accorded discursive respect if moral-political justification builds on a conception of reasonableness that is equally acceptable, or non-rejectable, by all relevant others, and that to this end abstracts from, or, in O'Neill's terms, "brackets", purported elements of reasonableness that are the subject of intelligent and conscientious disagreement.[26] Such a conception would need to be minimal, thin, or trivial, enough to allow controversy about constructivism and constitutive discursive standing to count as reasonable. What content might such a conception have? Prior to further argument, it seems that it might, for

---

[26] O'Neill elaborates on abstraction in *Toward Justice and Virtue*, pp. 38ff, and "Abstraction, Idealization and Ideology", in J. D. G. Evans (ed.), *Moral Philosophy and Contemporary Problems* (Cambridge: Cambridge University Press, 1988).

instance, involve content associated with the meaning of the word "reasonable" (as it is used in relation to people in their capacity as moral-political agents). Following Moore, as far as this meaning goes, reasonableness involves a commitment to *a* practice of reason-giving, or justification, and reasonable people take it that others are worthy of reason-giving and at least *some* minimum consideration.[27] Note that this implies very little. The commitment to a practice of reason-giving is distinct from a commitment to a *constructivist* practice of reason-giving; likewise, the commitment to according to others at least minimal moral consideration is consistent with a practice of according to others moral concern only, or, say, moral concern and what I called earlier consequential discursive standing. And this is as it should be: an inclusivist idea of reasonableness should allow for the possibility of reasonable non-constructivism.

There are other, innocuous elements of reasonableness that might not be entailed by the meaning of the word "reasonable", but that nevertheless mark features that are typically present where the term applies. For instance, reasonable people are willing to exercise "basic capacities of reason" (as Larmore puts it) – construed as a commitment to (some degree of) reasonability and criticality.[28] And they possess "executive virtues" (as Macedo calls them) that normally enable us to do as we say and to act in accordance with our beliefs.[29] Perhaps less trivial is another element. Reasonable people, I submit, place positive value on agreement, or some form of agreement. It is not easy to capture this element without making it unnecessarily controversial, but perhaps we may say that reasonable people place positive value on what they take to be reasoned convergence in judgment between what they regard as relevant other people. Other things being equal, then, they prefer solutions that are the subject of such convergence over relevantly similar solutions that are not. Again, all this entails little. Even in conjunction with the other elements of reasonableness indicated above, it leaves open what justificatory rank it is reasonable to accord to agreement, whose agreement we ought to value, how deep the agreement is that it is reasonable to value, or, not least, what sort of considerations may trump or nullify that value.

Can we go beyond this content? We evidently would have reasons to try if we seek to render an inclusivist conception of reasonableness fruitful for the aims of the public justification of rights-allocating moral-political principles. However, this marks an issue that goes beyond my current concern.[30] For what matters now, we should note that even if more content can be added, reasonableness would still have to be construed in terms that are abstract enough to not from the outset tie it to constructivism and the good of constitutive discursive standing – *if* the starting points of moral-political justification are to cohere with the view that everyone to whom moral political principles apply is to have a right to justification.

---

[27] Margaret Moore, "On Reasonableness", *Journal of Applied Philosophy* 13/2 (1996), p. 171.

[28] Larmore, *The Autonomy of Morality*, p. 143.

[29] Macedo*, Liberal Virtues*, p. 275.

[30] I have made suggestions as to how we might add content to a suitably inclusive idea of reasonableness in Besch, "On Political Legitimacy, Reasonableness and Perfectionism." (Unpublished manuscript, 2010.) Available from http://philpapers.org/archive/BESOPL.1.pdf

8.

What does all this suggest? It has in effect emerged that Forst-type constructivism about human rights is caught up in a tension between the *depth*, the *scope* and the ethical purchase or *strength* of discursive inclusion. Other things being equal, a high value in each of these three dimensions of discursive inclusion seems desirable, but their interdependence makes concessions inevitable. Forst's search for a categorical grounding for human rights seems driven by two intersecting aims: the aim of allowing discursive inclusion to have significant purchase – even so much so that it confers a power of "veto" – while securing equal acceptability (or non-rejectability) within a highly inclusive scope. Yet if discursive inclusion really is to be *deep* – that is, if, in following constructivism, we take it that discursive inclusion is to take the form of discursive respect, and require not only our rights-allocating principles but also their justifying foundations to be generally and reciprocally acceptable – then coherence cannot be maintained unless either, first, we restrict public justification's scope so as to exclude people who cannot accept constructivism, or the good of discursive respect, or, second, we significantly weaken discursive respect. On the first option, discursive respect might retain much purchase, but at a high cost. This marks a path political liberals have taken: they restrict public justification to the reasonable, and presuppose a constructivist view of reasonableness that is consistent with this restriction – thus, reasonableness becomes, to use Estlund's term, "insular".[31] We saw a similar tendency in Forst. If we understand him as supposing a constructivist view of reasonableness, both the republican and the liberal strands of his approach might escape failure. But, again, this would be a form of dogmatism – or, as Campos put it in discussing Rawls, of "secular fundamentalism"[32] – and it would conflict with the inclusivism of Forst's own view that everyone affected by the relevant principles is worthy of being given adequate, justifying reasons in moral-political matters that affect them.

Turning now to the second option, it might allow public justification to include on equal footing everyone affected by our rights-allocating principles, but coherence would dictate we weaken discursive respect so as to ensure that the fact that some, if not many, relevant others cannot accept constructivism, or the good of discursive respect, does not undermine its authority. The inclusiveness of public justification would hence come at the cost of adopting an idea of constitutive discursive standing that looks weak enough to make it quite indistinguishable from *consequential* discursive standing. And this hollows out, if not altogether abandons, constructivism and the good of constitutive discursive standing. If this is right, it seems that we cannot both reserve considerable purchase for discursive inclusion – purchase, that is, that marks a meaningful form of discursive respect – and at the same time secure equal acceptability within a suitably inclusive scope. Something, then, needs to give way.

It is not clear what the morally most plausible coherent position is in the space defined by the matrix of the depth, scope and strength of discursive inclusion. What we have seen above, though, points to the following. If we prioritize inclusiveness, but seek to

---

[31] Estlund, *Democratic Authority*, p. 55. For an early account of this problem, see my *Über John Rawls politischen Liberalismus* (Frankfurt am Main: Lang, 1998), chapter VI.

[32] Paul F. Campos, "Secular Fundamentalism," in *The Columbia Law Review* 94/6 (1994).

avoid hollowing out discursive respect entirely, we need to endorse a conception of discursive respect that is *not* deep, or at least *less* deep than the one sketched at the beginning of this section. That is, we might take it that rights-allocating moral-political principles depend for their authority on their general and reciprocal acceptability – so that, in relation to their justification, everyone affected by them might be accorded (some strong kind of) constitutive discursive standing. But this cannot hold at the level of a justification of the views (i) that such principles need to meet this requirement and (ii) that discursive respect is an important good. *These* views would have to be accorded authority despite the fact that they fail to be generally and reciprocally acceptable and even though they are the subject of reasonable disagreement. Thus, *their* justification cannot take the form of a justification that accords to all relevant others constitutive discursive standing. Consequently, if this justification is to include on *equal* footing everyone affected by the relevant principles, it could not accord to *any* of them constitutive discursive standing. In short, we would have to clearly distinguish between the moral implications of the corresponding two levels of justification; while both levels might be inclusive in scope, at level 1, the relevant others might enjoy discursive respect, but at the more fundamental level 2, they could at most enjoy consequential discursive standing.

What this means is this. For the purposes of a coherent and defensible Forst-type constructivism about human rights, the good seems to be in a strong, *justificatory* sense prior to the right – there are, it seems, perfectionist considerations at the core of this approach. This approach may or may not be right in assuming that rights-allocating principles must be publicly justifiable, or be generally and reciprocally acceptable. And it may or may not be right in claiming that everyone affected by these principles is to be accorded a right to justification – or, in the terms that I used here, discursive respect. But even if these things are supposed, Forst-type constructivism goes wrong in its dismissal of "ethical" approaches to human rights and its compartment insistence on the avoidance of reasonably contestable, non-categorical foundations. For Forst-type constructivism, instead of providing an alternative to "ethical" approaches to human rights, seems to suppose for its very reasonableness a defense of the good of constitutive discursive standing – a good, that is, which, at least prior to such a defense, can reasonably be rejected. This does not mean that human rights, or the principles allocating them, are mere instruments to the realization of reasonably controversial interests of some sort or other – say, whatever interests best go with this kind of standing. It does mean, though, that a commitment to the inclusive public justifiability of these principles reflects, and builds on, a reasonably contested conception of the good – one, moreover, that there might be good reasons to suppose in an account of human rights even if it is not generally and reciprocally acceptable (which, it seems, would hold at least from the point of view of Forst-type constructivism). To properly ground this kind of constructivism, then, what is needed is a non-constructivist, perfectionist defense of the good of constitutive discursive standing.

Thomas M. Besch
Department of Philosophy
The University of Sydney
Sydney, NSW 2006, Australia
thomas.besch@sydney.edu.au