

# Bringing Power to Justice: Rawls Contra Marx and Foucault

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Almost all normative political research is informed by theories of justice and power (Coulombis and Wolfe, 1978: 77–8). Three theorists are considered in this dissertation, and each has revolutionised practices in philosophy, law and political theory. Rawls, for example, has been the dominant theorist of justice since 1971; Foucault's ideas, particularly his concept of power, remain foundational to postmodernism and (post-)structuralism; and Marx, with his own *-ism*, has been influential perhaps more than any other political theorist, both theoretically and practically (Maffettone, 2010: vii; Gutting, 2014; Wolff, 2015). The key findings of this dissertation therefore have relevance to theoretical debates across several disciplines, especially political theory. They result from answering the following Central Research Question:

[CRQ] 'How do Rawls, Marx, and Foucault converge and diverge, with respect to their conceptions of justice and power, and why does this provide varied insights for contemporary cases?'

This question forms three research aims. Answering each will also answer the central research question will also be answered. These aims are as follows:

[A] Once advanced, what are the implications of Wolff's latent objection to Rawls?

[B] What are the areas of conflict and convergence between Rawls, Marx and Foucault, with respect to their conceptions of justice and power?

[C] How and why does each theorist provide varied insights for contemporary cases?

In the first chapter, the literature concerning justice and power will be reviewed. The aims here are to link Rawls, Marx and Foucault to the wider debates between other historical theorists, to demonstrate the originality and relevance of this dissertation, and to state the texts most relevant for answering the [CRQ]. The second chapter formulates and justifies decisions made concerning the theoretical framework, namely why Lukes' three-dimensional power is considered necessary for framing Marx's objection to Rawls, and for answering the [CRQ]. This chapter also accounts for the methodology of this dissertation, explaining the methods used to choose cases, why the cases were chosen, and how conceptions of justice and power have been operationalised.

The third chapter will answer aims [A] and [B]. Aim [A] is to advance an unsubstantiated, or 'latent', objection to Rawls, posed initially by Wolff (1977). To do so, certain aspects of Marxism will be applied to Rawls's theory of justice, and the implications will fill a significant gap in the literature on justice and power. By highlighting divergence between Marx and Rawls, they also answer part of the [B], which is to compare and contrast Rawls, Marx and Foucault so as to highlight areas of convergence and divergence between them.

The third aim [C] will be answered during the fourth and fifth chapters, which are the case study chapters. To answer this aim, the findings of aims [A] and [B] will be applied to two case studies. By answering [C], the second half of the [CRQ] will be answered. Crucially, the aim is to explain that the reason each theorist provides varied insights for

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contemporary issues is due to the similarities and differences revealed in the third chapter.

The first case study takes the form of a question, which is: 'Should the state subsidise the steel industry, and its workers, in Scotland?'. Here, Rawls's theory of justice is applied to provide an answer, which is that it should subsidise both. This insight, and Rawls's general ability to provide a coherent, prescriptive answer, unlike Marxian power, is explained with reference to the latter's critical approach. Indeed, a second insight for this case is that Marx, while not necessarily disagreeing with Rawls's answer, would disagree that this would be Rawls's answer. Again, this will be explained with reference to the findings of [A] and [B].

Finally, the second case study considers why Rawls excludes the cognitively disabled from participating in his theory. Here, an implication of aim [A]—that the knowledge with which Rawls constructed his theory is a function of power—will be applied. It will be argued that Marx and Foucault agree about this exclusion but explain it in different ways due to the findings of [B], namely that their views of power diverge. In this way, linking divergent explanations about cases to divergent conceptions of power is a direct answer to the central research question.

## CHAPTER 1. Literature Review

This section places Rawls, Marx and Foucault in the context of other historical theorists of justice and power. The objectives are to: (i) establish which texts are most relevant for answering the central research question; and (ii) relate the differences and similarities between each theorist to the broader debates concerning justice and power.

### 1.1: Contextualising Rawlsian Justice

Conceptions of justice typically begin in the western canon with Plato's (380 B.C./2007) *Republic* and Aristotle's (335–23 B.C./2007) *Politics*.<sup>[1]</sup> However, the first works to significantly influence Rawls's (1999) *A Theory of Justice* are Rousseau's (1762/1968) *Social Contract* and Locke's (1689/1997) *Second Treatise of Government*, the reason being that all three were theorists of the social contract.<sup>[2]</sup> This contract, in essence, is a hypothetical agreement between citizens about the structure of society. Rawls (1999: 3) sought to carry this tradition "to a higher level of abstraction", specifically that of Rousseau rather than Locke (Wolff, 1977: 14). Rousseau (1762/1968: esp. 62–64) differed from Locke by refuting the central idealistic claim in political liberalism, that a social contract facilitated peace, instead perceiving society to be a constraint on an otherwise free human nature. Hence, Rawls (1999: 111; 123–4) began with Rousseau's premise that humans are without benevolence, assuming participants in his social contract to be "mutually disinterested" and rationally self-interested. Constrained by these assumptions, and influenced heavily by developments in rational choice theory, he attempted to balance participants' "competing claims and interests" (Pettit, 2012: 10) without surrendering the traditional values of the social contract. One specific value was the Lockean view that a just social arrangement is chosen through, and is dependent upon, the consent of citizens (Buckler, 2010: 158, 162–3; Friend, 2016).

Rawls (1999: 120–1) argued that the outcome of his social contract—which he called the original position—would receive consent from all moral, rationally self-interested participants. His argument hinged on much the same justification as did Kant's (1785/1997) endorsement of the Categorical Imperative in his *Groundwork of the Foundation of Morals* (Wolff, 1977: 17; Rawls, 1999: 118, *fn.* 11). In this way, Rawls's theory invokes Kantian rationalism, specifying frameworks and conditions for formulating justice (Slote, 2015). Likewise, both advocate deontological theories. In other words, neither Rawls nor Kant understood justice by appealing to contexts or consequences, unlike the utilitarianism of Bentham's (1789/1996) *Principles of Morals and Legislation* (Schwartz, 1973: 294).<sup>[3]</sup>

With regard to criticisms of Rawls there are, most notably, Nozick's (1974) *Anarchy, State, and Utopia*, Wolff's (1977) *Understanding Rawls*, Cohen's (1989) *On the Currency of Egalitarian Justice*, and Sen's (2010) *The Idea of*

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*Justice*.<sup>[4]</sup> Generally, these theorists have, in different ways, criticised the “idealising assumptions” that Rawls’s (1999: 109) theory depends on. For example, Wolff (1977: 122) objected to a specific pair of assumptions, which, when held simultaneously, would permit of participants in the original position a “particular combination of knowledge and ignorance”. Wolff (Ibid.) further claims that if his objection were advanced then Rawls’s “entire theory [would] be called into question”. Crucially, Wolff does not himself advance it, and this leads to a significant gap in the literature, namely a latent objection. Systematically eliciting this objection, and assessing the implications for Rawls’s theory, constitutes research aim [A]. More specifically, applying Marx’s theory of the mode of production to Rawls’s assumption of general knowledge, when framed by Lukes’ conception of three-dimensional power, is considered the most effective way in which to address this aim. The justification for this decision is provided in the theoretical framework. Broad parallels can be drawn between this aim and the many communitarian criticisms of the universalism of Rawls’s theory, most forcefully articulated in MacIntyre’s (1984) *After Virtue*, which this dissertation would supplement.<sup>[5]</sup> Before aim [A] is evaluated, Marx and Foucault’s conceptions of power will be situated within the literature concerning power.

## 1.2: Contextualising Marxian and Foucaultian Power

Conceptions of power typically begin, in the western canon, with Thucydides’ (431–04 B.C./1944) *Peloponnesian War*.<sup>[6]</sup> However, it is more appropriate for this dissertation to relate conceptions of power within Lukes’ (1974: 21–5) categories or “dimensions” of power, rather than chronologically, because Lukesian three-dimensional power will be used to frame Marx and Foucault’s objections to Rawls. Traditionally, then, there is the one-dimensional view in Hobbes’ (1641/1985) *Leviathan*, Weber’s (1922/1978) *Economy and Society*, and Dahl’s (1957) *Concept of Power*.<sup>[7]</sup> One-dimensional power argues that “concrete decisions” (Bachrach and Baratz, 1970: 7) can be perceived, and that power is present in an “observable conflict [...] of interests” (my emphasis) (Lukes, 1974: 15).

Assuming decisions and interests to be concrete and observable indicates the “behavioural focus” (Ibid.: 24) of one-dimensional power, which would be challenged subsequently by intellectual developments, brought about by Nietzsche’s (1887/1994) *On the Genealogy of Morality* and Freud’s (1895/1974) *Studies on Hysteria*, among others. Within the literature on power, these objections culminated in the two-dimensional view of power. This view, formulated in Bachrach and Baratz’s (1970) *Power and Poverty*, considers the role of “non-decision making”, by which decisions are made following “coercion, influence, authority, force and manipulation” (Lukes, 1974: 17).<sup>[8]</sup> In other words, power is expressed by decision-making, but also by the *prevention* of decision-making.

In contrast, Lukes’ (2005: 144) three-dimensional view understands power as “the capacity to secure compliance to domination through the shaping of beliefs and desires”. For Lukes, compliance can be secured through one- and two-dimensional forms of power. However, it can also be secured through the shaping of preferences, and in this sense observable conflict is not a necessary condition of power (Lukes, 1974: 23–5). Foucault and Marx’s conceptions of power and objections to Rawlsian justice, which will be formulated in the first chapter, share this three-dimensional aspect with Lukesian power. This aspect, crucially, is that consent to domination can be secured tacitly, without an observable conflict of interests.

## 1.3: Literature Relevant to Central Research Question

While the literature on Marx is immense, the texts most relevant to the research aims are: Marx and Engel’s (1965/1845: 39–64; 366–79) *German Ideology*, especially *Volume I*, in which the mode of production is conceptualised; and Marx’s (1859/1904: 9–15) preface to the *Contribution to the Critique of Political Economy* and Marx and Engels’ (1848/2002) *Communist Manifesto*, including the prefaces to each edition, in which the basic tenets of Marxism are clearly outlined. These texts have relevance for all research aims, but particularly for [C], when relating Marx’s position on whether the state ought to subsidise the steel industry.

For Foucauldian power, the relevant texts are Foucault’s (1977) *Discipline and Punish*, which is his seminal work on the treatment of prisoners; and Foucault’s (1981) *The History of Sexuality, Volume I*, which explains the historical marginalisation of the homosexual. These texts will be essential for the second case study, which considers Marx and Foucault’s explanations as to why the cognitively disabled are excluded from Rawls’s social contract. In addition,

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Foucault (1981: 92–102) systematically conceptualises power in *The History of Sexuality*, which will be essential for understanding his objection to the liberal (Rawlsian) and Marxist view of power—that both view power “through economic models” (Oksala, 2007: 66)—by which research aim [B] will be addressed. Given the fact that [B] is necessary for answering [C], all of these texts are essential for answering the [CRQ].

As this literature review has shown, the concepts of justice and power have been debated for centuries; they are “essentially contested concepts” (Gallie, 1956: 167–98). Comparing and contrasting Rawls, Marx and Foucault is therefore highly relevant, which is elevated by the use of contemporary rather than historical cases. Additionally, the findings have a high degree of originality, because Lukesian three-dimensional power has likely never been used to frame Marx’s objection to Rawls, and for this reason the dissertation is a key supplement to communitarian critiques of abstract conceptions of justice, especially MacIntyre’s. The following section formulates and justifies the use of the Lukesian framework, which will be essential for aims [A] and [B], and explains the methodology of this dissertation.

## CHAPTER 2: Theory and Methodology

### 2.1: Theoretical Framework

#### *Research Aims*

[A] Once advanced, what are the implications of Wolff’s latent objection to Rawls?

[B] What are the areas of divergence and convergence between Rawls, Marx and Foucault, with respect to their conceptions of justice and power?

[C] How and why does each theorist provide new insights for contemporary cases?

#### *Relevance of Framework to Central Research Question*

Advancing Wolff’s latent objection brings two implications, which answer research aim [A]. After highlighting the key areas of convergence and divergence between Rawls, Marx and Foucault, thereby answering [B], the answers to [A] and [B] will be applied to the case studies to answer aim [C]. The insights that arise, which were outlined in the introduction, will answer the central research question. Hence, the theoretical framework is essential for answering [A] and [B], which are essential for answering the [CRQ].

#### *Justification for Framing Power in Three Dimensions*

Marx and Foucault’s objections to Rawlsian justice have parallels with how three-dimensional power objects to one-dimensional power. Therefore Lukes’ three-dimensional power is suitable for framing their objections. As noted in the literature review, one-dimensional power makes various assumptions pertaining to decision-making processes, the most significant of which is, as one proponent writes, that “concrete decisions” (Dahl, 1958: 466) can be observed and explicated. In contrast, Lukes’ (1974: 21–5) three-dimensional power does not view decisions as being ‘concrete’. Rather, it considers beliefs and desires to be shaped or determined by power.

With parallels to this debate, Rawls (1999: 124–5) assumes that rationally self-interested participants in the original position—his social contract—do not suffer from envy and are “mutually disinterested”. With these assumptions, their decisions are considered to be free from manipulation, just like with one-dimensional power. Conversely, Marx and

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Foucault would stress that reason is contingent to structures of domination, that knowledge is a function of power, and this point mirrors Lukes' objection to one-dimensional power. In this way, Rawls's view of decision-making processes diverges with the view shared by Marx and Foucault, which is a key answer to research aim [B].

The fundamental problem is that Rawls's assumptions of self-interest and mutual disinterest hypothesise manipulation out of the original position. This also seems to exclude the three-dimensional objections of Marxian and Foucauldian power. Crucially, it is not the case that Rawls dismisses their objections because he believes them to be false. Rather, his assumptions simply limit the scope of inquiry, and Marx and Foucault are effectively held at arms-length. Thus, the first aim of this dissertation is to 'place' their objections, without violating Rawls's formal constraints and assumptions, within the original position, which would expose Rawls's theory to the implications of power. Framing their objections with Lukes' three dimensions is considered the best method for 'Bringing Power to Justice'.

Achieving this would be to advance Wolff's latent objection. Quite simply, Wolff (1977: 122) suggested that knowledge of the "general facts about society", which participants in the original position are assumed to have, is knowledge more particular and more contingent to power than Rawls (1999: 118-9) imagines. This objection will be taken further by challenging the assumption of general knowledge with Marx's theory of the mode of production. It will be argued that power constitutes knowledge, and that three-dimensional power must in turn be part of the original position when general knowledge is permitted. Two specific implications are found, which answer research aim [A]. These are that: (i) the compliance of participants in the original position is secured by three-dimensional power; and (ii) three-dimensional power is exercised upon and *by* Rawls. In other words, his compliance is tacitly secured by power, and he subsequently secures the compliance to domination of those influenced by his theory (Lukes, 1974: 31).

These two implications answer part of aim [B], namely how Rawls diverges with Marx, and how Foucault converges in agreement with Marx about these two implications. The final answer to [B], which has relevance for the second case study, is that, while Foucault and Marx converge in this respect, they hold conflicting views of power. The key difference is that, whereas Marx views knowledge to be a function of the mode of production, Foucault views knowledge to be function of power without reference to productive relations. Once this divergence has been substantiated, all aspects of [A] and [B] will have been answered.

## *Application of Theoretical Findings to First Case Study*

The findings of [A] and [B] will then be applied to the case studies to answer the second half of the central research question, which constitutes aim [C]. The first case takes the form of a question, which is as follows: 'Should the state subsidise the steel industry, and its workers, in Scotland?'. An answer will be provided to this by Rawls's theory, specifically the two principles of justice within it, which he claims participants would choose in the original position. Secondly, this answer will be challenged by implications (i) and (ii), which are the findings of aim [A]. Only the areas of divergence between Rawls and Marx will be considered for the first case study, and the central research question will be answered by highlighting insights that arise in consequence, which were noted in the introduction.

## *Application of Theoretical Findings to Second Case Study*

According to Nussbaum (2006: 98-104), Rawls (1999: 124-5) excludes the cognitively disabled from the original position by assuming participants to be equally rational. The second case considers Marx and Foucault's explanations for this exclusion. To this case, only implication (ii) will be applied, which is that three-dimensional power is exercised 'outside' Rawls's theory, upon Rawls and upon those whose compliance to domination his theory subsequently secures. About this Marx and Foucault are in agreement, and the insights arising from this convergence will provide an answer to the central research question. This will also be answered by linking the divergence between Marx and Foucault's explanations to their conflicting views of power.

This section has justified the use of Lukes' three-dimensional power and explained its relevance to the central research question. It has also explained how the findings of each research aim will be applied to the cases. The

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following section explains the methods used to choose cases, justifies the choice of cases, and attempts to operationalise the concepts of justice and power.

## 2.2: Methodology

### *Justification for Case Selection*

Purposive sampling was used for two reasons. Firstly, the cases serve as “secondary interests” (Stake, 2005: 445) to the central research question. In other words, they are instrumental to understanding the areas of conflict and convergence between the three theorists, and to this effect were chosen for being the most effective at drawing out similarities and differences. Regarding similarities, for instance, the case concerning the subsidy of the steel industry intersects with Marxian theories of class exploitation; while, for the second case, the exclusion of the cognitively disabled intersects with Foucault’s concern for marginalised groups. Regarding differences, the first case brings out three-dimensional power ‘within’ justice as fairness, which posits Marx at odds with Rawls; while the second case makes apparent the ‘external’ role of three-dimensional power, namely the way in which Rawls has formally constructed his theory through contentious idealising assumptions. By providing breadth and depth for comparison, the cases bring out the full scope of the findings of [B], which means that the analysis is exhaustive and unrestricted when answering the [CRQ].

The second reason is that a key motivation was to provide a theoretically nuanced explanation for why the cognitively disabled are excluded from the social contract, and, more prescriptively, to establish a coherent yes/no answer to whether the steel industry in Scotland, and its workers, should be subsidised. While the cases predominantly serve as secondary interests to the central research question, the key findings nonetheless have value, or ‘intrinsic interest’, for those seeking a theoretical assessment of similar cases. The key findings of this dissertation would be devalued if the case-specific implications were ignored, even though the focus is theoretical.

Explaining cases that were excluded also justifies case selection. For example, normative questions pertaining to policies regulating immigration were considered instead of the first case. However, these were excluded because the international aspects of justice are the focus of Rawls’s (1996) *Political Liberalism*, which will not be considered here. Likewise, the treatment of prisoners was considered as an alternative to the second case. However, scholars have written extensively on this topic, Foucault (1977) especially, whereas applying Foucault to the cognitively disabled has rarely been conducted, if ever, even more so with respect to their exclusion from the social contract. This further highlights this dissertation’s originality.

Finally, regarding issues of practicality, cases were limited geographically to the UK for reasons of availability and accessibility, which is also the justification for using contemporary rather than historical cases. Additionally, data have been collected through method triangulation from a wide range of source material—news articles, journals and books—because this increases leads to more compelling findings (Robson, 2007: 26).

### *Operationalisation*

Operationalisation involves “translating abstract concepts into workable [...] indicators” (Sarantakos, 2005: 430). For this dissertation, the satisfaction of the two principles of justice, provided in Rawls’s (1999: 53) *A Theory of Justice*, and reiterated later in this dissertation (§3.1b), will serve as indicators for justice. For Marxian power, an indicator is class exploitation, which is systematized broadly as the forced performance of excess surplus by those who hold the means of production (Rummel, 1977). Trying to operationalise Foucault’s (1981: 92–4) concept of power is somewhat futile, since he argues that power is an “omnipresent” condition of all relationships, and is therefore represented in a “multiplicity of force relations” (Hall, 2007: 257). The inability to operationalise power and justice is further heightened by the fact that both are essentially contested concepts, which causes low external validity. This is, however, less of a problem for this dissertation, because highlighting areas of divergence, or ‘contestation’, is precisely the intention of research aim [B].

This section has justified the method used to choose cases, and the choice of cases. It has also operationalised, to

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some extent, the concepts of justice and power. Throughout, decisions were justified with reference to the [CRQ] and the research aims. Fulfilling aims [A] and [B] is the purpose of the following chapter, which begins by formulating Rawlsian justice.

## CHAPTER 3: Convergence and Divergence Between Theorists

### *Relevance of Chapter to Central Research Question*

Substantiating Rawls's theory of justice is necessary because it will be challenged by Marx's theory of the mode of production, and the implications will answer research aim [A]. In addition, contrasting and comparing all theorists is necessary for answering aim [B]. Crucially, the answers to aims [C] and the [CRQ], which are provided during the two case study chapters, depend on the findings of [A] and [B]. These are provided during this chapter, hence its relevance.

### **3.1: John Rawls: Justice as Fairness**

This section formulates: (a) the original position and the veil of ignorance; (b) the two principles of justice chosen by participants in the original position; and (c) the key idealising assumptions on which Rawls's theory depends.

#### *Original Position & Veil of Ignorance*

As noted in the literature review, Rawls's (1999: 3) motivation is to take aspects of the traditional social contract to a "higher level of abstraction". With commitments to political liberalism and pluralism, then, he begins with a conception of justice that aims to formulate principles that citizens would voluntarily consent to and continually affirm. To ensure their consent, Rawls (1999: 118) "set[s] up a fair procedure" for deciding these principles. This procedure is the original position, which is, at the most basic level, a hypothetical social contract for choosing which principles should regulate society (Swift, 2006: 22). These principles will then decide the basic structure and rules of social institutions, and these institutions will then distribute primary goods—"liberties, opportunities, powers, income and wealth, self-respect" (Swift, 2006: 22)—which Rawls (1999: 10) assumes "every rational man is presumed to want" (Buckler, 2010: 162-3; Hunt, 2013: 52).

Principles of justice are to be chosen from behind a veil of ignorance, which procedurally excludes, in general, participants' knowledge of their "political views [...] personal characteristics [and] culturally determined beliefs" (Hampton, 2010: 486). Rawls (1999: 118) proposes this as a way to purge bias from the original position and the resulting principles of justice (Swift, 2006: 22). The intuitive idea is that participants choosing principles from behind a veil of ignorance would desire for other participants what they would desire for themselves, which ensures fairness (Buckler, 2010: 163).

Fairness is also ensured through the characteristics of participants. Rawls (1999: 124-5) assumes that they are rationally self-interested, mutually disinterested, and do not suffer from envy. In turn, each seeks neither relative gains nor injury to others, but wishes only to advance his or her own system of ends. Rawls (1999: 120) also assumes participants to be equally rational, knowledgeable and ignorant, such that any one person would be representative of all participants when "selected at random", which, as will be shown, likely excludes the participation of the cognitively disabled. Again, this assumption ensures fair, unanimous agreement. Rawls's (1999: 118) basic logic is as follows: Principles chosen fairly are just principles, and principles chosen behind a veil of ignorance are chosen fairly. Therefore principles chosen in the original position are just (Pettit, 2012: 11).

#### *Two Principles of Justice*

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Consequently, Rawls (1999: 3, 53, 302) claims that rationally self-interested participants would choose, from a list of conceptions of justice, two principles of justice.[9]<sup>[10]</sup> These are as follows:

1. Each person is to have an equal right to the most extensive total scheme of equal basic liberties compatible with a similar scheme of liberties for all.
  
2. Social and economic inequalities are to be arranged so that they are both:
  1. To the greatest benefit of the least advantaged, and;
  2. attached to offices and positions open to all under conditions of fair equality of opportunity

The first principle of equal basic liberties embodies a commitment to equality, which satisfies Rawls's initial commitments. As each scheme must be 'compatible with a similar scheme of liberties for all', liberties cannot be violated for a single person. Condition (a) is called the difference principle, and it requires that inequalities be distributed through a *maximin* principle—in other words, to “the greatest benefit of the least advantaged members of society” (Rawls, 1993: 5–7; 1999: 68). Given the lexicographic priority of equal liberties and opportunities, inequalities cannot be distributed unequally in a way that prevents a fully adequate schemes of equal basic liberties.[11]

## *Idealising Assumptions*

In addition to the assumptions of rationality, mutual disinterestedness, and a lack of envy, Rawls makes numerous other idealising assumptions, two of which, as Wolff (1977: 122) wrote, lead to a “particular combination of knowledge and ignorance”.<sup>[12]</sup> The first is that participants are ignorant of the “particular circumstances of their own society”, such as its “economic or political situation”, and the second is that participants have knowledge of the “general facts about society” (Rawls, 1999: 118–9). General facts allow knowledge of, for example, “the principles of economic theory [...] and the laws of human psychology”. In this way, participants are assumed to be ignorant of particular facts but at the same time have knowledge of general facts. Rawls (1999: 119) does not believe there is tension here, and even claims that there is “no reason to rule out these [general] facts”. The two principles of justice depend on these assumptions, because without them participants choose these principles. If these assumptions can be shown to be incompatible, then Rawls's entire theory would be called into question.

## **3.2: Karl Marx: Mode of Production**

This section advances Wolff's latent objection, answering [A] and part of aim [B], namely the key areas of divergence between Marx and Rawls. The findings of these aims will be used, in the following two chapters, to explain why each theorist provides varied insights for contemporary cases.

### *(a) Formulating the Mode of Production*

According to Cohen (1978: 79), “a mode of production is a way of producing”. Cohen (1978: 79–84) identifies three ways in which Marx uses the term, though only two are relevant to the [CRQ]. Firstly, there is the material mode, which accounts for “the way men work with productive forces” (Ibid.). This mode, which focuses on *material* forms of power, will later be the object of Foucault's critique of Marx.

Secondly, there is the social mode, which denotes “social properties of the production process” (Cohen, 1978: 80). Of these processes, one aspect which Cohen (1978: 80–3) recognises concerns the means of exploiting producers. For Marx, this equates to producers' being forced to perform excess surplus by those who hold the means of



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production. Crucially, this exploitation expresses Marxian power (Rummel, 1977). More specifically, the “mode of exploitation” (Cohen, 1978: 82) is characterised by the exploitation of the proletariat by the bourgeoisie, or capitalist classes. This is encapsulated in Marx and Engels’ (1848/2002: 219) famous declaration, that “the history of all hitherto existing society is the history of class struggles”. The mode of exploitation is the aspect of Marxism that will be applied to Rawls’s two principles of justice to challenge them.

## *(b) Contingency of Reason to the Mode of Production*

For Marx, reason is a function of the “historically conditioned system of productive activity” (Wood, 1972: 249). In other words, Marx (1859/1904: 11–2) viewed consciousness to be determined by social existence, and preferences a product of the mode of production. There are two crucial implications. Firstly, there can be no abstract reasoning if reason is historically conditioned. Marx objected to Kantian formalistic universalism on this premise, and he would object to Rawls’s argument from the original position on the same premise, given its similarities with Kant.[13] Hence, while Rawls (1999: 231) claims that justice as fairness, with its assumptions of rationality and ignorance, “sets up an Archimedean point for assessing the social system”, Marx denies the possibility of transhistorical, abstract reasoning.

Secondly, as exploitation is a feature of social existence, so too does exploitation feature in reasoning. Marx and Engels (1965/1845: 60) make this exact point when arguing that the “ideas of the ruling class are in every epoch the ruling ideas”; that whoever holds “the means of material production [controls] the means of mental production”. In this way, knowledge is a function of power. It should be noted that this is precisely Foucault’s (1977: 27) concept of “power/knowledge”, which is quite simply the idea that power produces knowledge, or that knowledge and relations of power are “intrinsically tied together” (Oksala, 2007: 48). However, a key difference, as will be seen (§3.3b), is that Foucault does not view the mode of production as a necessary condition of power.

## *(c) Critique of Rawls’s Idealising Assumptions*

If knowledge is a function of power, and if Rawls assumes participants to have knowledge of general facts in the original position, then power must be present in the original position. The key divergence between the two theorists is that Rawls perceives general knowledge—of, for example, the principles of economic theory and the laws of psychology (see §3.1c)—as “ahistorical [with] impersonal character” (Wolff, 1977: 122–3, 129); whereas Marx perceives these ‘laws’ and ‘principles’ to be historical products of productive forces.

Hence, Marx’s critique of Rawls would be as follows: To allow participants in the original position knowledge of the general facts about society is to allow the implications of the mode of production. If Rawls were to hypothesise the mode of production out of the original position then so too must participants be without the ability to reason, and without this they would be unable to make decisions and reach “unanimous agreement” (Wolff, 1997: 17) on any principles of justice. As Rawls assumes participants to be so willing and able, the reason with which participants decide principles must also be a function of the mode of exploitation. Hence, the two principles of justice must express and maintain class exploitation. The necessity of this is captured by Marx and Engels’ (1965/1845: 396) statement that “hitherto existing production relations of individuals are *bound* also to be expressed as political and legal relations” (my emphasis). As Rawls’s social contract is a political and legal relation between individuals, the outcome is bound to express exploitative production relations.

However, there is another tension between the theorists. While Marx would stress the fact that “preferences and desires” (Shapiro, 2003: 53), including the self-interest of participants in the original position, are determined by the mode of exploitation, Rawls would argue that these are not, in fact, self-interested participants. In other words, Rawls would argue that participants cannot be acting in their self-interest if their interests are determined by ruling class interests. Hence, Rawls would protest that the assumptions of self-interest and mutual disinterest still keep power out of the original position. It would seem, given these assumptions, as though Rawls was free to state the ‘concrete’, one-dimensional decisions of self-interested participants. However, it is precisely to this point that Marx’s objection can be framed in three-dimensions.

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## *(d) Three-Dimensional Critique of Justice as Fairness Through Marxian Power*

There are two aspects of Lukes' (2005: 111) three-dimensional power with relevance to the central research question, the first of which relates to mechanisms that "secure compliance to domination". Crucially, for Marxian power, participants' compliance to domination would be secured in the original position by the mode of production (Lukes, 2005: 109). Marx would claim that this occurs despite assuming that participants are self-interested, mutually disinterested, and do not suffer from envy. Assuming the above arguments obtain, knowledge must express power and correlate with ruling class interests. With this correlation, participants' interests will be shaped, without an observable conflict of interests, and their compliance will be secured through tacit domination (Lukes, 2005: 25–9, 108–51). If Rawls were to assume *power* out of the original position, Marx would again claim that this would also exclude the mode of production, and therefore the possibility of general knowledge.

The contingency of knowledge to power does not violate Rawls's assumptions. Participants can still consent to the two principles of justice using only rational self-interest, but this self-interest must necessarily correlate with ruling interests. The key implication is that, if the original position cannot be free from three-dimensional Marxian power, decisions will be a function of the mode of exploitation, which will violate the fairness of justice as fairness. In summary, then, Rawls's theory of justice secures compliance to domination because the reason with which participants in the original position decide principles of justice is a function of the mode of exploitation. This implication, which is the first half of the answer to research aim [A], will be applied to the first case study.

It would likely be argued by Rawls that these participants may well be self-interested, but a decision expressing exploitation is not *in* their self-interest, and is therefore an irrational choice for rational participants. Here, the second aspect of Lukes' (2005: 111) conception, which depicts "the power to decide what is decided", is of relevance. For Marx, neither Rawls nor any other person should be able to infer what exactly would be hypothetically decided in the original position—other than the necessity of exploitation—because *all* reason is contingent upon the mode of production, including Rawls's knowledge. With this in mind, Marx would argue that Rawls, by presenting a certain choice as rational, as if chosen from behind a veil of ignorance through 'concrete', one-dimensional decisions, was simply relaying ruling class interests. Here, three-dimensional power would be exercised on Rawls by the mode of production, and subsequently on those whom Rawls convinced. Wolff (1977: 129) makes a similar, less class-based, argument when criticising Rawls for having "packed extremely powerful [...] ideologically biased" assumptions into his theorem, which he claims is a deliberate attempt to hypothesise away the insights of Marx *ab initio*. This implication, which is the second half of the answer to research aim [A], will be applied to both case studies.

In this section Wolff's objection to justice as fairness was advanced through Marxian three-dimensional power. To do so, it was argued that reason is contingent to the mode of production, containing the mode of exploitation, which means that knowledge is contingent to power. In turn, the mode of production tacitly secures the compliance to domination of participants in the original position, without violating Rawls's assumptions, and the outcome must then be a function of class exploitation. Lukes' two implications (§3.2d) provided an answer to research aim [A]. Both will be applied to the first case study, whereas only the second implication will be applied to the second case. Prior to this, the similarities and differences between Foucault and Marx will be provided, which will conclude research aim [B].

### **3.3: Michel Foucault: Relational Power**

To answer research aim [B], this section firstly highlights areas of convergence between Marx and Foucault, namely their agreement about the contingency of knowledge to power, the presence of power in the original position, and hence Lukes' two above implications. Divergence will be highlighted between their conceptions of power, namely the contrast between Marx's material power and Foucault's relational power.

#### *Similarities between Marx and Foucault*

Firstly, Marx and Foucault both perceive rationality as "context dependent and penetrated by power" (Lukes, 2005: 107). In turn, both are critical of abstract reasoning and formalistic conceptions of justice. Secondly, and as a consequence of the first similarity, Foucault would also criticise justice as fairness through the two aspects of Lukes'

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three dimensional power (§3.2d). These were that: (i) the consent of participants in the original position is secured by tacit domination; and (ii) three-dimensional power is exercised by and upon Rawls, who subsequently secures compliance to domination.

However, whereas Marx would stress the contingency of knowledge to the mode of exploitation, Foucault would claim, through his concept of power/knowledge, that knowledge expresses power irrespective of any productive mode. Despite convergence between Foucault and Marx with respect to their criticisms of Rawls, there is divergence regarding how these criticisms are reached and how they would be taken further, which is due to different conceptions of power.

## *Differences Between Foucauldian and Marxian Power*

For Foucault (1981: 92), power operates “whenever and wherever social relations exist” (Garland, 1998: 138) and constitutes a “multiplicity of force relations”. As knowledge expresses power, seeking “liberation” (Lukes, 2005: 91) from power is futile. This view conflicts with Marx’s theory of class domination, which prophesies the overthrowing of oppressive rulers by the proletariat, once the latter cast off their chains and seize the means of production (Coulombis and Wolfe, 1978: 18). For Marx, liberation is possible because power is exercised by those who ‘hold’ the means of production (Rummel, 1977), whereas Foucault argued that power cannot be “acquired, seized, or shared” (Oksala, 2007: 64). Rather, it is expressed in relationships, and as a result “there is no available state of being more autonomous” (Lukes, 2005: 123).

Being relational, Foucauldian power conflicts with the “economism” (Ashley, 1983: 463) of Marx’s material mode of production (§3.2a), which concerns surplus and production. It also conflicts with the economism of Rawlsian justice, which for the most part considers the distribution of primary goods as though they were a commodity to be distributed (Oksala, 2007: 66). For Foucault, power cannot be distributed because this presupposes its acquisition.

Furthermore, Foucault’s (1981: 92) relational power excludes power as “a general system of domination exerted by one group over another”. Here, Foucault is objecting to the mode of exploitation central to Marxism, according to which power is exerted by the bourgeois classes. Crucially, Foucauldian (1981: 94–9) power does not consider domination by one group over another, because power is not the property of “particular classes or individuals” (Lukes, 2005: 89). This is a result of viewing power as relational rather than material. In turn, Foucauldian power is “anchored [in] micropractices” (Fraser, 1989: 18), which include various strategies, techniques and institutions, and not necessarily productive relations (Lukes, 2005: 89). Foucault was therefore concerned with how power relations were organised and dependent upon these techniques, rather than with certain groups who “dominate or are dominated” (Garland, 1990: 138) by power.

To summarise, both Marx and Foucault would agree that power constitutes knowledge, and as a result compliance is secured in the original position by three-dimensional power. However, the key difference is that Foucauldian power constitutes all relationships, whereas Marxian power is expressed by productive relations. As such, class domination is not a necessary condition of Foucauldian power.

## *Conclusion of Chapter*

During this chapter, research aims [A] and [B] were answered. For [A], it was found that advancing Wolff’s (1977) latent objection to Rawls had two implications. These were that: (i) the compliance of participants in the original position is secured by three-dimensional power; and (ii) three-dimensional power is exercised by and upon Rawls. Regarding [B], it was found that both Marx and Foucault diverge with Rawls, and converge with each other, by agreeing to implications (i) and (ii). However, it was also found that Marxian material power diverges with Foucauldian relational power. The implications for this divergence will be assessed during the second case study. First, though, implications (i) and (ii) will be used to challenge the answer that can be derived from justice as fairness when applied to first case study.

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## Chapter 4: First Case Study: State Subsidy of the Steel Industry in Scotland

### *Relevance of Case Study to Central Research Question*

This case study applies the findings from research aims [A] and [B], excluding those concerning Foucault, to answer aims [C] and the [CRQ]. One key insight is that Rawls's theory is able to justify definitively why the steel industry in Scotland, and its workers, ought to be subsidised by the state, unlike Marxian power. The explanation provided for this is the fact that Marx assumes class exploitation. A second key insight is that Rawls's answer does not seem to indicate that the compliance of participants in the original position is secured by three-dimensional power. One explanation for this is that both Marx and Rawls opposed capitalism. However, and this provides a third insight, Marx would also disagree that the above answer would be the outcome Rawls's theory. The explanation for this is that participants would not choose Rawls's two principles after their compliance to domination had been secured, which is a result of three-dimensional power.

### *Context of Case Study*

In October, 2015, Tata Steel, the largest steel producer in the UK, confirmed 1,200 job losses throughout the UK, 270 of which were to the Dalzell and Clydebridge steel plants in Motherwell and Cambuslang, Scotland (STV, 2016; BBC, 2015). These job losses comprise a broader picture, with the number of employees in the UK's steel industry falling from 320,000 in 1971 to 24,000 in 2014, a 1,333% decrease over 43 years (Rhodes, 2016: 6). Despite this severe reduction, the current government in Scotland is, according to Scotland's First Minister, Nicola Sturgeon, "determined to fight for a future for [the Scottish] steel industry" (Heydecker, 2015). To do so, a task force has been established, which aims to "ensure a viable future for the plants" (MacPhee, 2016).

Just how far this task force ought to go to ensure this future is a normative question that can be answered by justice as fairness. Hence, Rawls's two principles of justice will be applied to two aspects of the case. The first is whether the state should subsidise the steel industry in Scotland, and the second is whether the state ought to subsidise its *workers*. Assumptions will be made where necessary, as the intention is to highlight varied theoretical rather than practical insights. For example, it will be assumed that the steel industry would completely disappear were it to be defunded. The result of this application will then be challenged by Marxian three-dimensional power, using the findings of aims [A] and [B], and the varied insights which arise in consequence will be explained with reference to the convergence and divergence between Marx and Rawls.

### **4.1: Rawls and State Subsidies**

As justice as fairness applies to the basic structure of society and decides the arrangement of institutions, it can prescribe social and economic legislation, including legislation that either subsidises or defunds the steel industry. It is not the case that participants in the original position decide whether the state ought to subsidise the steel industry in Scotland. Rather, the principles chosen by participants can be used to answer this question. It is essential to bear in mind that Rawls's idealising assumptions, such as the veil of ignorance, do not need to be considered during this application, because these the two principles have already been chosen, ostensibly, under formal constraints.

Adhering to the lexicographical ordering of principles, the first to apply are the constraints of equal basic liberties and, subsequently, fair equality of opportunity. With the constraint of equal basic liberties—taking Rawls's (1999: 177) broad definition of liberty as freedom from constraints to either do or not do something—steel industries in Britain cannot be defunded or subsidised if this were to violate liberty for any one individual. As a result, a government has a legal duty not to constrain liberty.

Using the two principles, Rawls (1999: 242, 177) argues that all citizens have the liberty to pursue their moral interests. If an individual could not pursue these interests, then the principle of equal basic liberty would be violated. However, Rawls's theory is not designed to establish whether pursuing moral interests would, for any one individual,

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depend on his or her specific employment in the steel industry. This must be inferred empirically, and outwith the remit of justice as fairness. Comments made by trade union representatives, for instance, could be used. According to Clark (in BBC, 2015), one such representative, news of job losses at the Dalzell plant “devastated and worried” workers, whose futures were now uncertain. With this devastation, it does not seem presumptuous to suppose that freedom to pursue moral interests would be at the very least constrained by job losses and job uncertainty.

If this were the case for even a single individual, then the constraints of equal basic liberties and fair equality of opportunity demand that the steel industry be subsidised. Defunding the steel industry would remove opportunities for those whose prospects depend on this work, which would violate the constraint of fair equality of opportunity.[14] Assuming that moral interests would be violated were steel industries to disappear, which seems likely in practice, it can be concluded that defunding the steel industry would violate the constraints of equal basic liberty and fair equality of opportunity.

The difference principle can be applied to the question of whether the state should subsidise workers in the steel industry. Given that participants in the original position would choose to *maximin*, social and economic inequalities must be arranged to the greatest benefit of the least advantaged. However, it is not clear which persons are the least advantaged in society. To this, Rawls (1999: 84) suggests one possibility, which is to define the least advantaged as “all persons with less than half of the median [...] income and wealth”. On this criterion, steel workers in the UK would indeed constitute the least advantaged group, given that full-time workers earn on average £23,913 per annum, which is below the annual median of £26,000–£30,000 (ONS, 2014).

After applying the difference principle, then, it is found that the state should distribute primary goods to the greatest advantage of steel workers, and others who form the least advantaged group. For Rawls, this distribution would be just because it was consented to by rationally self-interested participants from behind a veil of ignorance. This definitive and prescriptive answer to a normative question is the key insight provided by justice as fairness, which answers research aims [C] and the [CRQ].

## 4.2: Applying Areas of Divergence Between Marx and Rawls

### *Similarity of Outcome*

On face value, applying Rawls’s two principles to the steel industry does not seem to produce an outcome characterised by class exploitation. Justice as fairness dictates that the state should subsidise the steel industry, and its workers, in Scotland. If the outcome were class exploitation then it would more likely benefit the most advantaged.

Under closer scrutiny, however, Rawls’s answer can be expected given the fact that both theorists opposed laissez-faire capitalism. For Rawls, permitting the distribution of inequalities solely on the basis of economic efficiency would violate the difference principle, the basis of which is not efficiency but fairness (Patton, 2014: 151). For Marx—who would define ‘least advantaged’ not by those with less than half of the median income and wealth, but by those who do not hold the means of production—laissez-faire capitalism would lead to the exploitation of the proletariat by the capitalist classes (Rummel, 1977). Although Marx would ideally advocate the overthrowing of classes, he would, it can be assumed, still prefer to *maximin* than *maximax*.

### *Key Difference Between Marx and Rawls*

It was found in the first chapter that, for Marx, the outcome of the original position must be a function of class exploitation. This was because the reason and knowledge, which participants require for deciding principles of justice, are functions of the mode of production, which contains the mode of exploitation. Crucially, participants’ compliance to ruling class ideas was secured tacitly, without observable conflict, by three-dimensional power. In turn, whichever principles are decided in the original position must cause the producer to perform excess surplus by those who hold the means of production.

This considered, Marx would argue that class exploitation must be expressed in Rawls’s answer because Rawls is

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wrong about the principles that participants would choose. As the first chapter suggested, Rawls claimed that rational, self-interested participants, even if this self-interest was a function of ruling class ideas, would not choose to *maximax* because this would be an irrational choice. To this, Marx would argue that participants, once their consent to domination had been secured, would consider the distribution of social and economic inequalities to the benefit of those holding the means of production to be a rational choice. This choice could be to *maximax*, but, and crucially, the exact outcome cannot be reasoned about abstractly.

Hence, Marx would further claim, given the contingency of knowledge to power, that when Rawls suggests participants would choose to *maximin*, his suggestion would be a product of power. In essence, then, Marx would argue that the principles of justice chosen by participants from behind the veil of ignorance would serve the ruling classes, and to claim that these principles were irrational would be to purport a particular, historically conditioned conception of rationality, which would be a function of the mode of production (Miller, 1974: 170). Applying this to the present case study, the outcome of Rawls's theory must cause the exploitation of steel workers by those who hold the means of production. A key insight for the [CRQ] is that Marxian power does not itself provide an answer to whether the state should subsidise or defund the steel industry in Scotland, or its workers, but does provide a criticism of Rawls's attempt to do so. Crucially, this will be the case regardless of Rawls's answer, because there is fundamental divergence between them about which principles participants would choose. This divergence, as has been argued during this case study, is a result of framing Marx's two objections to Rawls in Lukes' three-dimensional power.

## *Conclusion of Case Study*

This case study provided clear insights for research aims [C] and [CRQ]. Justice as fairness was applied to the question of whether the state should subsidise the steel industry, and its workers, in Scotland, and it answered that it should. This was insightful because Rawls's theory can prescribe definitively, unlike Marx's theory, which more effectively provides a critical lens. It was shown that Marxian power will provide this lens regardless of convergence between Marx and Rawls, even if both would seek to avoid a *maximax* principle. Furthermore, this criticism was explained to be a result of divergence between Marx and Rawls, specifically that, for Marx, principles must correlate with ruling class interests. Next, Foucault's objection to Marx's assumption that power is a function of a particular group will be applied to the second case study.[15]

## **CHAPTER 5: Second Case Study: The Exclusion of the Cognitively Disabled from the Social Contract**

### *Relevance of Case Study to Central Research Question*

The aim of this chapter is to explain why Rawls excludes the cognitively disabled from the original position with specific reference to the second implication of [A]—that three dimensional-power is exercised by and upon Rawls. To answer the central research question, this implication is explained by applying the findings of [B], namely the areas of convergence and divergence between Marxian and Foucauldian objections to Rawls, so as to highlight various insights which arise. Hence, linking [A] and [B] to [C] directly answers the [CRQ].

### *Context of Case Study*

The literature review reveals that assumptions of rationality are common to most theorists of the social contract, including Locke, Kant and Rawls. Regarding the latter, Nussbaum (2006: 98–104) writes that, by assuming participants in the social contract to be “rationally competent adults”, Rawls (1999: 124–5; 1996: 183) excludes people with cognitive disabilities from choosing principles of justice. Rawls's liberal theory, the incentive of which is to properly balance between “competing claims and interests” (Pettit, 2012: 10; Kukathas and Pettit, 1990: 134), would be illiberal in this respect were it to exclude the cognitively disabled from the original position by assuming equal

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rationality.[16]

## 5.1: Similarities Between Marx and Foucault's Objections to Rawls

Marx and Foucault share the same general explanation as to why Rawls excludes the cognitively disabled from the social contract, which is that power is exercised by and upon Rawls when he decides the principles to which participants would consent. This occurs because Rawls's knowledge is a function of power, and this power is three-dimensional because his compliance is secured through tacit conflict. Foucault (1981: 86) suggests this when claiming that the successful compliance, or 'tolerance', of power is "proportional to its ability to hide its own mechanisms". Marx and Foucault both argue that the mechanisms of power are hidden, because the mode of production, or power/knowledge, secure compliance without interests conflicting in an observable manner.

Through these mechanisms, Rawls's compliance is secured, who then secures the compliance of those convinced by justice as fairness (Lukes, 2005: 90). This point was suggested above, in that Marx would argue that Rawls was simply purporting ruling class interests when stating the principles to which participants would consent, because all knowledge is contingent upon the mode of exploitation. While Foucault's objection would be similar to this—which is unsurprising, given the influence of Marxism on critical studies and postmodernism—divergence between Marxian and Foucauldian power does lead to significant differences (Gutting, 2014).

## 5.2: Differences Between Marx and Foucault's Objections to Rawls

The key finding for this section, which answers aim [C] and the [CRQ], is that divergence between views of power leads to different explanations as to why power operates 'outside' a theory. In turn, this leads to varied insights for case studies, specifically why Rawls excludes the cognitively disabled. Firstly, then, Marx's explanation is that, since Rawls's knowledge is a function of ruling class ideas, the exclusion of the cognitively disabled must serve the interests of those who hold the means of production. Hence, a Marxist would likely suggest that the exclusion of the cognitively disabled from the social contract tradition correlates with their exclusion from the labour market (Oliver, 1990: 40). In this way, participation is tied to rationality, is tied to economic value. The exclusion of the cognitively disabled would thus be a by-product of ruling classes exploiting the proletariat (Goodley, 2011: 62).

As the findings of [B] revealed, Foucault would, in contrast to Marx, argue that knowledge expresses power directly. As such, Foucauldian power does not concern the treatment of a particular group—although it can be and was applied subsequently to marginalised groups, for instance to the homosexual or the insane. To explain the exclusion of the cognitively disabled, Foucault would likely point to micropractices expressing techniques of power, and in particular the use of scientific discourses to subjugate and regulate populations. Foucault (1981: 140) called this technique "biopower". If power/knowledge conveys the contingency of knowledge to power, then biopower depicts the deployment of allegedly truthful scientific discourses to control "challenges to a conventional bourgeois morality" (Gutting, 2014). By highlighting the salience of biopower, Foucault confronted discourses that construct as truthful particular conceptions of normality, such as " 'normal' men and women" (Oksala, 2007: 76). He might therefore have ascribed biopower to Rawls's (1999: 10) definition of primary goods as that which "every rational man is presumed to want". This not only purports certain wants as truthful, but ascribes responsibility to normal, rational men for deciding the wants of the cognitively disabled.[17]

It is within this context that Foucault would explain the exclusion of the cognitively disabled, and it is a fundamentally different context to that of Marxian productive relations. Whereas Marx would explain their exclusion through modes of production, specifically their economic function, Foucault would argue, without necessarily referring to economic modes, that knowledge is a direct function of power. For Foucault (1981: 106–7), Marx and Rawls's 'economism' ignores the role of discourses and micropractices, and the economy is simply one way that power is expressed. Foucault would claim that this economism is a product of discursive formations, which concern the "social and historical character" of statements within "a system of statements" (Mahon, 1992: 118). More plainly, Rawls's exclusion of the cognitively disabled is a product of the dominance of economism during his time. This criticism is raised by Patton (2014: 152), and by Wolff (1977: 122–123), who note "the impact of neoliberal ideas on his thought". Ironically, Marx would make the objection to which he is susceptible, when attempting "to seek *in* [sic]

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political economy the anatomy of bourgeois society” (Carver, 1975: 88). In other words, to expose the pervasiveness of ruling class ideas. This captures Marx and Foucault’s agreement about how power is exercised upon and by Rawls. At the same time, the class-based economism of Marxism indicates, at least to Foucault, the discursive formation within which Marx operated, namely his contingency to ruling, rather than ruling *class*, ideas. This is the crucial difference between Marx and Foucault’s explanation as to why Rawls excludes the cognitively disabled, and it is the result of their divergent conceptions of power.

## Conclusion of Case Study

This chapter used the findings of [B], and the second answer to [A], to explain that Rawls excludes the cognitively disabled from the original position because his knowledge is a function of power. The [CRQ] was answered by highlighting the fact that the similarities and differences between Marx and Foucault’s explanations for why this is the case, is a result of the similarities and differences between their conceptions of power. Regarding similarities, both argued that assumptions within Rawls’s theory were influenced or determined by power exercised ‘outside’ his theory. A second insight which concerns differences was that, while Marx and Foucault converge regarding the *fact* of this power, their explanations as to *why* power operates ‘outside’ a theory diverges alongside their conflicting conceptions of power.

## Conclusion

This dissertation answered the following question: ‘How do Rawls, Marx, and Foucault converge and diverge, with respect to their conceptions of justice and power, and why does this provide varied insights for contemporary cases?’. The question was broken down, forming three research aims.

The first aim [A], which was answered during the first chapter, was to establish the implications that arose from advancing Wolff’s latent objection to Rawls. Wolff’s objection, quite simply, was that there is a tension between Rawls’s assumption that hypothetical participants in his social contract have both general knowledge and particular ignorance. To advance this objection, it was decided that the best method was to apply Marx’s theory of the mode of production to the assumption of general knowledge. The line of reasoning was that knowledge is a function of the mode of production, the mode of production features class exploitation, therefore participants’ ideas must correlate with ruling class ideas.

However, Rawls’s assumptions that participants are rationally self-interested and mutually disinterested seemed to separate the two principles of justice from power. It was therefore considered necessary to frame Marx’s objections in Lukesian three-dimensional power. Through this framework, Marx could object to Rawls’s assumption of self-interest in the same way that three-dimensional power objected to the ‘concrete’ decisions perceived by one-dimensional power. In turn, this permitted Marx’s argument that, after compliance to domination is secured, without observable conflict, ruling class interests can constitute self-interest. Moreover, this must be the case given the contingency of knowledge to the mode of exploitation. There were two implications, which answered [A]. These were that: (i) the consent of participants in the original position is secured by three-dimensional power; and (ii) three-dimensional power is exercised by and upon Rawls. Establishing these implications filled a significant gap in the literature, which Wolff initially framed, and also accounted for divergence between Marx and Rawls, which answered part of aim [B].

The remainder of [B] was answered by comparing and contrasting Marx to Foucault. Regarding similarities, it was found that both view knowledge as a function of power and therefore criticise abstract reasoning and formalistic conceptions of justice; and in consequence both support implications (i) and (ii). Regarding differences, the key finding was, in general, that Foucauldian power criticises Marxian power for linking knowledge, through an economic model, to productive forces and class exploitation; whereas for Foucault, since power is relational, knowledge expresses power directly. This answered research aims [A] and [B].

The third aim [C] was to highlight varied insights which each theorist provides for contemporary cases, and to explain these insights with reference to the findings of [A] and [B]. The first case was the steel industry in Scotland, and the



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question asked was whether the state should subsidise this industry and its workers. The insights were that Rawls's theory can prescribe definitively, unlike Marx's theory, which more effectively provides a critical lens. Moreover, Marxian power provides this lens regardless of convergence between Marx and Rawls, despite both seeking to avoid an outcome to the greatest advantage of the most advantaged. Crucially, this was explained by referring to the fundamental disagreement about principles of justice, which Marx must correlate with ruling class interests given the findings of [A].

Finally, for the second case the aim was to highlight how Marx and Foucault convergence and diverge when explaining why Rawls excludes the cognitively disabled from the original position. Here, the key insights were that the exclusion of marginalised groups within a theory, in this case the cognitively disabled within justice as fairness, is a function of power exercised upon and by a theorist, which was implication (ii) of finding [A]. The key insight for this case, which answered directly answered the [CRQ], is that divergence between Marx and Foucault's views or understandings of power leads to different explanations as to why power operates 'outside' a theory, and why, in turn, Rawls excludes the cognitively disabled from his theory.

Overall, this dissertation has furthered the literature on debates between power and justice, by advancing for first time Wolff's latent objection through Marxian power when framed by Lukesian three-dimensional power. This dissertation has also explained that similarities and differences between Rawls, Marx and Foucault interpretations of contemporary cases is due to initial convergence and divergence. Further studies could extend these findings to the global justice of Rawls's (1996) *Political Liberalism*, to other normative questions relating to state legislation in countries aside from Scotland, and to marginalised groups other than the cognitively disabled.

## Endnotes

### 1.1: Literature Review

[1] For Plato, justice was a function of the soul, a virtuous person is just, and a man could, by contemplating the abstract 'form' of justice, live a just life. Justice is fulfilled when reason, spirit and appetite are attended to and sufficiently maintained. This answer was provided by Socrates, in Plato's *Republic*, to the question, 'What is justice?'. For Platonic justice, wisdom requires continued contemplation of the desires that arise from the visceral, non-calculating parts of the soul; virtuous activity is good not because it brings about success, but because it *is* success; and political power is rightfully exercised by Philosopher-kings whose personal moral character is strictly virtuous. The prioritisation of justice, Nietzsche would subsequently claim, had a pervasive effect on, and was a symptom of, the psychology of subsequent, typically Judeo-Christian philosophy.

Unlike Plato, Aristotle's *Politics* endorsed a conception of justice that valued the pursuit of flourishing (εὐδαιμονία; *eudaimonia*). Like Plato, Aristotle afforded justice the ontological status of foundationalism, assuming its existence to be a function of nature. Aristotle's endorsement of flourishing was the result of his appeal to a biological purpose or end (τέλος; *telos*).

[2] For Rousseau the social contract tradition is misconceived. Rather than facilitating peace, the social contract is the cause of self-love (*amour propre*), or in other words, vanity. Man, as a social being, is 'forever in chains'; whereas man was born free from vanity, and free also from constantly comparing himself to others.

By the pre-Enlightenment, Lock grounded justice in a conception of natural rights and the law of nature. For Locke, all men, as children of God, have the right to life, liberty, property (estates) and health (Wolff, 1977: 14).

[3] Benthamite utilitarianism argues that we should seek the secure "the greatest happiness of the greatest number". The reason for this is that, according to Bentham, we consider actions that contribute to our well-being, increasing our pleasure, to be 'good' (Buckler, 2010: 160).

[4] For Nozick (1974: 162), Rawls's conception of redistributive justice, particularly the *maximin* principle, violates property rights because the state has "no claim of justice". Where there is property—which includes talents and

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one's ownership of oneself—a citizen must have the right to freely decide the outcome of any transfer. Inequalities must therefore be tolerated by the state. Despite this, Rawlsian justice continually requires the interference by the state, which would continually violate liberty. As Pettit (2012: 14) writes, “Every state must tax and coerce, claiming a monopoly of legitimate force, and so apparently it is bound to offend against libertarian rights”. Indeed, for Nozick (1974: 26), the only just form of a state, namely one with consent, would be a “minimal state”.

Cohen's objection relates to the difference principle, specifically Rawls's consideration of incentives. As Cohen (1991: 268–9) argues: “The difference principle can be used to justify paying incentives that reduce inequalities only when the attitude of talented people runs counter to the spirit of the difference principle itself: they would not need special incentives if they were themselves unambivalently committed to the principle” (Thomas, 2012).

In *The Idea of Justice*, Sen (2010), whose thought is influenced by Smith's (1759/2010) *Theory of Moral Sentiments*, advocates a conception of public reason that opposes Rawls's original position. For Sen (2010), one must conceptualise justice at ‘some distance from oneself’, if it is to be universal by avoiding parochialism. He therefore advocates the pursuit of a ‘non-ideal’ conception of justice, through public reasoning. Sen is also a proponent of the capabilities approach to justice, along with Nussbaum (2006), which develops a conception of justice with reference to what functions humans are actually capable of.

[5] As Bell (2013) writes, “The main target [...] has been Rawls's description of the original position as an ‘Archimedean point’ from which the structure of a social system can be appraised”. In other words, communitarians, like Marx, argue that there can be no ‘view from nowhere’, no ‘Gods-eye view’, no “perspective from eternity”. It is the universalism of Rawls's theory which has been challenged by communitarians, who argue that justice is particular to contexts and communities.

[6] Thucydides attempted to provide an impartial and scientific account of the Peloponnesian War without discussing concepts such as justice. It became a precursor to political realism, especially the contemporary work of Morgenthau's (1993) *Struggle for Power and Peace*; and to theories of political power, such as Machiavelli's (1532/1979) *Prince*.

[7] For Hobbes (1641/1985: 150), power is a person's “present means [...] to obtain some future apparent Good”. For Weber (1978: 53) power is “the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance.” For Dahl (1957: 202–3) the ‘intuitive idea of power’ was that “A has power over B to the extent that he can get B to do something that B would not otherwise do”. In all of these one-dimensional definitions, power is considered something that can be held, exercised, exercised over others, and observed.

[8] For Bachrach and Baratz (1970: 7) “power is exercised when A participates in the making of decisions that affect B. [...] Power is also exercised when A devotes his energies to creating or reinforcing social and political values and institutional practices that limit the scope of the political process to public consideration of only those issues that are comparatively innocuous to A”.

### 3.1: John Rawls: Justice as Fairness

[9] As Freeman (2014) writes, alternative conceptions of justice are “taken from the tradition of western political philosophy [and] include different versions of utilitarianism, perfectionism, and intuitionism (or pluralist views), rational egoism, justice as fairness, and a group of ‘mixed conceptions’ that combine elements of these”.

[10] Rawls's basic justification for these principles is that rationally self-interested participants would choose to *maximin*, because the worst outcome of justice as fairness would be better than the worst outcome in all alternative scenarios, especially in utilitarianism (Freeman, 2014; Wenar, 2013). In other words, once the veil is lifted, participants who chose to *maximin* are more likely to find themselves in a more favourable position than if inequalities were allocated according to any other principle, such as a *maximax* principle that secures the greatest benefit for the most advantaged. This most advantaged group would form a minority, and it is unlikely that a citizen would find him or herself situated within this minority once the veil was lifted. Hence, utilitarianism would be an irrational choice, and

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rational self-interested citizens would consent to the two principles over any other alternative (Pettit, 2012: 12).

[11] Rawls's second principle of justice follows in lexicographic order after the first. Within the second principle, condition (b) precedes condition (a). One justification Rawls (1971: 541–8) provides for this ordering is as follows: The first principle, and condition (b) of the second principle, both establish equal liberty. Liberty is prioritised over economic and social advantages, which are specified in condition (a) of the second principle, because the significance of these advantages “diminishes relative to the interests of liberty [as] material wants are satisfied [and] the obstacles to the exercise of the equal liberties decline”. Likewise, this ordering obtains because economic and social advantages may never be satisfied, unlike equal liberty, and this would prevent principles 1 and 2(a) from ever “com[ing] into play” (Rawls, 1999: 38). Further, Rawls implements a constraint by which participants must willingly commit themselves to whichever principles result from the original position—“whatever generation they turn out to belong to” (Rawls, 1999: 126). By this constraint, it is argued that participants would prioritise equal liberty over social goods, the economic and social advantages of which diminish more over time (Rawls, 1999: 119; Wolff, 1977: 20).

[12] Rawls makes numerous other idealising assumptions. For example, he assumes that participants must willingly comply with those principles chosen in the original position; and that the circumstances of justice are suitable. In other words, that justice is not made unnecessary by surplus resources or a benevolent human nature, or made impossible by an immoral state of nature or a scarcity of resources (Freeman, 2014).

## 3.2: Karl Marx: Mode of Production

[13] This premise can be better understood by appreciating the influence of Hegel (1807/1977) on Marx. As Habermas (1989: 52) explains, Hegel objected to abstract Kantian reason with the claim that reason cannot transcend language, culture and custom; that it cannot surpass, as Kelley writes (1999: 5) writes, “the ambit of a more or less accepted form of life”. In other words, reason is contingent on “historically and socially determined forms of embodied human existence” (Redding, 2015). This means that abstract reasoning is impossible. Marx's view is similar to Hegel's, although for him reason is determined to a greater extent by historical productive forces than by historical forces. At the most basic level, Marx's point is captured by the phrase, “the personal is the political” (Pettit, 2012: 16). If the mode of production is ‘the political’ and reason is ‘the personal’, then the mode of production is reason—or, more accurately, the mode of production *constitutes* reason. If the political constitutes the personal, then reason cannot be separated from the mode of production. It is from this general premise that Marx “followed Hegel in rejecting a formal conception of justice” (Wood, 1972: 257).

## 4.1: Rawls and State Subsidies

[14] This argument does not consider the fact that, for Rawls (1999: 54), liberty can be limited if this increases liberty for all. This also applies to the difference principle: The two principles of justice require that liberty, and all social and economic values, be distributed equally, and limited only if an unequal distribution leads to a positive-sum game of greater equal liberty for all parties. Again, this argument obtains only when assuming that the steel industry, and therefore a citizen's free choice of occupation, would disappear were it to be defunded.

[15] Marx's criticism that the outcome of the original position must be a function of class exploitation, with his adherence to the premise of exploitation, is worth susceptible to the charge of verificationism. When the outcome of justice as fairness serves ruling class interests, this is clear evidence of class exploitation. Likewise, when exploitation is seemingly refuted, as was the case with the decision to subsidise the steel industry, which was derived from Rawls's theory, then justice as fairness still evidences class exploitation. This outcome is perhaps due to the fact that Marx's premise of exploitation cannot be falsified, which is a criticism made by Popper (2000). Moreover, that power is held and exercised by a particular group over another is, as the second case study revealed, the main assumption to which Foucault would object.

## 5: The Exclusion of the Cognitively Disabled from the Social Contract

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[16] A likely rebuttal would be made that cognitively disabled persons' views are limited not by the social contract but by the disability itself. Nonetheless, it will remain the case that not all participants are represented by decisions based on rationality, and this point receives limited attention in the social contract tradition.

[17] The gendered language used through *A Theory of Justice*, with phrases such as 'every rational man', has led to numerous feminist critiques of Rawls's justice as fairness. See, for example: Nussbaum (1999) *Sex and Social Justice*.

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