

Interpretation

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Review Essay

James Gordon Finlayson, *The Habermas-Rawls Debate*. New York: Columbia University Press, 2019, 312 pp., \$35.00 (paper), \$105.00 (hardcover).

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To understand the book under review, some background is needed. John Rawls (1921–2002), who taught philosophy at Harvard for most of his career, produced his magnum opus *A Theory of Justice*, the fruit of some twenty years' labor, in 1971. The book's aim was to articulate and justify a set of principles of justice that if followed would produce consequences that better corresponded to people's "considered judgments of justice" than what Rawls represented as the leading rival theories of justice, utilitarianism and intuitionism.

Rawls called his theory "justice as fairness" (hereafter JF). It consisted of two principles ordaining (to be brief) that all individuals be secured the greatest possible equal liberty, and that social and economic goods other than liberty be distributed according to the "difference principle," entailing that the allocation maximize the well-being of the least-advantaged members of society. Rawls justified these principles in part by purporting to demonstrate that they would be adopted by rational, self-interested parties in a nonpolitical "original position" (OP) (his artificial substitute for previous philosophers' "state of nature") operating under a "veil of ignorance" that prevented them from knowing anything about their particular interests, capacities, or "conceptions of the good"—thus preventing them from biasing the choice of principles to favor their specific interests.

Oddly, considering the years that had gone into developing his theory, Rawls proceeded almost immediately after its publication to start modifying it, in content as well as presentation, in a series of articles. Notably, Rawls now represented the theory as “political not metaphysical,” meaning that it did not rest on any claim to objective truth, but was designed only to secure a “consensus” that could serve as the foundation for a modern, liberal-democratic society. The retreat from asserting the truth, as distinguished from the potential political appeal, of his doctrine (an issue left ambiguous in *Theory*) seemed the consequence of Rawls’s inability to defend the principles against critics who found them just a dressed-up version of sixties liberalism, combining the redistributionism of the New Deal and Great Society with ACLU-type libertarianism regarding the rights of sexual “minorities” along with mandatory governmental neutrality between religion and atheism, or among standards of human excellence. Rawls then put together a revised version of his theory in his second book, *Political Liberalism* (1993; hereafter *PL*).

The most distinctive aspect of *PL* is Rawls’s renunciation of any attempt to advance a “comprehensive doctrine” for guiding political life, in favor of a “political” conception of justice that citizens can share “as the basis of a reasoned, informed, and willing political agreement” because it is “independent of the opposing and conflicting philosophical and religious doctrines” they may hold. Hence Rawls now described JF as dependent on “no specific metaphysical or epistemological doctrine,” and thus acceptable to people who hold differing “comprehensive” beliefs.

A key difficulty in Rawls’s new approach, which he represents as a means to securing “toleration” and overcoming controversy about how “the values of liberty and equality are best expressed” in people’s “basic rights and liberties,” is that Rawls never explains *why* such a new moral foundation for constitutional government is needed, when well-established liberal regimes such as the American one ordinarily manage such controversies peacefully. (Nor does the approach have any evident relevance to moderating the civil uprisings occurring in 2020 arising from the Black Lives Matter and Antifa movements, which hardly concern competing “philosophical and religious doctrines.”)

The explanation of the foregoing puzzle is that Rawls means by toleration something far different from what the term has traditionally been understood to mean in America, that is, guarantees of the free exercise of religion, almost unlimited freedom of speech and of the press, and peaceful competition between rival political parties whose disagreements are limited by an underlying consensus on constitutionalism and the rule of law. Rather, for

Rawls, toleration properly understood entails the detachment of government and law from any conception of the good that is not shared by all citizens—to the point of limiting even the *sorts of argument* that citizens may advance to promote their political agendas, and their very *motives* for voting. For the sake of what Rawls represents as a “morally” based political consensus centered on the principle of toleration thus understood, citizens are allowed to pursue only “admissible ideas of the good,” that is, those that function within the “political conception of justice” that Rawls espouses, in conformity with the principle asserted in *Theory* of the “priority” of the right to the good. What makes such consensus possible, despite its lack of grounding in any doctrine of objective truth (such as the principle of natural rights), according to Rawls, is the achievement of an “overlapping consensus” among citizens’ diverse conceptions of the good. At a deeper level, all political debate must be guided by what Rawls calls the idea of “public reason,” which prohibits citizens from *voting* on the basis of “what they see as right and true” except to the extent they could demonstrate the harmony of their beliefs with what their fellow citizens, holding alternative philosophical, religious, and moral beliefs, would find acceptable.

Here, I turn to Jürgen Habermas (1927–). As Rawls is widely regarded as the most important and influential political theorist to have arisen in America over the past half century, Habermas, correspondingly, is undoubtedly the most influential German political theorist of the same period. Beginning as a disciple of the Marxist-oriented Frankfurt School, which espoused a “critical social theory” aimed at liberating humanity from the dominance of “instrumental” reason, Habermas took a more active role than Rawls in addressing the political events of his time—first supporting the German New Left of the sixties, but then repudiating its turn to nihilistic violence; participating in the controversy over the historical revisionism that had tried to minimize Germany’s responsibility for Nazism and the Holocaust; supporting the 1991 Gulf War but opposing the Iraq War of 2003. In recent years he has been a stalwart advocate of European unification.

Alongside his substantive political concerns, Habermas’s approach to philosophy gradually evolved, surprisingly, in the direction of the Anglophone “analytic” school exemplified by Rawls. Starting in the early 1980s Habermas endeavored to demonstrate how democratic discourse based on an “ideal” communicative situation—that is, one freed from any form of coercion (including that supposedly resulting from economic inequalities)—could overcome the reduction of rationality to an instrument of domination,

lamented by the Frankfurt School, so as to realize the liberating potential of the Enlightenment. This development reached its culmination in Habermas's 1996 book *Between Facts and Norms* (originally published in German in 1992; hereafter *BFN*).

It is this move towards defining the proper norms of democratic communication and hence of governance that brought Habermas's thought into juxtaposition with that of the "late" Rawls expounded in *PL*. James Gordon Finlayson's *The Habermas-Rawls Debate* focuses on an exchange between the two, which the author (who teaches at the University of Sussex) represents as one of the "landmarks in the history of philosophy" (1), beginning with a pair of articles published in the *Journal of Philosophy* in 1995 and continuing with a second, 1996 essay by Habermas embodying what he believed was an improved understanding of *PL*. (The author explains Habermas's original lack of clarity regarding Rawls's argument by remarking that "Rawls himself did not fully grasp" the implications of his position until he published a second edition of *PL* containing a new introduction outlining the book's "leading ideas" [10].)

From the outset, Finlayson is concerned to defend the exchange against two opposing criticisms: first, that it was a failure on account of the "very different aims and limitations" of the participants' theories; second, that there was no true issue between Habermas and Rawls, making the exchange "much ado about nothing." Regarding the former criticism, Finlayson acknowledges that the two theories "were developed under different circumstances and responded to different sets of problems," with "Rawls's theory of distributive justice [expressed in the second principle enunciated in *Theory*] address[ing] the problem of how to divide the social surplus of the postwar boom," while Habermas "was always more focused on the question of how to understand" and preserve "the moral and political basis of social integration in modern welfare-state capitalist society, particularly after the collapse of the Weimar Republic and the catastrophe of the Third Reich" (7). While remarking that at the time of the exchange, "neither had detailed first-hand knowledge of the other's recent work," Finlayson aspires to demonstrate that it was far from a failure, since it "broach[ed] deep and important issues" (4–5). But regarding the latter critique, Finlayson acknowledges that Rawls and Habermas were not only both "liberal democrats" but shared "deep philosophical commitments," making their exchange, in the latter's words, "a familial dispute" (7). (This remark followed Habermas's expression of "admiration" for Rawls's "project" in *PL*, his "shar[ing] its intentions," and his "regard[ing] its essential results as correct" [7, 145].)

The nine chapters of *The Habermas-Rawls Debate* (hereafter *HRD*) are divided into four parts. Part 1 addresses “the early debate” between the two thinkers through a summary of Rawls’s arguments in *Theory*, the criticisms that Habermas directed at Rawls’s enterprise on behalf of his own theory of “discourse ethics,” and the critiques leveled against both theories by communitarian and feminist critics. Part 2 offers “critical expositions” of *BFN* and *PL*. Part 3, the book’s “heart,” analyzes the *Journal of Philosophy* exchange along with Habermas’s follow-up in his 1996 book *The Inclusion of the Other*. Part 4, on the dispute’s “legacy,” focuses on the two thinkers’ “debate about the role of religion in the political public sphere” along with “the idea of public reason” developed in *PL* and in Rawls’s subsequent (1997) article “The Idea of Public Reason Revisited.” The four parts are followed by a brief conclusion expressing admiration for both thinkers as moral as well as philosophical exemplars.

In his opening summary of both men’s theories Finlayson represents Rawls’s original account of JF and Habermas’s “discourse ethics” as “nonrival,” in that Habermas’s doctrine is intended to be “general in scope,” while Rawls proposes his account of justice only for adoption in an “established liberal-democratic society” (50). (In fact, this is not how Rawls depicts his doctrine in *Theory*, where he claims it reflects the considered judgments of an unspecified “we”; only in *PL*, as I have noted, does he explicitly retreat from portraying it as an objectively [transculturally] valid account.)

Despite the foregoing distinction, Finlayson indicates what would seem a remarkable connection between the two theories: their joint assertion of what Rawls calls the priority of the right over the good, or in Habermas’s account, of “morality” (understood as justice) over “ethics” (which “concerns what is good for the individual or for the group”) (46–47, 129). That Rawls, as Finlayson will later observe, alters his presentation of that priority in *PL* by claiming that the right as he defines it “comprises ideas of the good” hardly answers the question of *why* anyone should choose to elevate conformity to either thinker’s version of justice to the pursuit of his own good. (Contrast Aristotle’s observation at the outset of his *Nicomachean Ethics* that all human beings naturally seek what they regard as good.) In fact, it is noteworthy that, as Charles Taylor (cited by Finlayson, 64) observes, Habermas’s ostensibly “Kantian” approach leaves him unable to respond “to someone who asks us why he should be moral.” (While Rawls, in *Theory*, similarly alludes to a possible “Kantian interpretation” of his position, he thinks he can uphold such a doctrine without any of the metaphysical grounding that Kant supplied for it, and indeed, as noted above, later describes his theory explicitly as “political not metaphysical.” He

simply denies that the moral skeptic who asks why he should be just can be, or needs to be, answered by reason, dismissing those who find that following his principles is detrimental to their welfare by remarking, “their nature is their misfortune.”¹) Habermas likewise describes it as a mistake (as Finlayson puts it) “to attempt to give a substantial reason or justification” for acting justly, describing it as “just a fact that mature moral agents...tend to act for the sake of morality,” and attributes any failures to do so to a deficient “socialization and moral education” (64). He even asserts that moral demands must take priority over “the good of friendship or the love of family.” Finlayson maintains that Habermas’s “razor-sharp’ distinction between issues of justice and the good life, and his insistence on the priority of the [former] over the [latter]²... simply reconstructs” what human beings typically believe, as a consequence of “modernization” (which has liberated us from the need for religious or metaphysical grounds for acting morally) (64–65, 73). But—barring extreme cases (being obliged to report a friend or relative for serious criminal acts)—does any normal human being think or behave this way? (Consider Plato’s *Euthyphro*.) Would even Habermas, in his own life, do so?

This is just the objection that critics such as Seyla Benhabib, as Finlayson reports, level against Habermas’s (along with Rawls’s) theory: it neglects such phenomena as “care” and concern for the good, along with “judgments of the concrete particularities of moral agents and their situations,” which “belong to morality in the broad sense” (73). Yet such criticisms, according to Finlayson, meet “with only limited success,” issuing in “stalemate.” He suggests that the disagreement between Benhabib (along with other feminists and communitarians) and Habermas is largely a “terminological” one, with Benhabib and Habermas “differ[ing] about what morality is,” since “for Habermas, moral discourse is confined to the task of justifying norms of justice and as such enjoys priority over any ethical considerations of care or the good” (73). But the difference is surely more than terminological. *Why should* “morality” be defined so narrowly, let alone severed from “ethical” considerations? Like Rawls, Habermas appears to rely on a decayed Kantianism that severs his doctrine not merely from logic, but from the realities of human life. But Finlayson seems unconcerned.

Finlayson concludes part 1 by suggesting that Habermas’s and Rawls’s doctrines became subject to parallel misunderstandings by their followers

¹ Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999), 504.

² I have corrected a typo in Finlayson’s text (73), which gets “former” and “latter” backwards.

(for which the authors themselves bore some responsibility). “By the early 1990s,” in the “second phase” of the development of his theory, according to Finlayson, Habermas made clear “that discourse ethics is a moral theory—not a normative ethical theory in the standard sense, but rather a social theory of morality,” even though his followers “construe[d] it as a nascent political theory, or theory of democratic legitimacy.” (Just in the nick of time, by Finlayson’s account, Habermas *did* come up with a separate “theory of democratic legitimacy” in the same period, i.e., “the early 1990s.”) Habermas’s “ambivalence” on this issue parallels what Finlayson describes as “a similar ambiguity” on Rawls’s part in *Theory*, which Rawls subsequently “admits... was unclear about whether justice as fairness was intended as a theory of institutional design or as a ‘moral doctrine of justice general in scope,’” a claim he subsequently denied in *PL*. Finlayson contends that “the moral reading” of *Theory* along with “the political reading of discourse ethics pushed each theory... toward what looked like a shared center ground in which they could be understood as rival theories... for identifying and justifying impartial principles of justice,” a view he regards as “misconceived” (74–76).

In part 2 Finlayson addresses what he calls “Habermas’s and Rawls’s mature political theories,” as set forth respectively in *BFN* and *PL*. In *BFN*, Finlayson notes, Habermas “justif[ies]” his “discourse theory of law” by contrasting it with Rawls’s theory, which he depicts as a “modern natural law theory” because it “focuses mainly... on ‘the legitimacy of law’” rather than on “‘the legal form as such and... the institutional dimensions of law backed by sanctions.’” (As Finlayson notes, even though Habermas targets Rawls’s 1989 essay “The Domain of the Political and Overlapping Consensus,” many of his criticisms “seem better calibrated” to *Theory*. Recall that *PL* had not yet been published when *BFN* appeared.) In contrast to Rawls, Habermas “situates” his own political theory as a form of “rational natural law,” supposedly following the tradition of Kant and Hegel, who unlike Rawls “distinguish clearly between morality and law.” Because Rawls, in Habermas’s telling, neglects to make that distinction sharply enough, he “fails to interrogate adequately the social and institutional basis of the constitutional state” (80). Since Rawls “approaches the legal system” from the perspective only of an outside “observer,” he “fails to grasp the ‘normative self-understanding’ of law.” By contrast, Habermas claims to offer “both a reconstruction of the attitudes and beliefs of citizens toward the law... and an empirical, sociological account of the legal system,” thus enabling him to “explain the ‘de facto acceptance’ of laws by those subject to them” (81). In fact, Habermas had earlier criticized the “‘weakness of Rawls’s attempt to bridge the chasm between

ideal theoretical demands and social facts,” whereas Habermas disclaims having had “any ambition of sketching a normative political theory,” denying that it is the role of a “theorist to determine the normative content of moral norms, principles of justice, or legitimate laws” (82). Instead, “philosophy” offers “an ‘objective and impartial’ standpoint from which society can be criticized, which it ‘finds in society itself,’” namely, what Habermas terms “the moral point of view” (84).

As Finlayson explains, in Habermas’s “broadly Kantian view of morality,” moral actions “cannot be coerced,” although “laws can compensate” for people’s “moral frailty” or lack of knowledge of what is right by employing coercion. What Finlayson calls “the centerpiece of Habermas’s political theory” is “the principle of democracy,” according to which legitimate statutes must “meet with the assent” of “all citizens” in a “legally constituted” “discursive process of legislation.” This means that even though in modern “mass societies, what actually makes laws authoritative...is merely that they received majority support in an essentially bureaucratic decision procedure,” such legitimacy presupposes the “normative richness” of the procedure (89–90). Notably, however, Habermas (in Finlay’s recounting) makes no mention of such institutions as the separation of powers, checks and balances, limited government, and an independent judiciary as means of legitimizing democratic decisions. Instead, Habermas claims that what is needed to overcome the tension between individual liberty and democracy is his “discourse theory of law” (101). Those accustomed to a system of constitutional government such as the American one, including the features I have just listed, may well doubt the desirability of trading it in for governance based on an abstract theory such as Habermas’s.

In chapter 4 Finlayson juxtaposes Habermas’s theory with the one Rawls presents in *PL*, laying stress on the latter’s new account of JF as a “political not metaphysical” concept that, since it is (by definition) “reasonable” (resting on an “overlapping consensus” among various comprehensive doctrines), “cannot be reasonably rejected.” Precisely because JF is “a political conception,” it is therefore, in Rawls’s view, a “moral” one (125): everyone has a moral obligation to subscribe to it, for the sake of civil peace and what Rawls terms “toleration.” (As I have noted, Rawls’s definition of toleration actually aims at excluding religiously based arguments, or those grounded in independent judgments of human excellence, from the public sphere, and is in this respect fundamentally *intolerant*).

As previously stated, Rawls in *Theory* shared Habermas's quasi-Kantian doctrine of the "priority" of the right to the good. However, Finlayson maintains that in *PL*, that phrase "was so much altered" as to render it "misleading." What has changed is that in *PL* it entails "a priority of the 'very great' [as Rawls calls them] political values and ideas" over nonpolitical ones, so that "the right, which is prior, in part comprises ideas of the good," albeit only those ideas "that are also 'political ideas' insofar as they 'belong to a reasonable political conception of justice for a constitutional regime'" (129–30). As Finlayson notes, Rawls admits that his "political conception, though neutral in aim, insofar as it does not aim to promote any particular comprehensive doctrines, is not neutral in effect or influence and so will inevitably over time shape reasonable comprehensive doctrines in its own image," so that "the right—in the form of [Rawls's conception of] a just constitutional democratic regime—will inevitably end up gradually influencing and reconfiguring the good" (130). But by what authority is Rawls entitled to "reconfigure" people's ideas of their own good?³ Is the supposed alteration of the relation of the right to the good in *PL* any more than an exercise in rhetorical sleight of hand, whereby, having given up the attempt to directly persuade people that following his principles of justice should take priority over their good, Rawls now reassures them that following his doctrine—echoing a claim he had made in part 3 of *Theory*—will not really require any sacrifice on their part, since even if they do not initially find it beneficial, in the long run they can be induced, given a proper "moral" education, to redefine what is good for them?

Finlayson sees nothing problematic in all this. Instead, he devotes the concluding pages of chapter 4 to a review of Habermas's criticisms of Rawls's theory in *BFN*. Responding to Habermas's charge that Rawls's theory is "unrealistic" since it "focused too little on the institutions that produce legitimate law and too much" on the law's "normative components," Finlayson explains that "what is at issue...are two discrepant senses of 'political' and two conceptions of the relation between the moral and the political," in that for Habermas, the political domain "is coextensive with all domains of social life regulated by government legislation," whereas "for Rawls, political values are a relatively fixed...subset of general moral values" (137). Here again, we

³ Nowhere in Rawls's writings does he undertake a substantive inquiry into the nature of the human good, his only venture in that direction being a purely abstract account in part 3 of *Theory*, which promises a fully satisfying, completely socialized life in a society based on his principles, conditioned on accepting his relativistic, hedonistic definition of the good, according to which, for someone "whose only pleasure is to count blades of grass...the good for this man is indeed counting blades of grass" (*Theory*, 379). For a critique of this aspect of *Theory*, see chaps. 7–9 of my book *Illiberal Justice: John Rawls vs. the American Political Tradition* (Columbia: University of Missouri Press, 2007).

seem lost in wordplay. More significant, perhaps, is Finlayson's response to "the descriptivist criticism" of Rawls's theory, according to which its "normative conclusions are unsupported...because they are merely descriptions of what Western liberal democratic societies are like," a criticism that Finlayson is confident Habermas "does not endorse," recognizing that *PL* "makes normative claims about what a just society should be like," and that "virtually all liberal democratic states fall miserably short of Rawls's principles" (140).

In the remark last quoted, which anticipates a judgment he will propound in the concluding pages of *HRD*, Finlayson interrupts his verbal nitpicking to allow his political partisanship—and that of the theories he is analyzing—to emerge into the open. The "principles of justice" Rawls expounds in *Theory* and seeks to uphold in *PL*, ranging from extreme moral libertarianism to the "difference principle" to his encouragement, in chapter 6 of *Theory*, of widespread "civil disobedience," are indeed not mere descriptions of what any "Western liberal democracy," or any other regime that has ever existed, is like. Rather, as I have demonstrated in my book *Illiberal Justice*, they are attempts to construct "philosophical" support for the sorts of beliefs espoused by today's progressives—and a program for setting aside all moral and prudential objections to those beliefs by branding them "immoral." To denounce today's liberal democracies as "fall[ing] miserably short" of those principles is to give Rawls's abstract, philosophically and prudentially unsupported theory an elevated status it does not merit. Who indeed, before Rawls, ever thought of representing an account of justice as "philosophical" precisely because it makes no claim to truth, but only promises to promote "consensus" based on the mandate that all citizens, whatever their own views of the good, must agree to its author's morally libertarian and redistributionist program?

In chapter 5, finally addressing the 1995 essay containing Habermas's critique of Rawls's theory, "Reconciliation through the Use of Public Reason," Finlayson notes that while the critique is ostensibly directed at *PL*, its initial target is Rawls's derivation of the principles of justice from the OP in *Theory*, which Habermas compares unfavorably with his own test of valid principles, universalizability ("U"). Here Habermas offers a plausible (if unoriginal) critique of the OP procedure, in that its imagined participants, deprived of knowledge of their notions of the good, other than that they prefer to maximize their "primary goods" (such as wealth and liberty), can hardly be regarded as proper representatives of the real human beings on whose behalf they are supposedly choosing principles of justice. Finlayson responds on Rawls's behalf by pointing to "a similar 'gap' in Habermas's discourse ethics,"

in which a relatively small number of “moral agents” must agree on a moral norm on behalf of *all* persons who will be affected by it (148). (Note, however, that unlike Rawls, Habermas imposes no “veil of ignorance” on the agents’ discourse, designed to guarantee that they will choose his favored principles. Nor, contrary to Finlayson, does Rawls close the gap in his theory by stipulating in *PL* that the participants in the OP must be “not only rational but also ‘reasonable’” in the sense that they are guided by “a sense of justice” [149]: the new qualification undermines the entire claim in *Theory* that Rawls’s principles derive from a calculation of each person’s interests.)

In fact, Finlayson has no response to Habermas’s observation that the impartiality of a principle of justice is better ascertained by whether real human beings, assessing it with reference to their “interests and values,” would agree on it than by its acceptability to imaginary parties operating under a veil of ignorance. Instead, Finlayson lets Rawls off the hook by observing that the OP “plays a comparatively minor role” in *PL* (just as he denies the centrality of U in *BFN*). And he insists that the failure to appreciate this fact has diverted attention “from the very weighty real issues between Rawls’s and Habermas’s mature political theories” (155). But in reality, there is reason to sympathize with a critic who argues (as Finlayson puts it) that in *PL* Rawls so “detaches his conception of ‘the political’ from political sociology and historical actuality” that it “bears hardly any relation to politics or the political domain as normally understood” (169).

The central substantive criticism of Rawls’s political theory that Finlayson attributes to Habermas is that it wrongly “prioritizes liberal rights over popular sovereignty,” in contrast with the thesis in *BFN* of “co-originality,” meaning that private and public “autonomy” should be given “equal weight.” How one could quantify those forms of autonomy in order to guarantee their equality, Finlayson does not explain. Nor does he give any evidence of considering the reasons why the American founders, or the architects of other modern representative, constitutional democracies, did choose to prioritize individual rights over anything resembling direct, popular self-government. Certainly, Habermas is right (as Finlayson puts it) to contend “that it is a mistake to entrust the philosopher with settling issues of moral and political substance” to the extent that Rawls does (e.g., as I have noted, by mandating moral libertarianism, strict government neutrality between religion and atheism, economic redistribution, and tolerance of civil disobedience), rather than leaving such issues to be decided by the democratic political process (170). In the end, however, the most striking aspect of Habermas’s and Rawls’s

theories, as Finlayson summarizes it in chapter 5, is their shared agreement on what Rawls calls “the strategy of avoidance” regarding the *truth* of their doctrines: Rawls “neither asserts nor denies’ the claim to the moral truth” of his “political conception” of justice (a sort of philosophical *nolo contendere* plea), while according to Habermas’s “discourse ethics, a validity claim to rightness is not a claim to truth but only analogous” to it (168–69). While such rhetorical legerdemain is reminiscent of the verbal antics that Montaigne mockingly attributes to the ancient Pyrrhonian Sceptics,⁴ it constitutes the polar opposite of the enterprise of political philosophy as practiced by thinkers from Plato to Nietzsche.

Despite Habermas’s efforts to avoid claiming that his theory is true, Rawls maintains in his 1995 reply (so Finlayson reports in chapter 6) that it falls into just that trap: it allegedly “presents an account of what there is” (176). Rushing to Habermas’s defense, Finlayson explains that he is really “a success theorist,” rather than one whose theory “presuppose[s] the validity of any particular substantive...conceptions of the good life.” Nonetheless, Habermas’s theory, up to *BFN*, “presupposes the truth of a secular world view by advancing a general theory about the obsolescence of religious and metaphysical narratives” (a claim that Habermas will later retract), whereas Rawls purportedly puts “secular world views...on a par with religious doctrines” (i.e., by avoiding truth-claims for either one) (177). As Finlayson puts it (citing one of his favorite *bêtes noires*), “Habermas’s theory of democratic legitimacy takes many theoretical hostages to fortune,” which needlessly “embroils” it in “controversies.” A prime example of the sort of danger this poses is “a Catholic doctrine of the sanctity of human life” (178). Far better to duck the question!

Again, Rawls apparently wins the day: whereas Habermas holds that morality “crosses the boundaries between public and private” and “flows into the political and legislative process through the channels of representative democracy,” to be “given legal form by the human rights enshrined...in democratic constitutions,” Rawls “conceives these constraints” as simply part of the “overlap of reasonable doctrines” within the political “domain” (183). But still, in Habermas’s view, “Rawls’s political liberalism makes all kinds of controversial philosophical assumptions,” such as the “method of avoidance” itself, “inevitably” threatening to draw him “into long running and still unresolved debates” (187). And besides, far from allowing for active citizen participation in formulating the rules by which they are to be governed,

⁴ *The Complete Essays of Montaigne*, trans. Donald Frame (Stanford, CA: Stanford University Press, 1958), II.12.372–74; II.29.533.

Rawls's method of reasoning from the original position imposes those rules "independently of democratic deliberation." In response, Finlayson recommends that Rawls simply "bite the bullet" by admitting this fact but denying (in the words of a devoted Rawlsian) that having to "rely on principles advocated by some known philosopher or statesman should...undermine anyone's political autonomy" (188; imagine if the authors of the American Constitution had adopted this procedure to get it ratified). But above all, he reminds us (citing Rawls), JF "explicates democratic values that allow citizens...to 'face one another openly' as members of a 'true community'" (190).

Neither Rawls nor Finlayson explains why or how JF would better enable citizens of a constitutional, liberal democracy to do this than they already do. But in this context, Rawls is most concerned to refute Habermas's accusation that JF secures individual rights in a way that restricts "the people's constituent will" (as, we might note, the US Constitution does)—even though Rawls admits that the role of political liberty in his theory is "*perhaps* largely instrumental in preserving the other liberties" (193 [Rawls's italics; Finlayson makes much of Habermas's having overlooked that "perhaps"]).

Finlayson's seventh chapter examines Habermas's 1996 reply to Rawls's previous response to him, under the title "'Reasonable' versus 'True,' or the Morality of Worldviews." Among his other objections, Habermas again questions Rawls's "method of avoidance," observing that "political theory cannot avoid making theoretical assumptions that some reasonable people will doubt." For instance, in *PL* Rawls "offers a moral psychology that he claims, rather puzzlingly, to be 'philosophical not psychological'" (*sic*), meaning that it is "based not on 'the science of human nature' but on 'a certain political conception of the person and an ideal of citizenship'"—that is, an account of how Rawls would *like* people to be—even though Rawls wishes to demonstrate the "stability" of his account of justice by showing how it harmonizes with people's *actual* psychology (203). Although Habermas himself cannot, after all, evade asserting the "metaphysical" claim that his own theory is true, he thinks that, in comparison with Rawls's, it is "ontologically parsimonious" and refrains from "making substantial normative or critical judgments on the basis of moral norms," "'clarifying the moral point of view' and the criteria for democratic legitimacy" in a way that 'does not anticipate their content,'" in another scholar's account. But in consequence, Finlayson argues that the fact that "Rawls's political conception of justice is a normative moral conception" better enables it to criticize existing societies and "actual political traditions" than Habermas's supposedly more critical, but formal one (205). Once again

denying that Rawls's principles "merely describe the basic structure of U.S. liberal democracy," Finlayson observes that "no actually existing liberal or social democracy comes close" to actualizing JF (206).

In chapter 8 Finlayson focuses on the respective responses by Rawls (in his 1997 essay "The Idea of Public Reason Revisited") and Habermas (in his 2005 paper "Religion in the Public Sphere") to the charge made by theorists starting in the late 1980s that Rawls's account of the "duty of civility" in *PL* unfairly "burden[ed]" religious citizens by excluding faith-based arguments from the public sphere. In the 1997 essay Rawls responded to this criticism by announcing a "proviso," according to which religious citizens might offer "nonpublic" reasons for their political views so long as they were subsequently replaced by "proper political reasons," that is, by reasons not depending on "comprehensive doctrines" (215–17). In further defense of Rawls's doctrine against the aforementioned objection, Finlayson offers what he calls "knock-down arguments," such as the claim that Rawls's political conception of justice "has the power to shape and bend reasonable comprehensive doctrines toward it," so any tension between it and particular religious beliefs will eventually disappear or at least "be rare." Hence "the duty of civility...does not impugn the identities of religious citizens in any reprehensible way." Wherever a citizen experiences a conflict between the political conception and his "religious values," he should either "make a good-faith attempt at public [secular] political justification" of his beliefs" or else "exercise self-restraint" (i.e., keep those beliefs to himself). For instance, anyone who regards homosexuality as religiously impermissible should just keep quiet to avoid "conflict." Any religious citizens who regard this demand as unfair should certainly accept it once they meet another "knock-down counterargument" to the effect that the fact that they hold "nonpublic" beliefs is simply the result of "bad luck" stemming from their happening to live in a "mainly secular society" (220–22; compare Rawls's aforementioned remark in *Theory* that for any people who find compliance with his doctrine detrimental to their welfare, "their nature is their misfortune").

Instead of relying on such alleged knock-downs, Habermas, as Finlayson reports, seeks to offer religious citizens greater freedom than Rawls does by allowing them "to express and justify their convictions even when they cannot find secular 'translations' for them"—although they are allowed to express them only in "the informal public sphere" rather than the formal political one (223). As Finlayson elaborates, "Habermas's conception of democracy" combines "a hard institutional core" with a "soft social periphery" or "civil society"

“in which ‘wild’ and ‘anarchic’ flows of communication” can circulate. Such communications “besiege the political system, without, however intending to conquer it,” but rather “‘program[ming]’ it in the common interest, generating laws with which most citizens will be inclined to comply “since they understand and accept the reasons for them.” (As an instance, we might consider how resistance to liberalized abortion access might have been lessened had abortion rights emerged from the democratic political process rather than being read into the Constitution by the US Supreme Court.) Habermas’s “formal public sphere,” unlike Rawls’s “‘political conception’ of justice,” “is an institutional reality” (224). Still, while Habermas maintains that religious arguments should be allowed “to circulate in civil society in order to facilitate a variety of authentic ways of life,” such arguments must somehow be “struck from the official transcript” of any formal political proceeding (227).

Despite that last caveat, Habermas’s treatment of religion in his 2005 paper reflects (as Finlayson observes) his late “qualms about the strictly secularist understanding of the political system” he had previously upheld, reflecting the “indispensable role” that religions play “in replenishing the fast-deleting values and meanings” of the secular “lifeworld,” even urging citizens to open their minds to the “‘possible truth contents’” of faith (229). While Finlayson observes the “tricky” task that Habermas now sets himself by “attenuat[ing]” his previous strict secularism while retaining his secularist understanding of the state itself, we cannot but note the contrast between Habermas’s substantive concern for fortifying the moral resources on which the survival of free government depends and Rawls’s steadfast adherence to his abstract doctrine of consensus. Still, in Finlayson’s account, Habermas remains “worried” that his revised theory “violates the ideal” of state neutrality among competing worldviews (235–36).

In his concluding comparison of Habermas’s and Rawls’s treatment of the relation between religion and “public reason,” Finlayson, after identifying “the major flaw in Rawls’s theory” as its “devolv[ing] so much onto the moral duty of individual citizens,” remarkably identifies as the resultant danger not that people may fail to act justly (since Rawls, unlike Habermas, makes no reference to institutions that compel just behavior), but rather that it would allow “theocracy and illiberality” to triumph “in the event that religion-based legislation results and is imposed on nonreligious citizens.” On the other hand, Habermas’s theory suffers from an equivalent flaw: the fact that it has nothing “directly to say to the Catholic believers who oppose physician-assisted suicide on religious grounds” (240, 242, 244). Amid

widespread familial decay in the Western world, weakness of will on the part of public officials, editors, and academic administrators faced with violent uprisings inspired by ideologies such as Antifa, and the precipitous decline of America's educational system at all levels, Finlayson's greatest fear is that we will be tyrannized by religious believers who regard practices such as single parenthood, abortion-on-demand, and assisted suicide as threats to human dignity and well-being.

Finlayson concludes his book with an outright affront to those who seek to maintain the cause of constitutional government. He not only laments that "our current political actuality is moving ever further away from the moral and political vision of democracy that Habermas and Rawls championed" (which, by his account, no actual political society ever came close to actualizing—fortunately!), but applies "to our own time" the words of an exiled Czechoslovak poet who recalled that even under Communism there were "people who had not forgotten the fundamental house rules of human coexistence and who were heroes if only because they had not succumbed to semantic confusion"—comparing the "political elite" of Western democracies to the tyrants who ruled Soviet satellites for four decades or more!

Leo Strauss generated controversy nearly sixty years ago when he likened "behavioral" political scientists, who professed to set aside questions of value or morality in their quest to discover neutral "laws" governing human existence (but really smuggled their own partisan preferences through the back door, so as to immunize them against rational assessment), to Nero fiddling while Rome burned. Theorists such as Rawls, Finlayson, and to a lesser extent (in his later years) Habermas do far worse. In their abstract, dogmatic progressivism and morally obtuse denunciations of actual constitutional democracies, to say nothing of customary (and sometimes religion-based) morality, they weaken the foundations of self-government and individual liberty. At the same time, through the conception of political philosophy that they espouse—which endeavors to deter people from the quest for truth (lest it undermine "consensus")—they themselves promote "semantic confusion" while exemplifying the sort of pedantry that Montaigne once lamented had made the name of philosophy an empty and fantastic one.⁵ Those who seek to restore genuine liberal education and informed citizenship in our time must overcome these considerable obstacles.

⁵ Ibid., I.26.118.