Modesty and Excess in the Philosophical Critique of the Idea of Public Justification

Maciej Golubiewski

Thesis presented to the Faculty of Philosophy at Washington and Lee University in

Candidacy for the Honors in Philosophy

To My Parents

Abbreviations used in the text

Works of Seyla Banhabib:

CNU -- *Critique, Norm and Utopia*

MI -- "The Methodological Illusions of Modern Political Theory: The Case of Rawls and Habermas"

Works of Jurgen Habermas:

FG -- *Faktizät und Geltung (Between Facts and Norms)*

MC&CA -- *Moral Consciousness and Communicative Action*

RJR -- "Reconciliation Through the Public use of Reason: Remarks on John Rawls' Political Liberalism"

SR -- "Social Action and Rationality" in *Jürgen Habermas on society and politics : a reader.* Seidman, S. (Ed.). Boston : Beacon Press, 1989.

Works of Onora O'Neill:

PL&PR -- "Political Liberalism and Practical Reason: A Critical Notice of John Rawls, *Political Liberalism*"

PR&PC -- "Practical Reason and Possible Community"

TJV -- *Towards Justice and Virtue*

Works of John Rawls:

PL -- *Political Liberalism*

RH -- "Reply to Habermas"

TJ -- *Theory of Justice*

TABLE OF CONTENTS

Prologue

This essay is the outcome of personal reflection on procedural rationality in politics. Finding a rational and universal principle behind a liberal doctrine has been the ambition of many philosophers who have believed in the Enlightenment project. The main attempts have been made by theorists in the utilitarian tradition and the social contract tradition. The natural rights tradition also claimed rational and universalizable grounds for its view of liberal government. Kant has been the most ambitious political philosopher in the natural rights and social contract traditions. It is Kant's legacy that animates contemporary justificatory projects of such liberals as Rawls and Habermas.

The essay is divided into five main chapters. The first chapter illuminates what is at stake in the recent family debates between neo-Kantian liberal theorists -- Rawls and Habermas. The chapter extracts the main lines of philosophical contention between the two thinkers which deal with the question of the modes of public justification of modern forms of a liberal government. The main philosophical issue here I claim to be the principle of justification of Rawls' and Habermas' theories of the liberal state.

In the second chapter I pitch Habermas' interpretation of Kant's use of practical reason in the public forum against Rawls' attempt to interpret Kant's moral constructivism in politics. The chapter ends in what I hope is a clear elucidation of both thinkers' views of the public use of reason, and the relative shades of their commitment to deontological universalism in political philosophy of liberalism.

The third chapter tries to carry out two tasks. The first one interprets Kant's themes in each of the philosophers' doctrines and investigates their modes of adopting categorical imperatives to politics as a priori attempts to provide the necessary conditions

for a just ordering of a polity. The investigation of necessary conditions, or in other words, Habermas's and Rawls's attempts to provide justifications for their theories, is the first task of this chapter.

The second task is carrying out a philosophical test of superiority of respective thinkers' attempts at justification. The parsimonious justification of Rawls' and the comprehensive transcendental justification of Habermas are the two ideal types addressed here. I will use O'Neill's tests of Kantian purity and adapt it to these two thinkers.

The task of the fourth chapter is to appreciate the fact that probably Rawls and Habermas probably have other reasons for justifying their doctrines than preserving the Kantian purity of their enterprises. Here I will look at the Hegelian critique of some communitarian and critical theoretical thinkers of contemporary Kantian versions of political philosophy. This I call the test of fire rather than the test of purity. If Kant's conception of deontological ethics as providing definite answers to questions of how one should live is outdated given the plurality of different ways of life in contemporary liberal regimes, I will investigate the reasons of Rawls and Habermas to modify the Kantian doctrine in the ways they do in their political writings. Nonetheless, still upholding the assumption that modifications were made to accommodate a philosophical critique rather than a critique of disenchanted skeptics, I will see which of the doctrines philosophically deals better with Hegelian attacks.

The final task of the fifth chapter is to draw lessons from the inquiry into the modes of justification of contemporary theories of liberalism. It will look at the possibility of creating free-standing and universal forms of reasoning about politics. It will also investigate the relative merits of eclecticism and relative merits and demerits of

comprehensive modes of justification by incorporating anthropological criticisms into originally transcendental doctrines. The Hegelian tension between the concrete universal of human condition and liberal ambitions of transnational justification for liberal regimes is the outcome. At the end I introduce some ways of looking at the issue of public justification from the standpoint of philosophy of science.

CHAPTER 1

Two conceptions of the public use of reason in the liberal philosophies of Habermas and Rawls

1. **Setting the ground: chief concepts[1], methods and tasks in the liberal philosophies of Rawls and Habermas**

The main thematic preoccupation of this essay is the treatment of the concept of public justification through the public use of reason. This treatment is a result of reflections upon reading the philosophical projects of John Rawls and Jurgen Habermas. As opposed to traditionalist or post-modernist thinkers, both Habermas and Rawls share a similar concept of public reason as basically having its grounding in Kant's assumption that practical (as opposed to speculative or theoretical) reason is the only reason that can provide unequivocal guidance to human action.

Nevertheless, before starting a purely philosophical investigation into the nature of public justification of legitimate norms of governance, there is a need for a few words of introduction to the political and methodological concepts used by the two thinkers. This introduction should serve two purposes. First, it will provide a necessary background to the debate that is chiefly concerned with substantive issues in political philosophy of contemporary Western political arrangements. Second, it will illuminate the philosophical nature behind *particular conceptions* employed in the respective "architectonics" of the

---

[1] For the purposes of this essay I will adopt the distinction between concept and conception that originated in Hart (1962) and has been subsequently used by Rawls (1973), Dworkin (1986), D'Agostino (1996) and others. Quoting Dworkin "The contrast between concept and conception is a contrast between levels of abstraction. At the first level agreement collects around discrete ideas that are uncontroversially employed in all interpretations; at the second level the controversy latent in this abstraction is identified and taken up" (Dworkin, 1986).

two philosophical projects, which try to elaborate upon such *general concepts* as liberalism, democracy, justice, legitimacy, constructivism and public justification. Without these conceptual caveats, the study of Rawls's and Habermas's theories could render itself very difficult for the uninitiated readers of this essay.

1.1 The concept of liberalism

There are two essential terms used in the political debate between Rawls and Habermas: liberalism and democracy. It is the problem of philosophically reconciling the two that forms the crux of the family disagreement between the two thinkers. Habermas and Rawls both claim to be liberals in a classical sense of seeing the preservation of individual rights to liberty or freedom as an imperative political principle of a democratic constitutional state. Some classical liberals in the laissez-faire tradition would probably be offended by calling Rawls and Habermas liberals in the classical sense. They would label Rawls a welfare liberal and Habermas a social-democrat. Nevertheless, these are ideological distinctions made in partisan debates rather than philosophical ones. In a philosophical sense, Habermas and Rawls belong to the liberal philosophical tradition starting with Locke and continuing through Kant. It is worth bearing in mind that some intentions of Habermas' thought (but not his method) carry slight Marxist overtones (late Habermas) as encapsulated in Marx's interpretation of Feuerbach in Marx's eleventh thesis (philosophy should not describe but change the world).

A distinction should be made between liberalism understood as political theory of freedom, and liberalism understood as a comprehensive political philosophy with its own theories of value, personhood and rationality. So understood, Kantian liberalism is more a

philosophy rather than a theory. Rawls and Habermas can then be considered political philosophers rather than political theorists.

1.2   The concept of democracy

Democracy refers to the ideals of the liberty of the ancients (freedom to equally participate in political life), but for both thinkers democracy is understood neither in classical terms as a rule of the majority nor in terms of competition for votes. It is rather abstractly viewed as an ideal type of public deliberation over (Rawls) and active participation in (Habermas) issues and events that concern the life of the polity. It is worth noticing that Habermas has a much more elaborate view of democracy, which for him is the rational ideal of unconstrained discourse of all interested on issues that the participants in the discourse regard as important for the life of the polity, and which takes place in public fora.

In political jargon, Rawls is an exponent of the pluralist model of democracy, while Habermas more willingly embraces the deliberative/participatory one. As we can see, part of the political orientation of the two thinkers is their interpretation of the scope and nature of the vindicating public that is being consulted about the adoption of the liberal principles. Also Habermas seems to attach quite a substantial normative and free standing content to democratic procedures, while Rawls considers them dependent upon what he calls a basic structure of a just society achieved by reflective equilibrium of the shared political meanings in a given political (specifically liberal) culture. Liberal justice than is prior to democratic legitimacy in Rawls's thought:

> It is of great importance that the constitution specifying the procedure be
> sufficiently just, even though not perfectly just, as no human institution can be that.
> But it may not be just and still be legitimate, provided it is sufficiently just in view

of the circumstances and social conditions (...). Legitimacy allows an undetermined range of injustice that justice might not permit (PL, 428).

1.3   The concept of justice and legitimacy

Both Habermas and Rawls generally agree on the importance of the principles of justice as guiding and ordering the political life of the polity. As we have seen, Habermas is particularly intent on making sure that such principles are arrived at in a legitimate manner, which for him denotes a process of rational public contestation. In this Habermas is definitely and Rawls considerably, concerned with safeguarding both the so-called liberty of the moderns (individual liberty) and the liberty of the ancients (equal liberty to participate in public affairs). Habermas' unusual stress on the legitimacy of government reflects his fundamental convictions about the superiority and actual autonomous epistemic status of democratic procedures. Rawls, a pragmatist, does not assign the same epistemic gravity to the democratic process, which for him is contained in the figure of reflective equilibrium, thus making democracy an expression of a shared cultural status quo among reasonable members of a political community, rather than a rational contestation of competing validity claims in the plurality of unrestricted public fora. In Rawls's thought the conception of justice, so understood, is prior to the conception of legitimacy.

1.4   The concept of constructivism in ethics: abstractions and idealizations

The final note has to be made here about a certain mode of practicing moral philosophy within the realm of political theory. Rawls claims that he is involved in building a "constructivist" theory of justice. The question of what exactly constructivism means as a way of doing moral philosophy comes to mind immediately.

Throughout the essay I will use the definition of constructivism in ethics (and about justice) that takes its clue from Rawls's more specific elaboration on Kant's moral constructivism[2]. Quoting O'Neill

> constructivism in ethics, or specifically about justice, is in the first instance the claim that their principles are not established by metaphysical arguments, or discovered in the world, but that they must be constructed on the basis of plausible, no doubt abstract, assumptions. (TJV, 44)

Another definition of constructivism that assigns a specific meaning to constructivism of Rawls and others in that tradition (often called a contractualist or contractarian tradition) is given by D'Agostino. Those in Rawls's camp are

> *constructivist* in the sense that they recognize no independent and determinate external standard of legitimacy that the contractual device is intended to approximate, but, rather, make the truth-maker for "S is legitimate" that S was the object of an agreement (for 'stakeholders' or their surrogates). Crudely, being agreed to *makes* a regime legitimate; it is not that being agreed to is *evidence* for legitimacy otherwise conceived. (*Stanford Encyclopedia of Philosophy*) [emphasis added]

It is important here to note one more conceptual distinction that has to be made between abstraction and idealization. Abstraction is "the process of *bracketing,* but not *denying,* the predicates that are true of the matter under discussion" (TJV, 40). Understood as such, abstraction in a strict sense can never lead from a truth to a falsehood as it does not directly rely on whether the predicate from which it abstracts holds or does not hold.

Idealization on the other hand might lead to falsehood. On O'Neill's view

> an assumption, and derivatively a theory, idealizes when it ascribes predicates -- often seen as enhanced, 'ideal' predicates that are true of that case. (TJV, 41)

---

[2] See Rawls, J. "Kantian Constructivism in Moral Theory" in *Journal of Philosophy*. Vol. 77. Spring, 1980.

Understanding the concepts of constructivism, abstraction and idealization is crucial for the debate about relative justificatory strengths of the accounts of public use of reason by Rawls and Habermas. Although Habermas's project of "discourse ethics" is different from Rawls's constructivism, it also conceives of philosophical constructions such as the "ideal speech situation". The differences in Rawls's and Habermas's constructivist *conceptions* of the conditions of public justification of political principles will be elaborated in due course of this essay. For the purposes of introduction, this section elaborated only on the *concept* of constructivism.

1.5   The concept of political philosophy

The substantive political issues described above have often been viewed as the domain of the investigation by moral philosophy. Here we also need a few words of explanation of a distinction between political and moral philosophy. The answer whether such a distinction can be drawn at all implicitly lies at the heart of this essay. For the ancient Greeks there was no such distinction to be drawn, as politics was viewed as an activity of relatively small and homogenous communities. Politics was supposed to reflect the morality and the mores of the community. Polity was then no different than a community. With the advent of empires, ancient and modern, and the progress of the division of labor within societies due to economic development, politics as an activity started to emancipate itself from the realm of morality regarded more and more as a private endeavor. Still, in the early medieval times the lack of clear institutional demarcation of the institutions of state and church produced a synthesis of politics and morality, at least in a way moral and political philosophy was practiced in the writings of St. Augustine or St. Thomas Aquinas.

The advent of political philosophy as a specific science emerged during the Renaissance specifically in the writings of Nicolo Machiavelli. Nonetheless, in as much as Machiavelli's *Prince* wanted to emancipate politics from morality it succeeded only partially. What is now called political science would probably like to see its roots in Machiavelli's work, but political philosophy definitely would not. All the philosophers of the Enlightenment Age saw themselves as moral philosophers. The impossibility of detaching the art of state-making from moral considerations of what is just has been at the heart of political philosophy seen as a moral inquiry. From Plato's *Republic*, Hobbes' *Leviathan* and contemporary writings of Habermas and of early Rawls, political philosophy has been seen fundamentally as an inquiry into the moral nature or constitution of individuals and their communities.

1.5.1 Two conceptions of practical reason in Kantian political philosophy of liberalism

Both Rawls and Habermas draw their own distinctions between the political and the moral. These distinctions reflect their interpretation of Kant's concept of practical reason. In this respect they provide their own interpretation of Kant's moral and political philosophy which has left an ambiguous legacy in this regard. Rawls modified Kant's moral contructivism and created his own form of political constructivism. For Rawls, the realm of public morality dealing with the issues of justice is deprived of deep epistemic status. Rawls rejects Kant's ideal of autonomy which "has regulative role for all of life" (PL, 99). Instead, Rawls introduces a political form of autonomy:

> A political view, we said is autonomous if it represents, or displays, the order of political values as based on principles of practical reason *in union with the appropriate political conceptions of society and person.* (PL, 100) [emphasis added]

In Rawls's political constructivism, as opposed to Kant's moral constructivism, practical reason is self-originating and self-authenticating yet does not aim at constituting the comprehensive account of the order of values as it is attached to a particular liberal view of society and person. In this regard, political constructivism does not carry a claim that all moral truths can be adjudicated impartially in a democratic public forum.

Habermas, in his own way draws a similar distinction. His distinction is very much informed by the German, mainly Hegelian tradition. He separates moral from ethical theorizing. Ethical reasoning argues about the ultimate good – the summum bonum or Hegel's *Sittlichkeit*. Moral reasoning (*Moralität*) on the other hand is more concerned with the issues of justice.

On Habermas's view, together with civilizational progress and the emergence of a plethora of personal and cultural traditional lifestyles, there has been a corresponding trend of increased reflexivity within these cultures:

> Simultaneously, however, norms of interaction have also become reflexive; in this way universalist value orientations gain ascendancy (...). At the same time, there has been a growing need for justification, which, under the conditions of postmetaphysical thinking, can be met only by *moral discourses*. The latter aim at the impartial evaluation of action conflicts. In contrast to ethical deliberations, which are oriented to the telos of my/our own good (or not misspent) life, moral deliberations require a perspective freed of all egocentrism or ethnocentrism (FG, 97).

Nonetheless, Habermas's distinction is not as radical as Rawls's. It admits epistemic status in moral theorizing. For Habermas, the public use of practical reason has to have independent epistemic status and not be attached to any particular political conception of liberal society or person if the outcome of democratic deliberations is to be fully legitimate. The importance of a legitimate rather than a just order is stressed much more

in Habermas's political thought. For the government to be legitimate the public use of practical reason has to abide by certain epistemic standards and full publicity conditions. This point is made obvious in Habermas's critical statement accusing Rawls of not providing enough epistemically founded conception of moral discourse (in Habermas's words), or politically autonomous deliberation (in Rawls's formulation):

> The more Rawls believes he should base the theory of justice on the public support for culturally molded intuitions that none "of us" can reasonably reject, the less clear is the boundary separating the task of philosophically justifying principles of justice, on the one hand, from a particular community enterprise of reaching a political self-understanding about the normative basis of its common life, on the other (FG, 60).

It is obvious that both thinkers operate on a modified interpretation of Kant's conception of *Moralität*. It is the interpretive shades of *Moralität*, especially concerning its epistemic status, that differentiate the style of thinking of Rawls and Habermas.

1.5.2   Epistemic differences in Habermas's and Rawls's understanding of public use of reason

It is in the spirit of Kant's political philosophy of liberalism that I will look at the debate between Habermas and Rawls. I will try to look at the philosophical sources of rational moral authority that appear in their political philosophies of liberalism. In other words my focus on the rationality of their projects can be more elaborately described as the investigation into the relative concepts of practical reason that can be found in the political philosophy of Rawls and Habermas. I claim that any universal theory of justice depends on the model of practical reason as the means of justification of political action of people and their institutions. If it did not, there would be no point of impartial adjudication among competing comprehensive accounts of the good life, which would lead

to the assertion of the so-called agonistic (fighting) models of liberalism that stands disarmed in the face of pathological value pluralism[3].

It would now be advisable to provide some framework in which my investigation will move. In Kantian formulation practical reason as opposed to theoretical reason is concerned about authority and guidance of action. A convincing account of practical reason

> should bear on action in ways that at least sometimes offer guidance or warning (it should be to some extent *practical*); and that it should do so in ways that we can see as having some measure of authority (it should be *reason*). (PR&PC, 308)

Michael Walzer believes that there are three ways of practicing moral philosophy: by discovery, invention and interpretation. Natural law philosophy was concerned with discovering the moral laws of nature; Rawls and Habermas in Walzer's formulation do moral philosophy via inventing appropriate procedures or frameworks whereby justice comes about (hence the term "constructivism" often attached to Rawls' and Habermas' projects); and, finally, communitarians such as Walzer himself practice various sorts of hermeneutic approaches in their studies of justice in actual or idealized communities. Investigating relative methodologies used by our two thinkers in constructing their accounts of justice should give us clue as to the relative justificatory strengths of their accounts of what constitutes practical rational authority.

So, to fully elucidate the problem that the essay addresses is to provide a discussion of the chief concept under investigation – philosophical justification. Since the

_____

[3] Agonistic liberalism is used by John Gray in his interpretation of Isaiah Berlin's liberalism (Gray, 1996) which stressed the acceptance of negative liberty (liberty from obstacles) as a chief principle of a liberal doctrine.

problem of justification gains dominance and is at the heart of the debate between Habermas and Rawls I will consign the whole section to the discussion not only of the concept of justification but also of the related concept of *public justification*. The concept of public justification is crucial for both Habermas and Rawls, but it gains entirely different dimensions due to different modeling of the conception of this term by Rawls and Habermas.

2. The concept of justification in ethics[4] as the main problem in Kantian philosophies of liberalism

The problem of justification in ethics is as old as the discipline itself. In the realm of theory of justice it addresses the question: What is the fully proper exercise of political power? The answers to this question are diverse and form the crux of the debate between Rawls and Habermas as well as between these two thinkers and their critics. This paper will address the problem of justification as a problem of rational public justification, meaning the process of justification to a reasonable audience of members of political communities.

It is important to note that the problem of public justification is part of a wider and fundamentally complex philosophical problem of justification as such. In the philosophy of science the concept of justification was couched in the terminology of verification, proof, consistency, and evidential warrant. Later in the essay it will become obvious that

---

[4] There is some confusion about the definition of ethics and morality. Contemporary meaning of "ethics" is very broad, ranging from the systematic study of particular moral conducts to the study of justice in political theory. Nevertheless, in the German tradition there was a reverse division into *Moralität* and *Sittlichkeit* introduced by Hegel. Morality was the study of formal precepts of conduct, whereas ethics (*Sittlichkeit*) was the actual moral content - the particular norms of behavior of a specific ethical community.

without some help from the philosophy of science certain reflections, even if only about

public justification in political theory, are not possible.

An interesting approach to the study of rational justification in the philosophy of

religion was developed by Sessions (1982) who claims that in ethics

> "rational justification" is a normative expression with many semantical properties
> resembling those of ethical terms, so that in an extended sense we may speak of
> principles of rational justification as an "ethics" (Sessions, 146)

Sessions' conception of rational justification is useful for definitional purposes as it carries

to a higher level of abstraction the relative conceptions of public justification that take

their roots from Kant's moral philosophy. It also very aptly introduces the complex nature

of justification put in ethical contexts.

Fred D'Agostino has recently categorized the models of public justification from

the standpoint of philosophy of science. D'Agostino situates the idea of public justification

as a debate about practical efficacy and morality, or in another way the moralistic

conceptions of public conceptions and empirical ones. I will only briefly sketch out this

interesting approach at the end of my essay. The full treatment of the issue of public

justification from the standpoint of the epistemology of the concept would exceed the

already large purpose of this work

2.1   The two particular conceptions of a "publicity condition" in public justification procedures

The previous section elaborated on the concept of justification in general. This

section will elaborate upon a particular interpretation of Kant's view of public justification

in the thought of Rawls and Habermas.

In Onora O'Neill's formulation

public reason seeks to identify principles of cooperation by a process of *public justification.* Justification is thought of as justification *to an audience,* and in the case of political justification that audience is the public. (PL&PR, 416)

It is important to note that neither Rawls's nor Habermas's conceptions view public reason as just any process that happens to produce agreement. Public reasoning has its standards and not all moral discourses fall into the category of public reasoning. We can say that both Rawls and Habermas share the same concept (but not a specific conception) of public justification in principle.

Now Rawls's conception of public reason and the resulting public justification procedures differ sharply from that of Habermas. Rawls relies very heavily on his political constructivism when describing his model of the public. For him the public is constituted by citizens born into a given political community. As such the process of public justification is the processes of convergence of wills of members of certain democratic communities -- quite a restrictive view of the public use of reason.

In case of Habermas, his idea of public reason is not constrained by a political model of autonomy. It is actually closer to Kant's original view of public reason as "wholly public" (PL&PR, 425). On O'Neill's interpretation of Kant,

> fundamental reasoning about the principles of politics and morality, about justice and virtue, should not, indeed, cannot be structured to reach only a limited, socially or politically defined audience. (PL&PR, 425)

Habermas's formulation of the principle of publicity stands in stark contrast to Rawls's and is almost identical to Kant's:

> In moral discussions the circle of those possibly affected is not even limited to the to members of one's own collectivity. The moral point of view under which policies and laws are subjected to a sensitive universalization test demands all the more that institutionalized deliberations be open to the input of information, the pressure of problems, and the potential for stimulating suggestions found in public

opinion. At the same time, the moral point of view transcends the boundaries of every concrete legal community, giving one some distance from the ethnocentrism of one's immediate surroundings. (FG, 183)

3. Conclusions to chapter 1

The purpose of this chapter was to situate Habermas's and Rawls's political philosophy in the Kantian deontological tradition in political philosophy. Both thinkers in a truly Kantian vein share Kant's basic ethical attitude to moral theorizing, which is expressed by Kant's attachment to the elucidation of deontic categories of moral worth and of a lack of moral worth with regard to the intentions contained in a human act. This attitude is expressed in Rawls's treatment of justice, and Habermas's treatment of legitimacy, rather than the treatment of any concretely specified good, e.g., the good society[5].

As opposed to the Aristotelian ethical tradition, for example, Kant's ethics does not provide answers to all practical questions of what would be the right and wrong thing to do in a given context. There are more imperfect duties in Kant's ethics than perfect ones. Besides, on Sandel's reading of Rawls as a deontologist, deontological reasoning is not basically oriented to any conception of the common good understood teleologically, that is in such a way that all of us should strive to attain it (*summum bonum*).

What is more, the discussion in this chapter also tried to illuminate a certain interpretation of practical reason by the two thinkers as public reason, or as practical reason used in public. This is important as both Rawls and Habermas are concerned with the normative issue of the viability of contemporary liberal regimes in democratic

societies. The illumination of Habermas's and Rawls's differing conceptions of practical reason as public reason sets the stage for the debate about relative justificatory strength of their conceptions understood as their ability to realistically model the appropriate procedures of public justification for contemporary liberal-democratic regimes.

---

[5] Such treatments have been made by Aristotelian critics of deontological ethics such as Michael Sandel in *Liberalism and the Limits of Justice* and Alasdair MacIntyre in *After Virtue.*

CHAPTER 2

The Habermas-Rawls debate: the illumination of conceptions and arguments

1.   The introduction to the Habermas-Rawls debate about (I) the forms of practical reason in political philosophy and (II) the methods of public justification of their respective conceptions of liberalism

I will try to sketch Rawls' philosophical position on the public use of practical reason and the modes of public justification in his *Theory of Justice* and later in his *Political Liberalism.* This will be followed by a sketch of Habermas's criticisms of Rawls, followed by Rawls's reply. A word of caution is needed here. Rawls in *Political Liberalism* insists on the renunciation of moral metaphysics in the theory of justice. Instead he proposes an alternative political understanding of justice as fairness as guiding the enterprise of political philosophy. By doing so, Rawls orients himself towards the tension described earlier between moral and political theorizing. Caution should be exercised not to interpret Rawls' renunciation of metaphysics in his political philosophy as the renunciation of philosophy as such. Although the ontological questions about the nature of the person in the liberal polity is not addressed from a metaphysical point of view, the notion of a citizen as an ontological category is introduced as well as the philosophical questions of (I) what constitutes a rational doctrine of autonomous political reasoning within the bounds of public reason, and (II) the nature of justification in the political process. It is the role of justificatory procedures of practical reason in the realm of political action in Rawls's and Habermas's model that will form the focus of my investigation of this part of the debate. In other words, the focus is not only on the forms of practical reason but also on the methodologies used as means of their justification.

The following sections will present the evolution of Rawls's thought (Section 4.1), Habermas's critiques of Rawls (Sections 4.1.1 and 4.1.2), finally followed by Rawls's rejoinder (Section 4.2).

1.1   From the Original Position to the Idea of Overlapping Consensus

Rawls has written his *Political Liberalism* as a response to his communitarian and postmodern critics. In his first work entitled *The Theory of Justice* Rawls built upon the contractarian tradition from Locke to Kant and came up with a theory of justice as fairness. Elaborating on justice as fairness Rawls tried to provide a procedural account of what should guide just policy-making in a liberal state. He devised a few useful conceptualizations to help us grasp his thinking. The first one is the so-called "the original position," a hypothetical situation in which all persons in the modified state of nature (under "the veil of ignorance" but with a minimal Humean empirical assumption of moderate scarcity) exercise their choice of fundamental political and other social arrangements.   The outcome of these hypothetical deliberations is the two principles of justice. The first one claims that under the veil of ignorance it is reasonable to hold that every person is equally entitled to the same system of equal and basic liberties. The second principle claims that all persons should have equal access to institutions and participatory arrangements in the state. The corollary to this principle, often called the difference principle, calls for measures of redistributive justice such that all arrangements among persons in the state would benefit the least advantaged among them. Rawls exposed himself to the criticism of the communitarians on the point of supposedly privileging the concept of the right over the conception of the good (Sandel). Rawls' theory as some of these critics have claimed contributes to the picture of the disembodied

liberal self who can only choose minimal principles not rooted in his cultural milieu. This criticism well served both cultural relativists as well as fundamentalist Thomists. Some thinkers like Michael Walzer (1984) and John Gray (1997) also pointed out that due to the presence of pathological value pluralism in modern societies (understood as the persistence of irreconcilable clash of fundamental conceptions of the good life), all attempts at creating a universal theory of justice based on one concept of practical reason will ultimately fail. The Aristotelian, Hegelian and relativist critiques united against Rawls and forced him to rethink his theory.

   Political Liberalism is a response to those critics. The first major turn that Rawls introduces us to is political in kind. Rawls renounces all attachments to metaphysics in his new book. In his renunciation of metaphysics Rawls has even befriended some radical critics such as Richard Rorty (1991). For Rawls the domain of the political is completely autonomous from what he calls reasonable comprehensive metaphysical doctrines. In the increasingly pluralistic world the only justification there exists for a stable liberal regime arises from the idea of overlapping consensus. Rawls believes that all comprehensive metaphysical doctrines contain a certain measure of reasonability within them and thus admit of rational adjudication of their metaphysical claims without renouncing them completely. Rawls believes in the idea of the so-called "reflective equilibrium", which is achieved by careful and reasoned evaluation of all rational elements present in comprehensive metaphysical doctrines in their relation to the shared public conception of political culture and its institutions. By envisaging liberalism as political rather than metaphysical Rawls tries to escape the moral and epistemological criticisms used against him by moral philosophers. He tries to escape the metaphysical

battleground by making political concessions to all reasonable elements found in moral theorizing.

1.1.1 Habermas's critique of Rawls's design of the original position in *Political Liberalism*

Habermas takes issue with Rawls on a couple of points. While fundamentally agreeing with Rawls on the importance of the justificatory project of liberalism, Habermas believes that Rawls does not completely manage to escape metaphysics. Habermas first takes on Rawls' design of the original position. Habermas believes that

> Rawls imposes a common perspective on the parties in the original position through informational constraints and thereby neutralizes the multiplicity of particular interpretive perspectives from the outset. (RJR, 117)

Such approach is contrasted to Habermas' own project of discourse ethics, which

> by contrast, views the moral point of view as embodied in an intersubjective practice of argumentation which enjoins those involved to an idealizing *enlargement* of their interpretive perspectives. (RJR, 117)

Habermas is uneasy with the original position because of the arbitrary initial conditions Rawls imposes on the model. The persons in the original position face a tall order. Deprived of moral situatedness, they are left as rational egoists to decide about higher-order values of society they will live in. For Habermas the neatly-constrained rational choice model with presuppositions of freedom and equality of persons in the original position poses irresolvable problems. First of all, Rawls's rational choice model has to be seen as a part of the theory of choice. That granted, Rawls has to boil down basic rights to primary goods over which individual *choice* is exercised. What is more, he has to "assimilate the deontological meaning of obligatory norms to the teleological meaning of preferred values" (RJR, 114). What this means is that the original position, even with Rawls's later modifications, is not preoccupied with practical reasoning about principles

of duty (moral reasoning); rather it is oriented towards setting boundary conditions on one's preferences for pursuing a particular life-plan (ethical reasoning).

Such reconceptualization has grave consequences for Rawls. Habermas believes that Rawls' conceptualization of norms (duties) as values (mere preferences) introduces the element of epistemic vagueness. The agreement over values does not take a "yes" or "no" form; rather it is "a gradual coding of the respective validity claims" (RJR, 115) understood as mere consensual agreement, varying with the political context, about the relative importance of moral assertions. In Habermas's formulation, values are relatively rather than absolutely binding and are related to purposive action (oriented towards the achievement of goals) rather than rule-governed action. Habermas claims that Rawls, in realizing these problems, is forced to arbitrarily grant a substantive priority to the first principle of equal liberty over the principle of equal access to primary goods of the second principle. Such ordering is based on a substantive reasoning and does not follow from the deliberative discourse. Habermas is then mainly concerned with a presence of a heavy burden of proof in Rawls' construction of the original position. Habermas concludes his criticism by saying:

> If such a heavy burden of proof is generated by the deprivation of information imposed on the parties in the original position by the veil of ignorance, a convenient response would be to lighten this burden by operationalizing the moral point of view in a different way. I have in mind the more open procedure of an argumentative practice that proceeds under the demanding presuppositions of the "public use of reason" and does not bracket the pluralism of convictions and worldviews from the outset. (RJR, 119)

1.1.2 Habermas' critique of the concept of the overlapping consensus in *Political Liberalism*

Habermas further develops his critique by focusing on what in his view is Rawls's lack of epistemic concern for the terms he uses. In the second section of his criticism

titled "The Fact of Pluralism and the Idea of the Overlapping Consensus" Habermas focuses on the epistemology found in *Political Liberalism* (previously Habermas' discussion of the original position referred to Rawls' *Theory of Justice*).

Habermas believes that Rawls introduces normative contents into the very procedure of justification, above all those ideas he associates with the concept of the citizen as a moral person: the sense of fairness and the capacity for one's own conception of the good. Thus the concept of the citizen as a moral person, which also underlies the concept of the fair cooperation of politically autonomous citizens, stands in need of a *prior* justification. (RJR, 119)

Rawls provides a political, not a metaphysical justification of his concept of a person to avoid metaphysical squabbles he once himself engaged in with his student Sandel. The first step is the development of reflective equilibrium, which is a position in which the philosopher has attained the assurance that those involved can no longer reject with good reasons intuitions reconstructed and clarified in this manner. Now to avoid being called a contextualist (like Rorty), Rawls developed the idea of the overlapping consensus, which is aimed at providing universal yet political justification of his concept of justice in a pluralistic society. What bothers Habermas is exactly the practical means of justifying the theory of justice in the public forum of overlapping consensus. For Habermas

> Rawls wants to secure for normative statements – and for the theory of justice as a whole – a form of rational obligatoriness founded on justified intersubjective recognition, but without according them an epistemic meaning. For this reason he introduces the predicate 'reasonable' as a complementary concept to 'true'. (RJR, 123)

Here, Habermas criticizes Rawls's reasonable-rational dichotomy, which for Rawls plays a crucial role in distinguishing between reasons employed in comprehensive (rational) as opposed to purely political (reasonable) doctrines.

1.2 Rawls's response

Rawls starts his response to Habermas by stipulating the main differences between their projects. Rawls believes that Habermas' thought is a part of a comprehensive metaphysical doctrine while his own is not. In evaluating a typical philosophical fight about Socratic modesty it seems that Rawls is more modest in his philosophical design and more substantive about content while in the case of Habermas it is vice versa. Habermas' project forces him to prepare appropriate procedural conditions, heavily laden with assumptions about rationality, truth and validity, so that he can be guaranteed a sufficiently complex and orderly political outcome. Rawls takes another route and presents us with a sufficiently substantial political theory so that little ground is left for, what for Rawls is, a dangerous enterprise of political activity on a level of adjudicating between conflicting rational comprehensive moral doctrines. Habermas is cautious about ends while Rawls is modest about means of political procedure. Rawls thinks that Habermas is too comprehensive and thus imperialistic about proper political procedure. Habermas on the other hand claims that Rawls concedes too much to pragmatism in political practice. This controversy poses a very interesting problem concerning the method of political theorizing and cannot be explored here immediately. As concerning the methodological device called the "original position", Habermas sees the original position as a methodological device, a procedure, which like his own "ideal speech situation" or in his later works concepts of idealizing and partly counterfactual

presuppositions, serves as a normative justification method of one or the other form of public practical reason. Rawls in his response dodges this accusation by making the original position a mere conjectural device of representation:

> Thus, free and equal citizens are envisaged as themselves reaching agreement about these political principles under conditions that represent those citizens as both reasonable and rational. *That the principles so agreed to are indeed the most reasonable ones is a conjecture since it may of course be incorrect.* (RH, 381) [emphasis added]

On this view, Habermas's critique of the original position as an instrumental and monological (as opposed to dialogical[1]) device that is useless in providing justification to Rawls's conception of public practical reason embodied in his formulation of political liberalism loses its ground. It is the citizen-wide process of reaching a wide reflective equilibrium that serves as the ultimate court that can judge principles arrived at in the original position. Since the idea of reflective equilibrium is seen as referring to the community (PR&PC, 309) Rawls can escape the charge of instrumentalism and rational choice. Nevertheless, the principles arrived at in the original position, although prone to revisability by the process of reaching the reflective equilibrium, need not revert to the court of the citizens to see that they are running a risk of being fundamentally flawed. The original position still remains a collective choice arrangement in which the rationality of purposive rather than rule-governed action takes precedence. The result is the situation that Habermas pointed to: choosing values rather than deliberating over norms. Since Rawls claims attachment to the idea of reasonable

---

[1] Monological-dialogical distinction is used here to stress Rawls's relatively static account of public use of reason as "reflective equilibrium", and Habermas's relatively more dynamic account of public use of reason as moral discourse.

overlapping consensus serving as a justificatory (not merely heuristic) procedure, which is also part and parcel of the public conception of specifically interpreted *practical reason*, ensuring political stability "for the right reasons" (PL, 390), Rawls does not fully escape Habermas's criticism.

Methodological issues aside, Rawls tries to provide an answer to Habermas' epistemic objection to the justificatory validity of the idea of the overlapping consensus. In his response, Rawls elaborates on his idea of overlapping consensus. In his criticism Habermas expresses skepticism about the epistemic status of the overlapping consensus as being only the necessary condition for political stability and not adding any justificatory force to Rawls' theory of justice. Rawls' answer to the epistemological criticism of Habermas is interesting yet unsatisfactory in my view. In a way Rawls develops an interesting form of metaethics or heuristic methodology as a response to fundamental challenges of traditional epistemology. Rawls replaces the "rational" with the "reasonable" and the philosophical conception of the person with "persons as citizens viewed as free and equal" (RH, 150). So Rawls is trying to find a balancing act between the foundationalism of epistemology and the contextualism of postmodernism. By introducing three modes of justification – pro tanto, full and public -- Rawls tries to clarify the justificatory force of overlapping consensus. Pro tanto justification clarifies the issue whether political questions can be answered fully by political considerations; it looks very thin and almost circular. Full justification is the process of relative ordering of political concepts within a citizen's own comprehensive doctrine. Public justification takes place in the public forum and allows the citizens to display, so to speak, the relative

coefficients of politicization of their respective comprehensive doctrines after the process of full justification (embedding the political within the personal metaphysical doctrine) has taken place. It is clear that Rawls' answer presupposes the existence of political vocabularies within societies, political discourses or political frames of reference to which individual citizens can relate to if they choose to be participants in the political process. He assumes enough diversity within the realm of contemporary liberal politics (which he sees axiomatically as rational) for rational adjudication of political claims to take place without considering the substance of comprehensive doctrines held by the citizens. The only role he sees comprehensive doctrines can play in the political process is the heuristic role of providing the holders of comprehensive doctrines with relative weights assigned to particular political values that they are evaluating.

Does Rawls' answer escape Habermas' criticism? Habermas would consider as dogmatic the use of solely political conceptions in the public discourse. This observation also intimates differences between Habermas' and Rawls' conceptions of the public sphere. Seyla Benhabib provides a further critique of a liberal conception of political dialogue in her reference to Bruce Ackerman's conception of "conversational restraint" which comes very close to Rawls' stipulations of what constitutes a political discourse. Benhabib says:

> The pragmatic justification of "conversational restraint" is not morally neutral; this justification trumps certain conceptions of the good life in that it privatizes them and pushes them out of the agenda of public debate in the liberal state. (Benhabib, 97)

As we can see, for the overlapping consensus to go beyond a role as a prerequisite for political stability and provide some further justification for Rawls's theory of justice, Rawls has to presuppose axiomatically the existence in respective

minds of the citizens of the idea of the autonomy of the political and of its importance in preserving justice. Rawls goes as far as to saying that "the conception of political justice can no more be voted on than can the axioms, principles, and rules of inference of mathematics and logic" (RH, 144). I believe it to be obvious that Habermas epistemic challenge retains its validity after Rawls' reply.

2.   Conclusions to chapter 2

The chapter pushed the task of the first chapter further. It tried to elucidate in more depth the main conceptions and arguments employed in the actual exchange between the two thinkers (Habermas's critique and Rawls's response in *The Journal of Philosophy*[2]). It also aimed at explicitly demonstrating the exact content of the debate as the debate about the uses of public reason as means of public justification in liberal-democratic regimes. The main issues that arose out of the discussion were the differing notions of the epistemic status of the public use of reason, as well as differences in employing Kant's idea of rational autonomy as providing a deductive standpoint for deriving the order of values in the liberal state. The chapter also analyzed the adoption by Habermas and Rawls of two forms of practical reasoning as reasoning in a particularly constructed public forum. Alongside, a fundamental observation has been made about the essential contestability of the concept of public justification.

The next chapter will elucidate to what extent both Rawls and Habermas have taken up a challenge to operationalize Kant's categorical imperative under contemporary

---

[2] In *Journal of Philosophy.* Vol. 92. No. 3, 1995.

conditions of value pluralism. It will also attempt to assess the relative successes and failures of adopting respectively modified categorical imperatives for the purposes of public justification. It will develop O'Neill's Kantian critique of contemporary political liberalisms and try to answer the question of whose (Rawls's or Habermas's) conception of the public use of reason for the purposes of public justification of the liberal principles better stands the test of Kantian purity.

CHAPTER 3

Reflections on justificatory strengths of neo-Kantian approaches to the philosophy of liberalism -- Onora O'Neill's critique of Rawls

1.   Public use of practical reason in Rawls and Habermas: Kant's or Kantian ?

As we can see, the main themes that emerged from the discussion of the status of Rawls' theorizing are concerned with the epistemic consequences of the distinction between moral and political constructivism. In the first stage of his theory (in *Political Liberalism)* Rawls wants to secure for his conception of justice as fairness a freestanding status that can address the possibility of a just and stable society deeply divided by value pluralism resulting from the presence of various comprehensive metaphysical doctrines in Western societies. Rawls modeled an approach to this question in his original position that serves as a device of representation. He proposed acceptable restrictions on public reason so that parties in the original position can be represented as free and equal in deciding on the most fair principles of social cooperation -- justice as fairness. Part of the last chapter consisted of the evaluation of whether Rawls succeeded in creating a free-standing conception of public reason.

Rawls's main assumption is that of the impossibility of reconciling the claims of comprehensive metaphysical doctrines in a public forum. He also believes that it is only the sphere of the political that can provide the focus in which rational comprehensive metaphysical doctrines can reach a consensus, and for that only a political consensus. The overlapping consensus enters into his philosophy as a second stage of the theory of political liberalism. Overlapping consensus addresses the issue of the possibility of sustaining a just and stable society in the situation of value pluralism. The last chapter

briefly looked at the question of how strong Rawls's idea of an overlapping consensus is as a justification for his project of attaining political stability in a liberal state.

The most important question this chapter will be trying to answer is the question of the form of the public (as opposed to private) use of practical (as opposed to theoretical) reason. Assuming that both Rawls and Habermas claim Kantian roots for their theories, this part of the essay will try to assess whose conception of practical reason (with the degree of its importance in the two respective projects) has stronger epistemic claims to universal justification.

1.1 Kant's categorical imperative in Habermas and Rawls -- Habermas's victory in a test of Kantian purity

The discussion in Chapter 1 has hinted at important distinctions in Rawls's and Habermas's understanding of practical reason. This section will try to operationalize the Categorical Imperative in the philosophies of Habermas and Rawls.

On Rawls's account that Onora O'Neill would rather call Kantian than Kant's, practical reason when exercised in a public forum takes the form of reasoning about political not moral ends. Rawls says that

> practical reason is concerned with the production of objects according to a conception of those objects--for example, the conception of a just constitutional regime taken as the aim of political endeavor--while theoretical reason is not concerned with the knowledge of given objects. (PL, 93)

Interestingly, though, practical reason for Rawls is embodied in particular definitions of citizen and society. So, according to Rawls: "constructivism does not proceed from practical reason alone but requires a procedure that models conceptions of society and person" (PL, 107). Also practical reason, on Rawls's account, has two components: rational and reasonable.

Comprehensive morality as rational (as in Kant's formulation) is removed from the public forum and replaced by political morality (sensibility) as reasonable. Rationality only partly embraces the concept of the moral in the public forum:

> What rational agents lack is the particular form of moral sensibility, that underlies the desire to engage in fair cooperation as such, and to do so on terms that others as equals might reasonably be expected to endorse. *I do not assume the reasonable is the whole of moral sensibility; but it includes the part that connects with the idea of fair social cooperation.* (PL, 51) [emphasis added]

On the assumption of irreconcilable value pluralism in modern liberal societies, reasonability as a modern idea of tolerance of other people's moral values in a public forum emerges as the guiding principle of political deliberation. Rawls makes a very interesting point that fully rational agents in possession of metaphysical doctrines might not be reasonable enough to tolerate others[1]. So what does "reasonable" mean on Rawls's formulation?

> Reasonable persons, we say, are not moved by the general good as such but desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept. They insist that reciprocity should hold within that world so that each benefits along with others. (PL, 50)

With regard to the conception of the rational, Rawls believes that

> The rational is, however, a distinct idea from the reasonable and applies to a single, unified agent (either an individual or corporate person) with the powers of judgement and deliberation in seeking ends and interests peculiarly its own (...) Yet, rational agents are not limited to means-ends reasoning, as they may balance final ends by their significance for their plan of life as a whole (PL, 51)

In addressing the distinction between reasonable and the rational it is best to quote Rawls himself as this division is quite difficult to discern. O'Neill's in-depth reading of

---

[1] Making the virtue out of reasonability of the attitude of tolerance has been pushed to the extreme by the so-called perfectionist liberals such as Joseph Raz (1975, 1986) and Ronald Dworkin (1985, 1986).

Rawls points out that Rawls's understanding of the reasonable is modal rather than motivational in Kantian sense, i.e.,

> reasonableness is a matter of proposing and accepting only principles that others too can accept, but is not conditional on an assurance or expectations that they will do so. (PL&PR, 416)

So on Rawls's account the original position operationalizes Kantian categorical imperative in a maxim *"choose to act only on the principle that you could presume others could not reasonably reject."*

Interestingly, O'Neill's main line of criticism of Rawls's interpretation focuses not merely on the shortcomings of his distinction between reasonability and rationality, but rather on the situatedness of Rawls's conception of reasonability in a particular view of the public (or the public sphere). O'Neill takes on Rawls's interpretation of the methods of abstraction and idealization that were elaborated in Chapter 1. O'Neill believes that Rawls, by modifying his model of the public sphere as a closed democratic society, is not using the method of "considerable abstraction" (PL, 12) but rather the method of idealization. On O'Oneill's interpretation of Rawls

> the idea of a closed society is an *idealization* that assumes predicates which are false of all existing societies. (PL&PR, 419)

She goes further and claims that Rawls' conception of public reason is then not fully public in a Kantian sense. According to O'Neill

> in requiring the most general and basic uses of reason to be public in this demanding sense, Kant requires that they be based on principles which *any,* hence all, others, whatever their political and social identities may be, can follow. (PL&PR, 425)

So for O'Neill, the vindication of Kant's account of public reason

lies in the thought that reasons must be exchangeable among reasoners, hence that any reasons that are relevant for all cannot presuppose the contingencies of a particular social or political formation. (PL&PR, 427)

Let us now see if O'Neill's critique applies to Habermas's conception of public reason. Practical reason, in Habermas' conception, provides guidance about the proper choice of moral ends. Practical reason exercised by the participants in democratic discourse takes the form of what Georgia Warnke calls "idealized role taking." (Warnke, 201) The choice of the principles on which one should act should be based on the exercise of a purely Kantian categorical imperative, which in its general form claims that we should act only on those principles which we can will to be universal law. In Habermas's formulation that would take place in a communicatively-organized action whereby all participants act by taking into account all other participant perspectives. Originally, Habermas conceptualized practical reason in his model of an "ideal speech situation", which emphasized "ideal" rather than "idealized" (understood as an abstraction from the empirically present situation) role-taking in discursive conditions that were sufficiently general and reciprocal due to the lack of structural obstacles that stand in the way of actual, historical forms of communication in a public sphere. If such disrupting conditions were originally present in his model it would be impossible for Habermas's conception of practical reason to take a strong justificatory form. It should not then come as a surprise that Habermas spent most of his time as a sociologist and a philosopher on the analysis of what he calls systematically distorted communication patterns that he attributes to the degeneration of the general openness of the public sphere in capitalist welfare states. Habermas's formulation of the principle of publicity is then much more radical than Rawls's and is almost identical to Kant's:

In moral discussions the circle of those possibly affected is not even limited
to members of one's own collectivity. The moral point of view under which
policies and laws are subjected to a sensitive universalization test demands all the
more that institutionalized deliberations be open to the input of information, the
pressure of problems, and the potential for stimulating suggestions found in public
opinion. At the same time, the moral point of view transcends the boundaries of
every concrete legal community, giving one some distance from the ethnocentrism
of one's immediate surroundings. (FG, 183)

Habermas's stylized categorical imperative arising out of his conception of public

use of practical reason might be *"to act on the principle that you could will to be*

rationally agreed to by all participants in a certain kind of discourse." In Habermas's

own words the universalizability principle is:

For a norm to be valid, the consequences and side effects of its general observance
for the satisfaction of each person's particular interests must be acceptable to all.
(MC&CA, 195-216)

Clearly Habermas emerges from O'Neill's critique as more purely Kantian than Rawls.

1.2   Epistemic vindication of Habermas's view of public reason

The particular importance of the epistemic vindication arises together with the

ambition to resurrect transcendental deductive reasoning in moral philosophy. Habermas

does not want to rely on constructivism or contractualism as a means of operationalizing

his version of practical reason. Instead of trying to construct a Kantian-based decision

procedure in ethics as Rawls tries to do, Habermas decided to follow a transcendental

project of justification.

Discourse ethics is a project to ground moral norms in communication. It is a

certain procedure of moral argumentation that is originally based on transcendental

assumptions about the possibility of human speech. Discourse ethics is cognitivist as it

admits that practical questions admit of truth in a way that it "conceives the rightness of

norms and commands on analogy with the truth of an assertoric statement" (321). Discourse ethics is deontological as it is concerned with establishing normative validity of commands of action (MC&CA, 321). What is most important, though, is the fact that in discourse ethics there is not much tension between the intelligible and the empirical as *"everyday communication"* gives "the factual force of counterfactual presuppositions" (326). As such the transcendental claim is an obvious condition of intelligibility of human speech.

As we can see, Habermas's claim of superiority of his operationalization of practical reason relies on the positive answer to the question of whether it is possible to attribute truth values to moral propositions of public reason. Rawls abandons this ambition due to his concessions to the political view of justice. Since political institutions and laws are imperfect, the forms of political discourse are imperfect and cannot admit of whole comprehensive truth. Habermas differs with Rawls on this point.

Since Hume, finding the bridge between *is* and *ought* has been of never-ending concern for philosophers. In Habermas' version of public reason, all participants weigh the validity of their respective normative claims. Habermas believes that validity claims(true, wrong) are not only applicable to facts but also to norms. He in fact accepts a (not uncontroversial) pragmatic conception of truth[2] proposed by C.S. Peirce.

For Habermas

---

[2] The standard definition of truth in formal languages was proposed by a Polish logician Alfred Tarski. It was a resurrection of the correspondence theory of truth. It is important to note that Tarski was skeptical about the application of his theory of truth to natural languages. Habermas is of course concerned with natural language which deals with "questions of normative validity in the performative attitudes of the participants" (FG, 6).

Peirce explains truth as ideal assertability, that is, as vindication of a criticizable validity claim under the communication conditions of an audience of competent interpreters that extends ideally across social space and historical time (FG, 15)

Validity claims can orient themselves to norms expressed in our performative attitudes via speech acts.

Habermas's conception of practical reason depends to a high degree on the idea that speech or communication (understood as a form of social action) is always oriented towards understanding (its "telos", as Habermas himself puts it) . He calls such a conception of practical reason "communicative reason". At this point it is imperative to sketch Habermas's theory of communicative action without which it would be impossible to understand Habermas's criticisms of Rawls's supposed lack of concern for the epistemic status of his original position and overlapping consensus.

In his essay "Social Action and Rationality" Habermas singles out four conceptualizations of action. The first one is teleological action, understood as fundamental, goal-oriented and serving to develop rational strategies in decision making. This model is used in contemporary game theory in economics and rational choice theory in political science, for example. Most notable here is its attachment to the idea of goal-oriented rationality -- a concept developed by Max Weber in his own analysis of social behavior. Weber, in his conception of the link between social action and rationality also developed a four-tier approach in his analysis. Apart from goal-oriented rationality, he conceptualized value-oriented, traditional and affectionate forms of rationality. Weber's influence on Habermas' thought is obvious here.

Normatively regulated action is the second conception of action. It explains the roles of social actors in their cultural settings. Social behavior is guided by agreement to

comply with the norms embedded in a given social environment. The third concept is that of the dramaturgical action, developed by symbolic interactionists (Goffman), oriented towards explaining how a person presents himself/herself in front of the larger public. Finally, Habermas introduces the concept of communicative action, which is an elaboration of Mead's philosophy contained in his *Self, Mind and Society* as well as in later developments in the ethnomethodology of Garfinkel.

George Herbert Mead was a philosopher who turned his attention to language as the constitutive factor in the formation of self and society. In Mead's model the self develops first by playing out parental roles observed in the family, then by participating in games with colleagues and then by developing a self-image in the professional (and generally public) environment. The "me" of the developed self is the set of gestural and linguistic representations of the group that the self becomes a part of. The "I" is the subject's reaction to his observed "generalized other". The formation of the society operates on similar grounds by establishing socially linguistic norms. Nevertheless, Mead's theory of self-formation and his concepts of society by the means of generalizing linguistic interactions is not a dynamic one. It does not investigate the hidden assumptions of intersubjective linguistic interaction. It is for that reason that Habermas turns to ethnomethodologists for inspiration. Garfinkel's sociological research was based on investigating rationality patterns contained in everyday communicative practice. By disturbing implicit assumptions in conversation, on which every one of social actors operates, he sought to discover the binding factors behind the stability of social structures. Garfinkel's analysis complemented the static analysis of Mead, and went beyond purely descriptive considerations. Observing the reactions of interlocutors whose basic

assumptions of meaning were challenged, Garfinkel could infer the power relations between people and their relation to the social phenomena and social structures that surrounded them. Nevertheless, to make his concept of communicative practice theoretical and epistemologically justified Habermas turned to the analytic tradition of ordinary language philosophy of Wittgenstein and Austin.

Austin's theory of speech acts incorporates the concept of action into the communicative practice. He divides speech acts into locutionary, illocutionary and perlocutionary ones. Respectively they are characterized by Habermas as "to say something, to act in saying something, to bring about something through acting in saying something" (SR, 159). The last two forms of speech acts need an explanation. Illocutionary would for example consist of the acts of promise of a certain action; a clause such as "I will hereby give it to you" could serve as an example here. Perlocutionary act such as "Run!" would elicit an effect on a hearer.

Habermas is mostly interested in social action that is oriented towards understanding. For him "reaching understanding is the inherent telos of human speech" (SR, 158). Such type of action, as opposed to actions oriented towards success in forms of instrumental and strategic actions, is communicative action. Putting aside problems with the demarcation criteria for precisely distinguishing between illocutionary and perlocutionary, Austin's speech-act theory lies at the basis of the communicative action model:

> I have called the type of interaction in which *all* participants harmonize their individual plans of action with one another and thus pursue their illocutionary aims *without reservation* 'communicative action'. (SR, 163)

Habermas is concerned about not binding speech acts to any particular institutional

context as Austin did in ascribing perlocutionary acts to social actions such as appointments, religious practices and others. As we can see, Habermas's skepticism about Austin's ascription has consequences for Habermas's discourse ethics. For Habermas the concept of the "ideal speech situation" in which the ideal necessary conditions for reaching agreements about validity claims is central to his ethics.

The most important strength of Habermas's formulation of practical reason in a public forum springs from his study of social action. Recognizing that "understanding is the inherent telos of human speech" and (after Austin) that communication has locutionary force that mobilizes social action, Habermas provides his ethical theory with powerful foundations arising directly out of the theory of communicative action. As opposed to Rawls, Habermas is less concerned with the exact operationalization of decision procedures in ethics because the justificatory strength of his discourse ethics lies less in the method and more in his theory of action. Rawls, on the other hand, is much more bound to his original position and the concept of reflective equilibrium as they provide him the "constructivist" method for the establishment and respective ordering of his principles of justice. It is unfortunate that Rawls did not pay too much attention to the patterns of social action, as it led his "original position" (especially before the arrival of his *Political Liberalism*) to be described as one more asocial and instrumental collective choice model. Although Rawls's invocation of the original position can be seen merely as the device of representation in which conjectures about the binding political principles first arise and are then further revised by the process of reflective equilibrium, he does not provide an elaborate idea of societal reflective equilibrium, as opposed to Habermas's painstaking attempts at building his theory of communicative action that in a way is a sociological

excursus on the process of reaching rational reflective equilibria in democratic societies. The idea that Habermas is less methodologically bound than Rawls will be important when the evaluation of the attack on the methodologies of both Habermas and Rawls by Seyla Benhabib is considered.

2. Conclusions to chapter 3

Habermas's concept of practical reason comes closer to Kant's when O'Neill's critique is also applied to Habermas. Yet notwithstanding the analysis in this chapter, it is difficult to judge Rawls's and Habermas's conceptions of public justification on purely Kantian grounds. One can follow Onora O'Neill's project of investigating the relative purity of Rawls's and Habermas's appropriations of Kant by carrying out a project of what might be called "providing Kant's solutions to Kantian dilemmas". That tactic would provide only partial answers to the debate between Rawls and Habermas. One could just argue Kant's doctrine in its original form. Obviously Kant's operationalization of practical reason could be regarded as superior (read: purer than) both Habermas's and Rawls's. But is it what is at stake here? This essay set out on the journey to investigate forms of practical reasoning by both thinkers and their justificatory strength. Yet, I dare to say, it would be a mistake to judge the justificatory strength of Habermas's and Rawls's conceptions of justice solely by the standards of its original influence -- Kant's ethics.

Kant's ethics proved vulnerable to a lot of *rational* (as opposed to traditionalist or post-modernist) criticisms, especially from Hegel and his followers, including Marx. As Seyla Benhabib claims, Hegel seriously shook the enterprise of political philosophy as a free-standing enterprise. Hegel could be claimed to be the first social scientist among political philosophers.

So the other route to evaluate the relative robustness of Rawls's and Habermas's conceptions of practical reason as public reason, as well as their attempts to model public justification, would be to test their accounts not by the tribunal of scholastic puritanism but rather by the tribunal of more radical critique. We can then proceed to investigate whose account better stands the critical assault of Kant's most formidable critic in the German tradition -- G. W. F. Hegel. The suspicion is that the purer Kantian theory might stand Hegel's critique better than the contaminated one. I call this type of justification test a "comprehensiveness check."

I will start with a typical neo-Hegelian critique carried out by Benhabib and Lukes. I suspect that a Hegelian critique does not affect equally negatively both Habermas's and Rawls's projects. Finally I try to find an answer by analyzing the communitarian, democratic, post-Hegelian[3], critique of liberalism. Here I find Habermas's defenses much stronger than Rawls's. A word of caution is needed though. Introducing strong modifiers as "left" and "right" (or "democratic" and "conservative") introduces ideological divisions that can hardly be operationalized as relatively non-partisan philosophical critiques. Michael Walzer's critique is most appropriate for my purposes as his democratic theory of complex equality can be oriented within the "in-house" enterprise of political philosophy of liberalism.

---

[3] I divide the communitarian critique with regards to its legacy into four groups: 1) Aristotelian critique of Sandel and MacIntyre, 2) neo-Hegelian critique of S. Benhabib and S. Lukes, 3) democratic post-Hegelian critique of M. Walzer, and B. Barber, and 4) conservative post-Hegelian critique of R. Scruton, for example.

CHAPTER 4

Radical critique as the comprehensive test of public justification in Rawls's and Habermas's political philosophy

1.   Hegel's critique of Kant -- an introduction

Hegel criticizes Kant on three points. First, Hegel criticizes Kant for the so called "impotence of mere ought".   For Hegel *ought* does not imply *can*. My moral obligation to tell the truth is often impotent without taking into account my circumstances and my environment. Secondly, Hegel claims that one maxim of action can be embodied in a variety of performances.   Seyla Benhabib calls this critique the contextualization critique of moral principles. The third most important critique is Hegel's invention of the dialectic of form and content. For Hegel, on Benhabib's reading, "if the universalizability procedure is interpreted as one of non-contradiction, on this basis alone we cannot decide among different normative contents" (CNU, 75) unless we add some material considerations. Of course Kant could not accept this critique as the introduction of human needs into his formal model would lead to heteronomy.[1]

The following sections will present contemporary neo-Hegelian critiques of contemporary neo-Kantian projects, as well as some particularist critiques which take their root from Hegel but which present an even more radical critique of any type of universalism. Walzer's critique requires from a reader some knowledge of the substance of the liberal-communitarian debate that started after Rawls's publication of his first book. Oversimplifying the very varied camp of communitarian critics, communitarians were mainly concerned with the dangers of applying abstract principles when analyzing

the issues of justice and legitimacy. In this regard communitarians such as Walzer can claim some Hegelian ancestry on a very basic level of analysis.[2] The chapter will end by the evaluation of the Kantian legacy in liberal conceptions of public reason after the particularist critique.

1.1 Neo-Hegelian attack on neo-Kantian liberals: Seyla Benhabib and Steven Lukes

Seyla Benhabib criticizes both Rawls's and Habermas's justificatory procedures. She argues that both "counterfactuals" – original position and the ideal speech situation – are flawed by a dialectic of "formal-procedural constraints" and "substantive-material assumptions". In other words both thinkers' methods are circular, as even weak forms of procedural arrangements contain substantive presuppositions they are supposedly trying to elucidate. Benhabib's article was written in 1982 and both Habermas and Rawls have managed to accommodate some of her criticisms.

To illustrate the accommodation of Benhabib's critique I will first show Benhabib's view of Rawls's "original position" as formally too weak to accommodate strong assumptions of the normative content of his *Theory of Justice*:

> Upon Rawls's admission, the criteria of selection guiding the description of the original position are not minimal and general; they are strong moral assumptions whose plausibility depends upon their *hermeneutic* capacity to *interpret* for social and political agents an answer to a certain impasse in their culture. (…) Given the admission that the original position formulates the conditions of *reasonable* rational consent (…) then it cannot be said to interpret the conditions of rational consent *simpliciter*. (MI, 56-57)

Nonetheless, Rawls of *Political Liberalism* now admits that his original position is a

---

[1] Autonomy is achieved when reason operates without recourse to material (empirical) assumptions; heteronomy (introduction of these assumptions) destroys the transcendental project

[2] For a concise analysis of this huge debate see Swift and Mulhall (Eds.) *Liberals and Communitarians*. Cambridge: MA, Blackwell, 1992.

revisable illustration of the normative principles of his theory and thus escapes Benhabib's critique of the supposed dialectic of form (supposedly instrumental understanding of the original position as a rational choice situation[3]) and content (the referential real ethical community -- *Sittlichkeit)* present therein. Rawls explicitly denied his assertions from *Theory of Justice* on the supposed rational-choice theoretic assumption of the original position. Still, by claiming that the doctrine of reasonability can provides a basis for public justification, Rawls admits that it is part and parcel of practical rationality and thus admitting of rational public justification on condition of its authority.

Habermas's "ideal speech situation" is a bit more difficult to modify under Benhabib's critique than Rawls's original position as it claims to elucidate transcendental rational assumptions about human speech. According to Benhabib, it suffers from a flawed "notion of an ideal community of reconciled intersubjectivity" (MI, 69). For Benhabib, the counterfactual assumption of the possibility of a rational discursive resolve on the part of conflicting parties is naïve in real-life situations. It is important to note that Rawls can modify his original model of original position, as criticized by Banhabib, from a rational choice model to a model operationalized on another level, that is reasonability rather than rationality (distinction elaborated in Chapter 2), whereas Habermas cannot. Habermas is distrustful towards Rawls's distinction between reasonable and rational as

---

[3] Onora O'Neill quite skillfully fends off criticisms of Rawls that attack his supposed instrumental rationality. She says "For Rawls's underlying conception of reason is not merely instrumental; rather it is the conception embodied in his account of reflective equilibrium, which is always defined by reference to a plurality, indeed to a community, and in many cases quite specifically by reference to a political community, for example, a community who share a liberal ideal of citizenship. (For these reasons I also do not think that Rawls's theory of justice in any of its formulations is fundamentally either individualist or monological). (O'Neill, 309)

the reasonable admits only partially of truth and as such does not form an adequate basis for public justification of his political principles of justice. The ideal speech situation is important as it describes the necessary presuppositions of the public use of practical reason understood as oriented towards understanding.

Nevertheless, by providing the public use of reason with *a priori*, not empirically grounded, necessary conditions for it to be fully public and justifiably binding on its users, according to Benhabib, Habermas endorses the supposed ideal of "self-transparent and self-identical collectivity" (MI, 71) that brackets from public view real conflicts (understood as ethical in Hegel's critique).

Steven Lukes makes a similar argument (1982) by stressing, like Benhabib, the Hegelian charge of ethical formalism. Lukes concentrates, almost exactly in the way Benhabib did, on third-person accounts of what kind of person would pass the test of, which for Lukes is quite an unimaginable counterfactual of the "ideal speech situation". His questions are ontological in nature. Lukes asks what kind of actors are involved in the process of reaching agreement about moral norms under Habermas's stringent counterfactual conditions of supposed ideal communities. For Lukes, neither real-life actors, typical actors defined by their membership in certain "conflict groups or their incumbency of roles" (Lukes, 139) nor ideally rational actors would provide the vindication of Habermas's counterfactual ideal of democratic community. In the first example of real life actors the counterfactual is too radical to include diversity of all ethical communities, and in the last example of ideally rational actors "counterfactual hypothesis emerges as vindicated but only because it has been so formulated that it must do so. Ideally rational people in an ideal speech situation cannot but reach a rational

agreement." (Lukes, 141)

Habermas answers these neo-Hegelian charges against his supposed unwarranted formalism by pointing out a distinction between justification and application of his procedure of discourse ethics. From a third-person point of view, the ideal speech situation is an ontological, not a cognitive idea. Understood in such a manner, indeed, there are no ideal speech situations. Nevertheless, Habermas takes pains to explain that his conception of communicative public reason has its origins in Kant's project of transcendental justification, which takes a first-person perspective on the determination of what I consider necessary pragmatic[4] assumptions in order to make myself and my interlocutors understandable to each other. Understood as a process of first person justification, Habermas does not regard his ideal speech situation as even an approximation of any practical discourse. But neither does he disregard real discourses (Walzer's "real talk"). All real discourses are distorted in a way that they are structured by particular social contexts in which they arise. Nevertheless, these are the only discourses to which one can *apply* the transcendental-pragmatic assumptions of discourse ethics. In other words

> Habermas now invokes neither the structures of an ideal communicative (speech) situation nor the actualities of a democratic process, *but the necessary conditions of a possible communicative situation.* (O'Neill, 311) [emphasis added]

These Kantian conditions of communication "tempts one to improperly hypostatize the system of validity claims on which speech is based" (FG, 323). Habermas's

---

[4] "Pragmatic act" is understood as referring to the act of speaking. Habermas builds upon Apel's project of transcendental pragmatism which tries to ground practical reason in a transcendental-deductive fashion by elucidating *a priori* conditions for human speech. For a detailed formal presentation of the transcendental-pragmatic argument see J. Habermas. *Moral Consciousness and Communicative Action* and *Justification and Application.*

interpretation of idealized conditions for reaching understanding does not detach discursive processes of reaching from the bases of communicative action but reckons on their being situated in lifeworld contexts. In short, it does not abstract from the "finitude" of communicative social relations. Thus the conditions that *enable* communicative socialization must not be mistaken for contingently imposed *constraints* (FG, 323).

It is then imperative to reject Benhabib's diagnosis that Habermas's "counterfactual theory of discourse can hardly fulfill the critical intentions of his sociological theory" (MI, 49) on the assumption that Habermas's conception abolishes not only structural constraints on communication but virtually all conflict and pluralism of values and biographies from his society. Habermas's answer also rebuts Lukes's charge that Habermas does not manage in his own bold words to "vindicate the power of discursively attained, rational consensus against the Weberian pluralism of value systems, gods and demons" (Habermas, 1973).

Benhabib went further and applied her neo-Hegelian critique to yet another dialectic found this time only in Rawls, that is the dialectic of "the relationship of sociological presuppositions to normative principles in counterfactual procedures" (Benhabib, 63). On Benhabib's account, normative assumptions of *Political Liberalism* with its emphasis on shared understandings (in reflective equilibrium) of Western, liberal *culture* in possession of highly autonomous political vocabularies are too strong to fit Rawls's very restrictive view of morality and the science of politics as such.

1.2 Post-hegelian communitarian critiques of Rawls: Walzer's concrete particularism

As the early criticism of Rawls has shown, the part of the liberal-

communitarian debate was fought on the instrumentalist grounds of traditional philosophy. The argument had an ontological basis and reduced itself into an abstract battle of classical and modern (Kantian) philosophies and ontologically-based moral theories of the self. Respective rejoinders of Rawls (in his book *Political Liberalism,* and the article "Liberalism Political not Metaphysical") and of William Galston *(Liberal Purposes)* have pointed to the fact that communitarian criticism can be effectively fought by liberals who abandon the metaphysical ambitions in their theorizing. This switch has even been welcomed by such pragmatists as Richard Rorty himself (see his "Priority of Democracy to Philosophy"). Realizing this philosophical detour of the liberals, who still claimed to retain their universalism although this time political in kind, the communitarians started to look for more effective methodological grounds in fighting their liberal opponents. They try to provide a hermeneutic in method, and particular and contextualized in exposition, bases for public justification of liberal-democratic principles.

Alasdair MacIntyre was the first communitarian philosopher who started to complement his neo-Thomist philosophical critique of liberalism with the methodological means of social criticism and interpretation. Nevertheless, it is Michael Walzer who presents an interesting and radical change in the methodological approach. His interpretation of modern liberal societies calls for attention, as it exhibits certain very important features that have emerged only quite recently in modern discourse. It can be claimed that Walzer, having realized weaknesses of communitarian attachments to pre-modern philosophy, has started a socio-critical turn in the communitarian argument

1.3 Walzer's methodological critique -- post-Hegelian warnings of hegemonic understandings of distributive justice

A subtitle of Michael Walzer's book *Spheres of Justice* carries the name *A Defense of Pluralism and Equality*. In his book, Walzer presents an argument for the plurality of conceptions of justice. He does it in response to Rawls's and Nozick's abstract accounts of liberalism. Walzer's main line of argument is focused on showing the ways in which modern society can liberate itself from the peculiar dominance of goods. He states that "domination is always mediated by some set of social goods" (Walzer, ix), be it money, possession of office or talents. He points out that in all our attempts at creating a truly egalitarian society the adopted measures have always turned against us as one set of social goods usurped its dominance over the other. This process is similar to the Hegelian historical dialectic. Even communism, that once widely-acclaimed philosophy of utopian egalitarianism, effectively sought to usurp power through an establishment of social over private good. Walzer's disenchantment with philosophies advocating universal, often singular and abstract theories of solving the problems of inequality led him to the conviction that they were not providing the right theoretical basis for evaluating our social environment. His disenchantment led to further conclusions about the philosophical methodology that has been used by Rawls and Nozick in constructing their arguments for fair and truly free societies. It is doubtful whether Walzer would use the terms "purposive" or "instrumental" rationality with respect to Rawls and Nozick, which are employed in much more radical critiques of the *Geisteswissenschaften* tradition. Notwithstanding, he would probably agree that (specifically) Nozick has used a theoretical model

of methodological individualism in his account of the justifiability of the minimal state. It is contentious whether Walzer would consider this methodology particularly hostile unless it supported universal claims as it actually does. So, in as much as methodology cannot escape adherence to philosophy, Walzer's account of justice as opposed to Nozick's and Rawls's does not aim at, nor is it based on, a universal argument.

"My argument is radically particularist" (Walzer, xiv), and as such it cannot be abstract and truly philosophical in a traditional sense. It is somewhat close to Hegel's way of argumentation at least in its anthropological intention. Walzer divides his book into sections, each section being indicative of one set of social goods. In a way, each chapter is a particularist description of how a particular set of social goods or a good can translate itself into a dominant factor shaping the politics of our liberal culture. Here Walzer manifests his attachment to certain post-Hegelian, specifically Gramscian, way of describing social reality as a dialectical relation between hegemonic forces of some sets of interests over smaller less vociferous interests.

Walzer's conception of distributive justice is then not a rationalization of our social behavior as Rawls and Nozick would like it to be, but rather a particular system of distribution governed by an arbitrary institutional arrangement of a particular set of goods. As such, it can be modified in a dialectical process of emancipation of one social good over another. Walzer does it very well in his discussion of meritocracy. He makes apparent how such at first sight innocuous goods as merit and talent can be translated into political power (Gramsci's hegemony) resulting in the subordination of other social groups that are in possession of "inferior" sets of social goods.

Let us now concentrate on one aspect of Walzer's particularist social methodology. I will examine Walzer's discussion of gift giving as an example of how he goes about presenting his argument in the methodological sense, but also of how his argument shows ways in which some cultures escape the dominance of one good, in this case that of money, over their social environment.

People are inclined to give gifts. They are present in all areas of social activity. In the Western society gifts are often unilateral and bear a connotation of selflessness and friendship. It would seem that under the system of simple equality propagated by liberals like Rawls gifts should not be the object of constraint. Nevertheless, Walzer's interpretive argument shows that the principle of simple equality and a singular conception of distributive justice would actually hinder free gift-exchange. In his account, Walzer distinguishes three spheres in which the gift is present. One is the sphere of money, where the gift is determined by the commodity. Another is the public sphere of the Trobriand Islanders, and finally there is the sphere of kinship (not public but having a bearing on a public sphere) in France under the Napoleonic Code.

Among the peoples of the Western Pacific gift exchange was not determined by the commodity. It belonged to the public, communal sphere. Kula -- the gift -- consisted of ritual objects like bracelets and necklaces. Those objects were to be in constant exchange. There was also no place for bargaining activity. Gift-exchange was binding and once started had to be upheld, hence the concept of the Kula relationship. There were a lot of restrictions on the Kula. It had to go in a circle, and giving of a gift had to be reciprocated in the future by receiving it. Gifts could not be held in constant possession,

and they were used to foster public trust, and to shape alliances. Kula was then much different from gimwali -- a proper name for what we simply call bargaining or trade. One should not fail to see how much can be inferred from Walzer' s use of Malinowski's study about his methodological inclinations.

In Napoleonic France there were several restriction on the bestowment of gifts and inheritance, because wealth was concentrated in the hands of one family or lineage. Unregulated bestowment of a gift on someone from outside the family could upset the sociopolitical balance of the country. Under this particularly applied principle of simple equality, owners of large fortunes were not at liberty to bestow their property on strangers.

For Walzer the limitations on gift-exchange, which after Mill he considers the most important determinant of full ownership, are the result of the improper role of money as a good, which often determines and shapes political power. If they were independent of each other, then even large and unequal redistribution of wealth would not have to be limited, which would in turn result in upholding true freedom and ownership. This is how Walzer provides us with a theory of complex equality, which has the purpose of easing the tension between the seemingly often-conflicting principles of freedom and equality in a liberal society.

1.4 Walzer's account of public justification

The interpretive and narrative method used by Walzer, although particularist, seems to have worked. The method has power in its demonstrative nature. It demonstrates the power of hermeneutic non-universal reasoning about determining the principles of justice in given communities. As such Walzer's method gives us some

account of hermeneutic justification of just distribution of social goods. Walzer's method also possesses some normative discerning power. In the particular case of gift - exchange it showed the dangers of overlapping spheres of certain social goods -- money and political power.

As we can see from the discussion, Walzer's argument is heavily influenced by critical narrative as a mode of exposition as well as is marked by the interpretive methodology. Such an approach has a bearing on the content of his argument, which is particularist and barely philosophical in the traditional sense. Yet Walzer's effective treatment of issues such as justification of just procedures and recognition of illegitimate distributive arrangements in his *Spheres of Justice* managed to maneuver the liberals into the pragmatist trap of liberal rejoinders.

Yet Walzer's method has serious limitations. It is merely descriptive. It does not give any account of reasonability of given examples of the principles of distribution. Walzer then does not provide an important vantagepoint from which the legitimacy of given social distributive arrangements can be judged publicly. Stephen Macedo went as far as labeling Walzer's method as non-theoretical conventionalism, the label that Walzer would probably not reject. Yet this label voices grave concerns about Walzer's romantic attachment to cultural relativism and value pluralism which does not admit of forceful conflict among them in contemporary polities.

2. Kantian responses: the clash of moralistic and realistic desiderata of public justification

At the end of his book Walzer makes explicit that we should "learn to live with the autonomy of distributions and (...) Recognize that different outcomes for different people in different spheres make a just society" (Walzer, 320). The question that can now

be asked is whether Walzer's particularist methodology can produce a sustained argument for the general theory of justice. Walzer indeed creates a theory of justice out of his particularist theory of complex equality, which makes imperative the tolerance of autonomous distributions through "the reflections in individual minds, shaped by also by individual thought, of the social meanings that constitute our common life" (Walzer, 320). Upon such understanding of justice, the idea of justification lacks the public dimension. The particular forms of distributive arrangements are justified by internalized processes of reflection upon one's cultural tradition.

Benhabib would argue from a purer neo-Hegelian perspective that Walzer interpretive methodology is too particularist and broad to be taken as an acknowledged philosophical tool. Walzer's methodology seems to be a philosophical contraption adopted ad hoc, and as such can be hardly acceptable among traditional theorists. What can be said is that Walzer presented a broad inductive argument shaped by using an arbitrarily conceived sociocultural/anthropological pool of particularized data.

Stephen Macedo in his book *Liberal Virtues* carries out a neo-Kantian critique of Walzer's argument, which he dubs as non-theoretical conventionalism. Macedo contends that Walzer's method of immanent critique "barely masks a general moral theory of liberal democratic politics which is every bit as 'philosophical' as its competitors" (Macedo, 21). In this Macedo criticizes Walzer for "heaping scorn on judiciary and philosophy" (Macedo, 21), while he is at the same time praising reflection and displaying appreciation of shared communal meanings, which are part of the political agenda of liberals. Walzer's argument seems to be criticized on both fronts, then. His social criticism is a far cry from the theoretical coherence of contemporary

social theorists such as Habermas and his philosophy for some seems to be a badly disguised liberal agenda.

In the course of the discussion of the early liberal-communitarian debate, apart from the clash of arguments, we could also observe a clash of methodologies that powerfully shape those arguments. The methodology of Rawls and Nozick is based on the method of traditional philosophic discourse, whereas Walzer uses a hybrid tool that balances between philosophy and sociology. Paying attention to criticisms of Walzer's approach, it can be argued that a communitarian agenda, in order to become effective in the argument against liberals has to be both strengthened theoretically in its embracement of interpretation and social-criticism, and more philosophically autonomous.

The discussion hopefully revealed some of the tension in contemporary understandings of public justification of liberal principles. Both Rawls and Habermas seem to have oriented themselves to the described tension.

CHAPTER 5

The disenchantment of practical reason -- concluding reflections on the viability of the uncontestable theory of public justification

Master thinkers have fallen on hard times.
This has been true of Hegel ever since Popper
unmasked him as an enemy of the open society.(...)
Though (...) there may still be a majority of scholars whose
image of Kant has stayed the same,
in the world outside his reputation is being eclipsed,
and not for the first time, by Nietzsche.

Jurgen Habermas. *Moral Consciousness and Communicative Action*

1.   **An unfortunate marriage of philosophical universalism and anthropological particularism: the examination of the legacy of Hegel's curse of the form-content dialectic**

I think that Habermas and to a definitely lesser extent Rawls, as well as other philosophers such as Charles Taylor, Michael Walzer, but also Sheila Benhabib, Georgia Warnke, Shane O'Neill, and various others have tried, in a more or less ambitious or explicit manner, to reconcile the unfortunate clash of reasonable intentions of Kant and Hegel with regard to the political philosophy of liberalism. Both Kant and Hegel were concerned with some measure of particularly-interpreted public justification. Kant wanted to create formal justification procedures which would categorically bind autonomous practical reason to practical conclusions about the content of maxims of moral conduct. Hegel, on the other hand, was concerned with consistency or the principle of non-contradiction of the principle of justification.   He wanted to develop a consistent set of material assumptions (the system of needs) that would link practical

reasoning about human action to the actual ethical contexts (the forms of ethical life or *Sittlichkeit)*.

Interestingly, Habermas, Rawls, Taylor and Walzer oriented themselves independently and in a very original manner to this tension, whereas the other aforementioned philosophers have tried to synthesize the intention of the four philosophers. These syntheses are interesting yet they reflect what I call the unfortunate marriage of ethical particularism and moral universalism.

Sheila Banhabib in her own project went from a pure Hegelian methodological critique of Rawls and Habermas (outlined in Chapter 4) to her own reconceptualization of discourse ethics by getting rid (under influence of Charles Taylor) of the moral-ethical distinction of Habermas, who on her account misunderstands Hegel's original distinction in *The Philosophy of the Right*. For Benhabib, disourse ethics is not purely deontological, as on the very abstract level it specifies what is good for the community of all human beings, e.g. justice and equality are good. It is still deontological as it does not provide a theory of the good. Benhabib places great value on the feminist critique of the private-public distinction. Benhabib sees no need to dismantle this distinction; rather she wants us to recognize that contemporary disputes of human rights guarantees in transnational politics (the recent wars in Bosnia or Kosovo, for example) are complex moral discourses that do indeed involve the conceptions of good life that bear upon the private sphere. The moral-ethical distinction in Habermas she considers a merely technical dodge in the face of criticism his ethics suffered from communitarian critics such as Taylor and MacIntyre.

Banhabib's as well as Georgia Warnke's and Shane O'Neill's projects try to complement Walzer's theoretically-deficient "defense of pluralism and equality" (Walzer, 1) and the equally deficient "Rawls's impartiality" (O'Neill S., 5) by a modified version of Habermas's discourse ethics, again admitting (as in Benhabib's proposal) of "heavier emphasis on ethical discourses in disputes about justice" (O'Neill, S., 9). Yet, these syntheses of Kant and Hegel add little to the clarity of justification procedures. The following account of the criticism of Walzer tries to show that particularism is in a way justified in its avoidance of theory of universal justification and that the attempts of creating synthetic universalist theories with ambitions for retaining the intentions of strong public justification further antagonize what has already been an uneasy tension in Rawls's and Habermas's philosophies of liberalism.

The criticism of Walzer's method is aimed at its methodological incongruity, and the lack of formal arrangements. Although Walzer regards himself as a social critic, he nonetheless distances himself from any attempt at social theorizing. In his book entitled *Interpretation and Social Criticism*, Walzer explicitly criticizes the traditional position of a social critic such as Amos, the prophet in the Old Testament, by saying that "It is a mistake, then, to praise the prophets for their universalist message." (Walzer, 93) As we can see, Walzer's particularist hermeneutics wants to have nothing to do with Jurgen Habermas, whose theories, like Rawls's, he dismisses as being too universalist. Moreover, I think, he does it to escape Alasdair MacIntyre's criticism of social theories, which as MacIntyre points out, are unable to quantify "Machiavellian Fortuna" into a statistical error (thus not coming up with law-like generalizations). Walzer is very

conscious of the danger of marrying Kant's and Hegelian intentions, as it might lead to fantastic idealizing assumptions and theoretical gymnastics.

Nevertheless, as I stated in the previous section, post-Hegelian social-criticism seems to have to universalize its message if it wants to become more effective in integrating its criticisms into the typical Kantian liberal agenda on the issue of public justification. The liberal claim that some measure of impartial adjudication among pluralities of world-views is indispensable in the modern world still seems very plausible. Yet some scholars doubt that it is possible, and they agree with Walzer that interpretation can only take the form of an immanent rather than a total or universal critical form. In *Hermeneutics as Interpretation* Stanley Rosen sets a powerful argument against any attempts at theoretical hermeneutic interpretation. Interestingly, the chapter "Theory and Interpretation" is opened by a forceful and honest assertion:

> Every hermeneutical program is at the same time a political manifesto or the corollary of a political manifesto. (Rosen, 141)

In the end, though, Rosen states that "amid the plethora of hermeneutical theories, what it means to be a theory is a matter of interpretation" (Rosen, 160). Does it indicate that Walzer is right in his persistent negation of hermeneutic theory? The post-Hegelians are faced with a dilemma. They have to either disregard Rosen's pessimism about universal hermeneutics or keep on searching for a particularist answer to a universal question of the viability of liberalism. As I have tentatively tried to show in this conclusive chapter of the essay, disregarding Rosen's claim might be a dangerous enterprise if one wants to retain even minimal statements that some forms of political action can be considered more legitimate or possess more rational authority than others. Let me bolster my disenchantment with the attempts to complement Habermas's critique of Rawls with

another much more comprehensive account of an attempt at creating a "concrete universal" theory of public justification.

2. Dangers of the excesses of post-Hegelian thought -- the case of Amitai Etzioni

What is in place is the elucidation of some dangers of post-Hegelian theorizing understood in positive (constructive) rather than negative (critical) manner. Hegel's critique when taken in separation from its relation to Kant's moral philosophy turns into post-Hegelian sociological critique. Taking its roots from the Marxist materialist interpretation of Hegel, but also from various functionalist schools, the post-Hegelian sociological critique attacks the very epistemological basis of liberalism. What is meant by the materialist interpretation of Hegel is Marx's development of Hegel's idea that individuals are dependent upon the grander developments of history. Marx did not share Hegel's idealist interpretation of history as Spirit but he nevertheless adopted Hegel's preoccupation with the context of history as defining the fate of human beings. Marx is famous for his thesis that it is social existence that determines a person's consciousness, not vice versa. This particular thesis of the individual's dependence on his environment Popper calls the thesis of the autonomy of sociology (Popper, 89). Popper sees a sociological perception of human existence as utterly pernicious and influenced directly by Hegel's romantic theories of the state and the nation.

Apart from the ontological differences, the clash between a typical epistemological point of departure for a philosopher (a solipsistic question "what can I know?") and a sociological one ("what does a society need to maintain itself?") is the formalist crux of the debate among liberals and post-Hegelian sociologists today. One of the most avid proponents of the post-Hegelian sociological critique, Etzioni, is a

supporter of the functionalist account. In one of his methodological notes to his most recent book *The New Golden Rule* Etzioni says:

> the paradigm developed here to explore the good society differs from many others in that it is more sociological, and thus empirical, and less normative (less prescriptive). (Etzioni, 5)

Going further, Etzioni unabashedly exposes his collectivism, asserting a typical communitarian social constitution thesis:

> communitarians have shown that individuals do not exist outside particular social contexts, and that is erroneous to depict individuals as free agents. We are social animals, members in one another. (Etzioni, …)

Now, Etzioni' s functionalism apparently avoids the charge of maintaining the status quo.

Etzioni says:

> The functional paradigm applied in this book assumes that while certain needs are universal to all societies, there are always alternative responses. Societal needs do not dictate the specific ways a society must be designed; they only serve to indicate that satisfying basic societal needs - in one way or another - cannot be ignored, and that some ways make for a better society than others. (Etzioni, 7)

How does a post-Hegelian sociological critique fare when elucidating its answer to the question of public justification of liberal regimes? Obviously, sociological justification is that of satisfying social basic needs. Society is understood as a static system (especially in the sociology of Parsons) whose maintenance is regulated by technocratic institutions (among others). Clearly such a conception of justification can hardly be called public. It does not grant individual autonomy (rather it grants autonomy to collectives), is dubious about the assertion of minority rights, lacks deliberative capacities, and is hardly reflexive on a personal level of rational reflection. As such, Etzioni's model of public rationality is in need of prior justification of the functionalist method it uses.[1] Etzioni is a perfect

---

[1] For a systematic critique of functionalist accounts of rationality see Habermas, J. *The Theory of Communicative Action.*

ι

example of an unfortunate marriage of liberal universalism and Hegel's contextualism, and should make philosophers wary of Kantian-Hegelian synthesis.

Epilogue: Habermas and Rawls through the lense of philosophy of science

In previous chapters, I have indicated that Habermas' modest critique of Rawls better sustains Kant's intentions as to the practical authority of reason used in publicly justifying (or legitimizing) at least some core principles of liberal-democracy. Habermas better stood the tests of Kantian purity and Hegel's radical critique.

I will briefly re-sketch here in a bit more sharpened detail the modes of public justification in Rawls' account of political liberalism and Habermas' account of discourse ethics. I will do it for the purpose of addressing the question of public justification on a philosophical level that goes beyond the in-house or familial critique of Kantian and Hegel's interpreters. This will be done by the very brief evaluation of Fred D'Agostino's very illuminating work on public justification in contemporary political theory from the standpoint of the philosophy of science.

The in-house debate within the liberal-democratic tradition of political philosophy can be quite aptly called a meta-debate as it has developed, maybe even inadvertently, into the battleground of methodologies. It has been observed that in the attempt to accommodate hermeneutic methodology adopted by the democratic post-Hegelian camp, the neo-Kantian liberals turned to the devices of either pragmatism understood as purely political interpretation of the issues of justice (Rawls) or the theories of intersubjective agreement grounded in natural language philosophies and supplemented by cognitive-developmental psychology (Habermas). The consequences of introducing these anthropological and empirical-physiological themes for the project of

forming a publicly justified form of liberalism are very portentous. By a publicly justified form of liberalism (or justificatory liberalism in Jerry Gaus's words) I understand attempts to treat the questions of justice and legitimacy in politics as questions that admit of reasonably justified (at least on a public level) unequivocal answers. It is exactly from the standpoint of providing unequivocal answers to political questions of justice and legitimacy (public justification on my understanding of the term), that I consider the consequences of Kant's metamorphoses in Rawls and Habermas as portentous. Both, Habermas and Rawls realize that it is the irreducible fact of value pluralism in modern societies that makes philosophy unable to answer the question of "how should I live?" in a way that can be valid for everyone. Yet both of them hope to find a place for philosophy to find *publicly justifiable* answers to moral questions of justice and legitimacy.

Rawls revisited

Rawls has made a painstaking attempt to sustain this promise of the absence of moral equivocation on the level of politics, originally shown in Kant's categorical imperative, by conceiving practical reason on the grounds of supposedly minimal assumptions about reasonability – i.e., reasonability related to Rawls's particular conceptions of person and society. These assumptions about reasonability are demonstrated by reflective equilibrium, that is by the process of personal elucidation (by you and me) of the publicly shared conception of what fair political procedures are in society, understood on "a reasonably abstract" level as a democratic society of citizens. Nevertheless, as Onora O'Neill has tried to show, "Kant's account of public reason accordingly differs in numerous respects from Rawls's more Rousseauian conception, in

which public reason is identified with citizens' reason" (PL&PR, 423). For O'Neill, Rawls abandons Kant's justificatory project, as Kant's project is "mute on the question [of] *actual* or even a *hypothetical* convergence of wills" (PL&PR, 428) and instead of viewing justification in a form of consensus Kant actually "allows that a consensus (...) be iniquitous" (PL&PR, 428).

Habermas revisited

Habermas has also not been satisfied, on similar grounds to O'Neill's, with Rawls's attempt to save the universalist intentions of Kant's practical reason in the form of the fictive original position and reflective equilibrium. Once again, the original position is a contractual interpretation that supposedly *must* be assumed by anyone concerned with a basic conditions of fairness ("basic structure" or "constitutional essentials") in any political society. Reflective equilibrium is a position from the actual point of view of flesh and blood citizens who reason

> how well the view as a whole our more firm considered convictions of political justice, at all levels of generality, after due examination, once all adjustments and revisions that seem compelling have been made. (PL, 28)

Habermas criticizes Rawls for the lack of formal rigor in this definition. Habermas asks Rawls what he means exactly by the process of "due examination" and making "adjustments and revisions *that seem compelling*". Habermas's discourse ethics claims that it operationalizes the procedures implicitly contained in reflective equilibrium. Instead of relying on the view of consensus with weak cognitivist claims on attaining "truth" in reflective equilibrium, Habermas proposes much stronger deontological claims on issues of justice and, specifically, legitimacy. By a stronger deontological claim Habermas means a project that "hold[s] the view that normative rightness must be

regarded as a claim to validity that is analogous to a truth claim" (in Beiner, Booth, 321). Habermas claims that Kant's categorical imperative "plays the part of a principle of justification that discriminates between valid and invalid norms in terms of their univesalizability"; in other words "what every rational being must be able to will is justified in a moral sense" (B, B, 321).

D'Agostino's functional analysis from the standpoint of philosophy of science

D'Agostino approaches the debates about public justification among Habermas, Rawls and other philosophers (Gauthier, Gaus, Ackerman) from the standpoint of the philosophy of science. His book is in a way a contribution to the development of a pluralistic account of value.

D'Agostino places the various conceptions of public justification among the polar dimensions of consensual/convergent, positive/negative, volitional/negative, direct/indirect, economic/political, prior/posterior, interactive/non-interactive spectra of vindicative justificatory principles. These spectra are then functionally placed under the jurisdiction of two so-called classes of desiderata, which provide the list of requirements that D'Agostino considers " "natural enough" in relation to the project of public justification" (D'Agostino, 56). The moralistic desiderata are universality, independence, transparency, reflexivity and determinacy. The realistic desiderata – which are often in conflict with the moralistic desiderata – are universality, salience, intelligibility, stability and determinacy. This rather complicated categorical framework allows D'Agostino to evaluate the questions of what the best conception of public justification might be. In his study of Rawls, Habermas and other contractualist philosophers, D'Agostino concludes that each conception fails some part of either moralistic or realistic desiderata, thus

diminishing hopes for the solubility of the problem of public justification and establishing the case for "essential contestability of the concept of public justification" (D'Agostino, 89) as such.

In relation to D'Agostino's work, it is Habermas, not Rawls, who sees the philosophical enterprise as a truly intersubjective practice of sciences and philosophy. Apart from formalizing what in practice is a cognitively more robust reflective equilibrium, Habermas also views his project as testable. Rawls is not very clear on this view. For Rawls, the particular conception of political liberalism is testable as to its public justifiability by the public of citizens in their everyday engagement in a process of wide reflective equilibrium. Rawls considers more important the actual citizens' subjective perceptions of what is a just "basic structure" of society. The interpretive activity of reasoning citizen arriving in public with other citizens at normative agreement about the principles of justice in the reflective equilibrium is just taken for granted by Rawls. It is not so in the case of Habermas. Habermas claims that

> Discourse ethics, like other reconstructive[2] sciences, relies solely on hypothetical reconstruction for which plausible confirmation must be sought. (...) A theory of this kind is also open to, indeed dependent upon, *indirect* validation by *other* theories that are consonant with it. (MC&CA, 116-117)

What kind of a picture is being painted by reflecting on the methodologies of Habermas, Rawls and Walzer? It is definitely that of the contentious status of social sciences as such. The debate between Habermas and Rawls and to some extent Walzer

---

[2] The subtle distinction between constructivism and reconstructivism is simply based on the fact that in constructing a moral theory a philosopher has to rely on hypothetical assumptions (rather than abstractions *simpliciter*) that can be empirically tested. Reconstruction then rejects thought-experiments and replaces them with testable philosophical hypotheses.

brings about echoes of not so recent battles between Popper's "critical rationalism" and the German tradition of the *Geisteswissenschaften*. The famous "positivism debate" between Habermas and Popper in the Sixties and earlier debates between Popper and the sociologists of knowledge described in Popper's book "Open Society and its Enemies" are probably the roots of the Habermas-Rawls v. communitarian debate on its bare, most theoretical level. What takes precedence in the theoretical determinations of the foundations of socially scientific knowledge: science or "sociologism," nature or history, methodological individualism or various forms of functionalism or methodological collectivism? These questions bear heavily on debates about public justification of theoretical systems of value such as the theories that have been under scrutiny in this essay, and the justificatory project on both sides of the debate awaits a solution. For, as John Gray says in one of his essays, liberalism is not a scientifically justified doctrine. Mill, Rawls, Hayek -- all fall short of the proof for the liberal principle. If this is so, then liberalism has been simply a historical phenomenon with a bag of literature on its back.

Communitarian critique that avoids Hegelian excesses is then justified (in the oblique sense of being equally privileged) in bringing about its own conceptions of public justifications. Walzer's critique is an attempt of a pragmatic philosopher to appropriate sociological methods in the philosophical search for justice, that he brings what has been considered "low" communitarian critique to the higher level of abstract speculation.

Let me end the epilogue with a quote from D'Agostino who captures the intrinsic difficulty of Kant's original project of rational public justification:

> On the one hand, public justification does seek some distance from people's actual 'reasons', in search of *genuine justification* rather than *specious rationalization*. On the other hand, publicly justificatory arguments are meant to have an impact on the individuals which they target, and, in particular, to give them motives as well as reasons for conformity (or otherwise) to the demands they are subject to. Unfortunately, there is *prima facie* incompatibility between these dual demands. To the extent that a given course of reasoning satisfies the demands for 'normative distance', to that extent it is likely to fail to meet the demands for motivational impact. In fact, there is a catalogue of such incompatibilities. (D'Agostino, Stanford Encyclopedia of Philosophy)

This intrinsic difficulty is in a way the motto of this essay contained in its title: *Modesty and Excess in Contemporary Philosphical Critique.* Throughout the essay I have implicitly argued the claim that Rawls' political philosophy of liberalism and the radical critique of neo- and post-Hegelians are D'Agostino's polar opposites of 'normative distance' (Rawls' "considerable abstractions" of person and society) and 'motivational impact' (Walzer's, early Benhabib's and Lukes' purely context-motivated political behavior). In face of this tension I have tried to argue for a modest critique of Habermas rather than an excessive critique of his neo- and post-Hegelian opponents (early Benhabib, Lukes, Etzioni) and interpreters (late Benhabib, Shane O'Neill, Georgia Warnke).

BIBLIOGRAPHY

Adorno, T. W., and Horkheimer, M. *Dialectic of the Enlightenment.* Translated by John Cumming. New York: The Continuum Publishing Company, 1993.

Benhabib, S. *Critique, Norm and Utopia.* New York: Columbia University Press, 1986

_____. "Deliberative rationality and Models of Democratic Legitimacy" in *Constellations* Vol.1 No.1, 1994.

_____. *Situating the Self.* New York: Routledge, 1992.

_____. "The Methodological Illusions of Modern Political Theory: The Case of Rawls and Habermas" in *Neue Hefte Philsophie* Vol.21, 1982.

Baynes, K. "Liberal Neutrality, Pluralism, and Deliberative Politics" in *Praxis International* Vol.12 No.1, 1992

_____. "The Liberal/Communitarian Controversy and Commnicative Ethics" in David Rasmussen (Ed.) *Universalism vs. Communitarianism.* Cambridge, MA: The MIT Press, 1990.

D'Agostino, Fred. *Free Public Reason: Making it up as we go.* New York, Oxford: Oxford University Press, 1996

Donagan, A. *The Theory of Morality.* Chicago and London: The University of Chicago Press, 1977.

Dworkin, R. *A Matter of Principle.* Cambridge, MA: Harvard University Press, 1985.

_____. *Law's Empire.* Cambridge, MA: Harvard University Press, 1986.

Etzioni, Amitai. *The New Golden Rule : Community and Morality in a Democratic Society.* New York : BasicBooks, 1996.

Galston, William. Liberal Purposes. Cambridge: Cambridge University Press, 1991.

_____. "What is Living and What is Dead in Kant's Political Philsophy?" Beiner and Booth (Eds.) *Kant and Political Philosophy.* New Haven and London: Yale University Press, 1993.

Gray, John. *Endgames : questions in late modern political thought.* Malden, MA, Blackwell, 1997.

_____. *Isaiah Berlin.* Princeton, NJ: Princeton University Press, 1996.

O'Neill, Onora. *Constructions of Reason.* Cambridge: Cambridge University Press, 1989.

_____. *Towards Justice and Virtue.* Cambridge: Cambridge University Press, 1996.

_____. "Political Liberalism and Public Reason: A Critical Notice of John Rawls, *Political Liberalism* in *The Philosophical Review.* Vol. 106 No. 3, 1997.

_____. "Practical Reason and Possible Community" in *Ratio Juris* Vol.7 No.3, 1994.

O'Neill, Shane. *Impartiality in Context: Grounding Justice in a Pluralist World.* Albany: State University of New York Press, 1997.

Popper, Karl R. *The Open Society and its Enemies.* London : Routledge & K. Paul, 1952.

Rawls, John. *A Theory of Justice.* Cambridge, Massachusetts: The Belknap Press of Harvard University Press' 1971.

_____. *Political Liberalism.* New York: Columbia University Press, 1993.

_____. "Reply to Habermas" in *Journal of Philosophy.* Vol. 92 No. 3, 1995.

_____. "The Idea of Public Reason" in Bohman J. and William Rehg (Eds.) *Deliberative Democracy.* Cambridge, MA.: The MIT Press, 1997.

_____. "Themes in Kant's Moral Philosophy" in Beiner and Booth (Eds.) *Kant and Political Philosophy.* New Haven   and London: Yale University Press, 1993.

Raz, Joseph. *The Morality of Freedom.* Oxford, UK: Clarendon Press; New York : Oxford University Press, 1986.

Rehg, W. *Insight and Solidarity -- A Study in the Discourse Ethics of Jurgen Habermas.* Berkeley, CA: University of California Press, 1994.

Rorty, Richard. *Contingency, Irony, and Solidarity.* Cambridge University Press, 1989.

_____."Priority of Democracy to Philosophy". In *Objectivity, Relativism, and Truth.* Cambridge: Cambridge University Press, 1991.

Rosen, Stanley. *Hermeneutics as Politics.* Oxford: Oxford University Press, 1987.

Rosenau, Pauline M. *Post-modernism and the Social Sciences.* Princeton, New Jersey: Princeton University Press, 1992.

Sandel, Michael. *Liberalism and the Limits of Justice.* Cambridge: Cambridge University Press, 1982.

Habermas, J. *Between facts and Norms*. Cambridge, MA: The MIT Press, 1996.

_____. *Justification and Application*. Cambridge, MA: The MIT Press, 1993.

_____. *Moral Consciousness and Communicative Action*. Cambridge, MA: The MIT Press, 1990

_____. "Morality and Ethical Life: Does Hegel's Critique of Kant Apply to Discourse Ethics? In Beiner and Booth (Eds.) *Kant and Political Philosophy*. New Haven and London: Yale University Press, 1993.

_____. "Reconciliation Through the Public Use of Reason: Remarks on Johnm Rawls' Political Liberalism" in *Journal of Philosophy* Vol. 92 No. 3, 1995.

_____. *The Structural Transformation of the Public Sphere*. Cambridge, MA: The MIT Press, 1989.

Horkheimer, Max. *Between Philosophy and Social Science*. Translated by G. F. Hunter, M. S. Kramer and J. Torpey. Cambridge, MA.: The MIT Press, 1993.

Jürgen Habermas on society and politics : a reader. Seidman, S. (Ed.). Boston : Beacon Press, 1989.

Liberals and Communitarans. Mulhall S. and Adam Swift (Eds.). Oxford: Blackwell Publishers, 1992.

Lukes, Stephen. "Of Gods ad Demons: Habermas and Practical Reason" in Thompson J.B.and David Held (Eds.). *Habermas: Critical debates*. Cambridge, MA.: The MIT Press, 1982.

Macedo, Stephen. *Liberal Virtues*. Oxford: Clarendon Press, 1990.

MacIntyre, Alasdair. *After Virtue*. Notre Dame, Indiana: University of Notre Dame Press, 1981.

McCarthy, T. "Kantian Constructivism and Reconstructivism: Rawls and Habermas in Dialogue" in *Ethics* Vol. 105, October, 1994.

Mead, George H. *Mind, self & society from the standpoint of a social behaviorist*. Chicago, Ill: The University of Chicago Press, 1934.

Moon, D "Practical Discourse and Commnicative Ethics" in Stephen K. White (ed.) *The Cambridge Companion to Habermas*. Cambridge: Cambridge University Press, 1995.

Nozick, Robert. *Anarchy, State, and Utopia*. Basic Books, Inc., 1974.

Sessions, William L., "Religious Faith and Rational Justification" in *International Journal for Philosophy of Religion.* No. 13, 1982.

Walzer, Michael. *Interpretation and Social Criticism.* Cambridge, Mass.: Harvard University Press' 1987.

_____. *Spheres of Justice.* New York: Basic Books' Inc.' Publishers' 1983.

Warnke, G. "Rawls, Habermas and Real Talk" in *The Philosophical Forum.* Vol. 21 No.1-2, 1989-1990.

Wuthnow, R. "Rationality and the Limits of Rational Theory: A Sociological Critique" in Browning and Fiorenza (Eds.) *Habermas, Modernity, and Public Theology.* New York: Crossroad, 1992.