

Habermas and Rawls

Disputing the Political

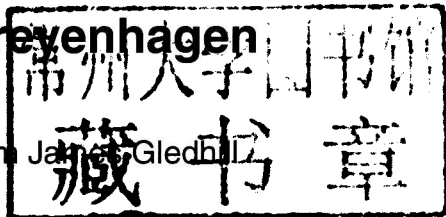
**Edited by
James Gordon Finlayson and
Fabian Freyenhagen**

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With help from James Gledhill



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Abbreviations

WORKS BY JÜRGEN HABERMAS

- AS *Autonomy and Solidarity: Interviews with Jürgen Habermas*, ed. Peter Dews (London: Verso, 1986; revised and enlarged edition, 1992).
- BFN *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge: Polity Press, 1996). [Translation of FG.]
- BNR *Between Naturalism and Religion: Philosophical Essays* trans. Ciaran Cronin (Cambridge: Polity Press, 2008).
- DEA *Die Einbeziehung des Anderen* (Frankfurt am Main: Suhrkamp, 1996). [Translated as TIO.]
- FG *Faktizität und Geltung* (Frankfurt am Main: Suhrkamp, 1992). [Translated as BFN.]
- FK “Faith and Knowledge,” in *The Future of Human Nature* (Cambridge: Polity Press, 2003) pp. 101–15.
- JA *Justification and Application: Remarks on Discourse Ethics*, trans. Ciaran Cronin (Cambridge, MA: MIT Press, 1993).
- MCCA *Moral Consciousness and Communicative Action*, trans. Christian Lenhardt and Shierry Weber Nicholsen (Cambridge, MA: MIT Press, 1990).
- MW “‘Reasonable’ versus ‘True’, or the Morality of Worldviews,” TIO, ch. 3, 75–101; reprinted as Chapter 3 in this volume.

- RPR “Reconciliation through the Public Use of Reason: Remarks on John Rawls’s Political Liberalism,” *Journal of Philosophy*, XCII, 3 (March 1995): 109–31; reprinted as TIO, ch. 2, 49–75; and as Chapter 1 in this volume. [Original pagination in square brackets.]
- TCA1/TCA2 *The Theory of Communicative Action*, Volumes 1&2, trans. Thomas McCarthy (Cambridge: Polity Press, 1984 & 1987).
- TIO *The Inclusion of the Other: Studies in Political Theory*, ed. Ciaran Cronin and Pablo De Greiff, trans. Ciaran Cronin (Cambridge, MA: MIT Press). [Translation of DEA.]
- T&J *Truth and Justification*, trans. Barbara Fultner (Cambridge: Polity Press, 2003). [Translation of most of WR.]
- WR *Wahrheit und Rechtfertigung* (Frankfurt am Main: Suhrkamp, 1990). [Translated as T&J.]

WORKS BY JOHN RAWLS

- IPRR “The Idea of Public Reason Revisited,” *University of Chicago Law Review*, IXIV, 3 (1997): 765–807; reprinted in LP, 129–180. [References to the reprint.]
- JF *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Harvard University Press, 2001).
- LP *The Law of Peoples; with, “The Idea of Public Reason Revisited”* (Cambridge, MA: Harvard University Press, 1999).
- PL *Political Liberalism* (New York: Columbia University Press, 1993; paperback edition, 1996).
- RH “Political Liberalism: Reply to Habermas,” *Journal of Philosophy*, XCII, 3 (March 1995): 132–80; reprinted as Chapter 2 in this volume. [Original pagination in square brackets.]
- TJ *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971; revised edition, 1999). [References to the latter are preceded by “rev.”]

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Finally, we should like to thank all the contributors for remaining patient and committed to the volume while we were searching for a publisher in the midst of the credit crunch. We hope that this volume, if it manages to sell even in the most adverse of economic circumstances, will show that a well-conceived edited collection of scholarly philosophical articles can be a viable economic proposition, as well as a valuable contribution to knowledge.

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Introduction

The Habermas–Rawls Dispute: Analysis and Reevaluation

*James Gordon Finlayson and
Fabian Freyenhagen*

La justice sans la force est impuissante; la force sans la justice est tyrannique. La justice sans force est contredite, parce qu'il y a toujours des méchants; la force sans la justice est accusée. Il faut donc mettre ensemble la justice et la force; et pour cela faire que ce qui est juste soit fort, ou que ce qui est fort soit juste.

Blaise Pascale

1 A TIME FOR REEVALUATION

Fifteen years after the appearance of the dispute between Habermas and Rawls in the *Journal of Philosophy*, their exchange has yet to receive adequate attention. This is all the more astounding given that the former was arguably the greatest social theorist of the twentieth century and the latter arguably its most important political philosopher. Considering how much thought has been devoted to—and how many words written on—the works of these two thinkers, it is surprising that the dispute between them has been relatively neglected. Why is this? A likely answer is that initial high expectations were followed by a sense of disappointment in the immediate aftermath of the dispute, which quickly congealed into the received opinion that neither thinker had properly understood the other. As one recent commentator puts it, the much anticipated dispute amounted in the end to “a somewhat embarrassing failure of two of the greatest contemporary minds to meet.”¹

This widespread view is a curious combination of truth and travesty. The truth is that each disputant was rather more concerned with defending and clarifying his own project than with genuinely engaging the opponent on his own ground. Moreover, the dispute was a missed opportunity inasmuch as important issues, which might have been broached (several of which are discussed by the contributors to this volume), were not.

1. Jonathan Wolff, “In Front of the Curtain,” *Times Literary Supplement*, March 7, 2008.

The travesty consists in the fact that—despite widespread misunderstandings in the literature about their respective projects, misunderstandings for which the disputants themselves bear some responsibility, and from which they are not themselves always completely immune—they nevertheless both make insightful criticisms of each other's work. Indeed, in both cases these criticisms eventually resulted in important clarifications and developments of their respective theories that otherwise might not have occurred. Had it not been for Habermas, we may not have known what Rawls's fully worked out notion of public justification was. Had it not been for Rawls, Habermas might not have begun to develop a more positive view of the advantages of religious discourse for social integration. (This is the topic to which Catherine Audard devotes her analysis in Chapter 9.)

The different approaches of these two thinkers, working within different traditions on similar problems, each have their own strengths and weaknesses. A serious and concerted effort to identify these, and to bring Habermas's theory in *Between Facts and Norms* into dialogue with Rawls's theory in *Political Liberalism* can help to throw light on a whole gamut of pressing questions in contemporary political philosophy, such as: What is the task of political philosophy, and how does one best realize its goals? How is political justification possible, given the facts of reasonable pluralism, social complexity and globalization? What is democratic legitimacy? What is the relation of morality to democratic legitimacy, both in political theory and practice? What is the place of religion in contemporary political society? What is the political status and function of human rights? What implications do Habermas and Rawls's respective conceptions of legitimacy have for the international political arena?

The aim of this volume is not so much to assess what Habermas and Rawls said about each other's work, as to examine how their respective theories deal with the important questions of political philosophy, including wider questions that did not feature directly in the dispute. For example, Catherine Audard looks at what Rawls and Habermas say about religion in the public domain (Chapter 9); Jeffrey Flynn critically compares their respective models of human rights, and the role these rights play in the political process (Chapter 10); while James Bohman shows how the debate between Habermas and Rawls can inform and elucidate questions of international justice (Chapter 11). To this extent our aim is not just to refocus and reevaluate the dispute, but to widen and deepen it. We do also want to refocus and reevaluate the dispute, however, and in order to do so, we need to understand its prehistory.

2 THE EARLY DEBATE

Prior to the dispute proper, an earlier debate (henceforth 'the early debate') was set in train by some passing remarks by Habermas in *Moral*

Consciousness and Communicative Action on Rawls's *A Theory of Justice*.² These remarks were taken up and developed into a full-blown critical comparison of Discourse Ethics and *Theory* by commentators sympathetic to Habermas's project and critical of Rawls's.³ With the considerable benefit of hindsight we can see that the early debate was clouded by several closely related misapprehensions, which, in turn, colored subsequent interpretations of the dispute proper. Our aim in this section is to peel away these misapprehensions.

The central misapprehension clouding the early debate was that Discourse Ethics and the view set forward in *Theory* were like for like theories. That this is indeed a misapprehension is shown by the fact that Habermas and Rawls use the term 'justice' in quite different senses. The significance of this difference has not yet been fully appreciated. Throughout his work, Rawls uses the concept of justice in a narrow, distributive sense, encapsulated in his two principles.⁴ However one interprets Rawls's Justice as Fairness, there is an important respect in which it is not a moral theory, for it is not a general theory of right conduct.⁵ At most, it is only part of a general theory of right conduct.⁶ This feature of *Theory* becomes more pronounced in *Political Liberalism* where Rawls presents Justice as Fairness as a way of specifying the content of a political conception of justice, understood as a module that can fit into and claim support from any reasonable comprehensive doctrine.⁷

2. MCCA, 43, 66, 79.

3. Important initiators of this debate were: Stephen K. White, *The Recent Work of Jürgen Habermas* (Cambridge: Cambridge University Press, 1988); Kenneth Baynes, *The Normative Grounds of Social Criticism: Kant, Rawls and Habermas* (Albany, NY: SUNY Press, 1992); Seyla Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (London: Routledge, 1992).

4. The two principles of justice are so well known we omit to spell them out; for the most considered statement of them, see JF, 42–43. It is true that Rawls stretches the boundaries of distributive justice by construing rights and liberties as distributable goods, for which Habermas criticizes him (RPR, 114).

5. It is a tricky question whether and in what sense the later Rawls's theory of justice is a 'moral' theory, and we return to it in section 3.

6. TJ, 7–8; PL, xvii.

7. See for example PL, 12, 144–45. Comprehensive doctrines are more or less complete and more or less coherent conceptions of the good, which might include (a) values and principles for a range of domains (not just the political) in rank order; and (b) more theoretical (or religious) views in moral psychology, metaethics or metaphysics more generally (see, for example, PL, 59). Habermas's talk of "world-views" (see MW) is perhaps more apt to capture what is at issue. It is notoriously difficult to say exactly what Rawls means by 'reasonable,' partly because there seem to be a number of different notions of it at play applied to different subject matters (persons, doctrines and the nature of pluralism). Still, the following summarizes the main ideas: persons (or doctrines) are reasonable if (a) they accept that pluralism about values persists even after free discussion among people willing to be convinced by arguments (that is, if they accept that this pluralism is reasonable);

Still, it is to some extent already present in the earlier work. Even in *Theory*, Rawls considers only one aspect of distributive justice—its application to the basic structure of society. Whether or not the principles of justice derived for this specific subject matter (or the method of derivation) can be extended to other cases—the international sphere and noninstitutional spheres of justice (associations, interpersonal conduct, etc.)—is left open. He says explicitly that “[t]here is no reason to suppose ahead of time that the principles satisfactory for the basic structure hold for all cases,” though he also admits that “once we have a sound theory for this case, the remaining problems of justice will prove tractable in the light of it.”⁸ Any other subject matter of justice would have to take into account the specific character of the sphere to which it is applied. This will imply “suitable modifications” to the theory, and these may lead to extensive changes in the nature of the principles and their justification—as they later do in *The Law of Peoples*.

Habermas’s Discourse Ethics, by contrast, is a moral theory in the sense that *Theory* is not, i.e., it is a general theory of right conduct. This is shown by the fact that in Habermas’s work ‘justice’ is equivalent to moral rightness: it is the central normative concept of the discourse theory of morality and the central phenomenon to be studied.⁹ Accordingly, it covers the whole range of interpersonal conflicts of action that can be appropriately regulated by appeal to valid moral norms. Principle (U) indirectly regulates all the actions and decisions of individual agents, not just questions concerning the basic structure of society.¹⁰

The central misapprehension arose as the combined effect of two strategies of interpretation, which were not without warrant in the respective

(b) they value tolerance of (reasonable) doctrines and persons as a consequence of accepting reasonable pluralism (and recognizing the burdens of judgment explaining it); (c) reject the use of political power to enforce their own doctrine on others; and (d) would abide by fair terms of social cooperation, even to the detriment of their self-interest, if others are prepared to do so as well. (See PL, 48–63; LP, 87–88; JF, 191; see also MW, 88.)

8. JF, 8.

9. See, for example, MCCA, 180: “This moral point of view comes about when the social world is moralized from the hypothetical attitude of a participant in argumentation . . . This deontological abstraction separates out issues of justice from issues of the good life.” See also MCCA, xii, 200; TIO, 28–29; and, especially, “Justice and Solidarity: On the Discussion Concerning Stage 6,” *Philosophical Forum*, XXI, 12 (Fall/Winter 1989–90): 32–52. In *Justification and Application*, where Habermas introduces the distinction between morality and ethics, he notes that Discourse Ethics would be more properly called the discourse theory of morality (JA, 2).

10. Principle (U) states that: “a norm is valid if and only if the foreseeable consequences and side effects of its general observance for the interests and value-orientations of *each individual* could be freely accepted *jointly* by *all* concerned” (DEA, 60 [our translation]; TIO, 42). (Unfortunately, Cronin’s translation erases the biconditional that is for once made explicit in Habermas’s German text.)

texts. The first of these was the political reading of Discourse Ethics. Against Habermas's intentions, Discourse Ethics was taken to be a political theory and a theory of democratic legitimacy in disguise.¹¹ There were several reasons for this, which we need not go into here.¹² Moreover, a later development in Habermas's thinking added to the impression that his notion of justice and overall project is similar to Rawls's. From 1991 on, Habermas distinguishes between 'morality,' which has to do with universally valid norms, and 'ethics,' which has to do with conceptions of the good—a distinction that Habermas equates with the distinction between the right and the good in Rawls.¹³

At the same time an influential interpretation of *Theory* pulled it in the opposite direction and hence moved it closer to Discourse Ethics. Though Rawls mainly used the term 'justice' in the narrow sense tailored to the basic structure of society,¹⁴ already in the 1970s and increasingly in the 1980s Justice as Fairness came to be treated as a moral theory in the broad sense of a general theory of right conduct. Many first-generation Rawlsians argued that his principles of justice and the use of the Original Position for

11. Exponents of what we call, following William Rehg, "the political reading" include Albrecht Wellmer, *The Persistence of Modernity* (Cambridge: Polity Press, 1991 [1985]), p. 193; Alessandro Ferrara, "A Critique of Habermas's Discourse Ethics," *Telos*, LXV (Summer 1985): 45–74; Jean Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge, MA: MIT Press, 1992), p. 231; Seyla Benhabib, "Deliberative Democracy and Models of Democratic Legitimacy," *Constellations*, I (April 1994): 26–52; Agnes Heller, "The Discourse Ethics of Habermas: Critique and Appraisal," *Thesis Eleven*, X–XI (1984–85): 5–17; Walther Reese-Schäfer, "Sind Hoffnungen auf eine kommunikative Rationalität berechtigt?" in Wolfgang Zierhöfer and Dieter Steiner, eds., *Vernunft Angesichts der Umweltzerstörung* (Opladen: VS Verlag für Sozialwissenschaften, 1994); and Simone Chambers, *Reasonable Democracy, Jürgen Habermas and the Politics of Discourse* (Ithaca, NY: Cornell University Press), p. 144. Chambers writes, "I agree that discourse ethics makes its strongest showing as a theory of political justice and democratic legitimacy." William Rehg is sympathetic to the "political reading" but rightly shies away from endorsing it himself. He thinks of Discourse Ethics as a kind of hybrid. See *Insight and Solidarity: The Discourse Ethics of Jürgen Habermas* (Berkeley: University of California Press, 1994), pp. 32–34.

12. First, according to Habermas, the primary function of moral norms is to resolve conflicts of interest and to facilitate social cooperation, and this looks like a political rather than a moral task. Second, Discourse Ethics is broadly contractarian in nature, and contract theories are more common in political than moral theory. Third, the central normative concept of Discourse Ethics is that of 'justice,' which is commonly held to be a political value. Fourth, Habermas claimed that moral norms embody universalizable interests, whose scope extends to every member of the moral community, but most commentators are prepared only to concede that all members of a situated political community have common interests.

13. See, for example, MCCA, 167, 180; JA, 1–19; TIO, 28–29.

14. See TJ, 7. Rawls makes this more explicit in "The Basic Structure as Subject," *American Philosophical Quarterly*, XXIV, 2 (April 1977): 159–37. Apparently he did not feel he had made himself sufficiently clear on this point.

moral deliberation could be applied to domains other than the basic structure of society without much, if any, modification. If anything, they were surprised when Rawls later rejected what they thought were natural extensions of his view. (This is also notably the case in respect of international justice.¹⁵) In Lawrence Kohlberg's account of moral psychology, which was hugely influential for Habermas's work, Rawls's Justice as Fairness is ranked alongside Kant's ethics and the Golden Rule as a principled morality of rights and duties. Kohlberg went so far as to maintain that Rawls's device of choosing moral principles in the Original Position was cognitively and philosophically the most adequate form of moral reasoning.¹⁶

Rawls himself was no doubt partly responsible for Justice as Fairness's being interpreted in this way. Perhaps most misleading was his willingness to present his view as Kantian, which could be—and often was—taken as implying that the Original Position is the operationalization of the moral point of view (confirming Kohlberg's characterization).¹⁷ (This made Rawls's distinction between the right and the good look more like Habermas's distinction between morality and ethics.) As Rawls later admitted, he was not as clear about this as he might have been: "In *Theory* a moral doctrine of justice general in scope is not distinguished from a strictly political conception of justice. Nothing is made of the contrast between comprehensive philosophical and moral doctrines and conceptions limited to the domain of the political."¹⁸

The combined effect of these two readings, the political reading of Discourse Ethics and the moral reading of *Theory*, was to nudge both theories from opposite ends towards what appeared to be a shared center ground, and a serious misapprehension arose from the resultant appearance that they were like for like theories. Once this misapprehension is

15. For cosmopolitan extensions of *Theory*, see, for example, C. Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979), part III; and T. Pogge, *Realizing Rawls* (Ithaca, NY: Cornell University Press, 1990), part 3. For Rawls's rejection of them, see LP, 82–83, 115–20. A representative rejoinder to this is T. Pogge, "The Incoherence between Rawls's Theories of Justice," *Fordham Law Review*, LXXII, 5 (2004):1739–60.

16. Lawrence Kohlberg, *Essays on Moral Development*, vol. 1, *The Philosophy of Moral Development. Moral Stages and the Idea of Justice* (San Francisco: Harper and Row, 1981), p. 197. Kohlberg was not alone in interpreting Rawls's Justice as Fairness as a general theory of right conduct. See also Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), pp. 1–15, 54, 64, 175–83.

17. Consider especially the following passage: "The original position may be viewed, then, as a procedural interpretation of Kant's conception of autonomy and the categorical imperative. The principles regulative of the kingdom of ends are those that would be chosen in this position, and the description of this situation enables us to explain the sense in which acting from these principles expresses our nature as free and equal rational persons" (TJ, 256).

18. PL, xvii.