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## HABERMAS AND RAWLS ON AN EPISTEMIC STATUS OF THE PRINCIPLES OF JUSTICE

### Abstract

The so-called debate between Jürgen Habermas and John Rawls concentrated mainly on the latter's political liberalism. It dealt with the many aspects of Rawls's philosophical project. In this article, I focus only on one of them, namely the epistemic or cognitivist nature of principles of justice. The first part provides an overview of the debate, while the second part aims to show that Habermas has not misinterpreted Rawls's position. I argue that Habermas rightly considers Rawls's conception of justice as a moral one. In the last part, I discuss two key questions raised by Habermas. The first concerns the relation between justification and acceptance of the principles of justice. The second concerns the relation between two validity terms: truth and reasonableness.

### Keywords

Habermas, Rawls, principles of justice, justification, validity

### 1. OVERVIEW OF THE DEBATE

The debate between Jürgen Habermas and John Rawls began in 1995 on the pages of *The Journal of Philosophy* following the publication of their two main works of political philosophy: Habermas's *Faktizität und Geltung* in 1992 (translated into English in 1996 as *Between Facts and Norms*<sup>1</sup>) and Rawls's *Political Liberalism* in 1993. Habermas initiated the exchange with his "Reconciliation Through the Public Use of Reason: Remarks on John Rawls's *Political Liberalism*."<sup>2</sup> Rawls replied to Habermas with the text "Political

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<sup>1</sup> Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: The MIT Press, 1996).

<sup>2</sup> Jürgen Habermas, "Reconciliation Through the Public Use of Reason: Remarks on John Rawls's *Political Liberalism*," *The Journal of Philosophy* 92, no. 3 (March 1995): 109–131.

Liberalism: Reply to Habermas.”<sup>3</sup> These two articles were supplemented by Habermas’s reaction to Rawls’s response which appeared in 1996 as a chapter in the collection of essays *Die Einbeziehung des Anderen. Studien zur politischen Theorie* (translated as *The Inclusion of the Other: Studies in Political Theory*<sup>4</sup> in 1998) entitled “‘Reasonable’ versus ‘True’, or the Morality of Worldviews.”<sup>5</sup>

*Reconciliation* is mainly a “constructive and immanent”<sup>6</sup> critique of Rawls’s philosophical project of *Political Liberalism*, which Habermas still considers to be an instance of a thorough and critical re-evaluation of Kant’s practical philosophy. This means that his critique remains “within the bounds of a familial dispute.”<sup>7</sup> It consists of three parts. In the first part Habermas questions whether the design of the original position is appropriately constructed to fully express impartial and deontological qualities of principles of justice. In the second part he asks how to understand the requirement that a conception of justice gain acceptance of reasonable comprehensive doctrines. Habermas suggests that Rawls does not clearly distinguish between questions of acceptance and questions of justification. As a consequence of this, Rawls seems to waive a claim to cognitive validity of principles of justice. In the last part Habermas argues that Rawls’s philosophical decisions, mentioned above, result in giving priority to liberal rights over democratic self-determination: “Rawls thereby fails to achieve his goal of bringing the liberties of the moderns into harmony with the liberties of the ancients.”<sup>8</sup>

<sup>3</sup> John Rawls, “Political Liberalism: Reply to Habermas,” *The Journal of Philosophy* 92, no. 3 (March 1995): 132–180.

<sup>4</sup> Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory*, trans. Ciaran Cronin (Cambridge, MA: The MIT Press, 1998).

<sup>5</sup> For the context of the debate see: James Gordon Finlayson and Fabian Freyenhagen, “Introduction: The Habermas-Rawls Dispute – Analysis and Reevaluation,” in *Habermas and Rawls: Disputing the Political*, ed. James Gordon Finlayson and Fabian Freyenhagen (New York: Routledge, 2011), 1–21. The introduction also provides an overview of the earlier stages of the debate. It was Habermas who was more engaged in commenting on and polemicizing with John Rawls’s philosophy than *vice versa*. His main focus was naturally on *A Theory of Justice* and the conception of justice as fairness, which he considered as an attempt, similar to his own, to reformulate Kant’s practical philosophy. See also James Gordon Finlayson, *The Habermas-Rawls Debate* (New York: Columbia University Press, 2019), where he elaborates on the aforementioned introduction.

<sup>6</sup> Habermas, “Reconciliation,” 110.

<sup>7</sup> *Ibid.* Habermas remarked later that “Reconciliation” had been meant as a review of *Political Liberalism* and he had failed to fully appreciate its significance at that time. He acquired a proper grasp of Rawls’s work “only gradually” and then was able to adequately understand his insistence on the reasonable pluralism. Jürgen Habermas, “Reply to My Critics,” in *Habermas and Rawls: Disputing the Political*, ed. James Gordon Finlayson and Fabian Freyenhagen (New York: Routledge, 2011), 283–284.

<sup>8</sup> *Ibid.*

As the title of his article indicates, Rawls focuses largely on responding to Habermas's critique without engaging in polemics about Habermas's philosophy. Rawls makes only two remarks on differences between his own conception of justice and Habermas's theory. The first concerns the different standing of their positions. Habermas's theory, claims Rawls, is a "comprehensive doctrine" whereas his own is political.<sup>9</sup> The second remark concerns the differences between the "devices of representation" they use to conceptualize the moral point of view.<sup>10</sup> The first remarks may explain why Rawls avoids any polemical engagement with Habermas's philosophy. According to him, there is no real rivalry between their positions because they operate at different levels: justice as fairness at a political level; the theory of communicative action, discourse ethics, and so on at a philosophical level.

The subject of the last Habermas article, which marked the end of the debate on account of Rawls's death in 2002, is the relation between "reasonableness" and "truth", and the role they play in justification of principles of justice. Paradoxically, the philosophical questions Rawls tried to avoid in order to secure an agreement on his principles of justice shows how important and inescapable they really are.<sup>11</sup> The more we try to suppress them, the more they impose themselves on us. Given that, in my view, the questions of justification of principles of justice and their validity go right to the heart of Rawls's project, I will focus on the peculiarity of his approach to these issues.

## 2. DID THEY TALK PAST ONE ANOTHER?

Before proceeding, I will address one of the most frequently raised objections, namely that the debate between Habermas and Rawls was misplaced because they were not seeking to establish a common ground and instead worked on the

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<sup>9</sup> Rawls, "Reply," 132. I will not go into detail here. I simply point to Rawls's account of the comprehensive character of Habermas's philosophy because it is crucial for his own philosophical self-understanding. Rawls contrasts his own conception of justice which is limited to the domain of the political and does not enter into philosophical controversies with Habermas's theory whose aims are more ambitious. He wants, Rawls writes, "to give a general account of meaning, reference, and truth or validity both for theoretical reason and for the several forms of practical reason," *Ibid.*, 135. There is no easy answer to the question of whether Habermas's philosophy is comprehensive in Rawls's sense and Rawls's is not. Yet, it is important to note that Rawls defines the comprehensiveness of a doctrine by its engagement in philosophical controversies. His own position is supposed to be free of them. I will return to this later. See: Joseph Heat, "Justice. Transcendental not Metaphysical," in *Habermas and Rawls: Disputing the Political*, ed. James Gordon Finlayson and Fabian Freyenhagen (New York: Routledge, 2011), 117–134.

<sup>10</sup> Rawls, "Reply," 138–142.

<sup>11</sup> The crude summary I have given is meant to give only a hint of the complexities of the debate between Habermas and Rawls. Even if, as I mentioned, the death of Rawls ended the exchange between them, it is far from having concluded.

assumptions of their own conceptions. There is some validity to this objection. Indeed, both Habermas and Rawls start from the assumptions of their own conceptions and try to evaluate the position of the other in light of those conceptions. Of course, this does not mean that they were not truly engaged in the debate and only seized the opportunity to expose their ideas. This reliance on the resources of their own theories seems not only natural but also to have a decisive advantage. It enables them to examine the same problems that both of their theories address from different points of view and to express them through different philosophical vocabularies.<sup>12</sup>

The more serious objection is that they misinterpret the other's position because their conceptions have a different "subject matter," or "object domain."<sup>13</sup> Finlayson claims this misinterpretation goes back to so-called "early debate."<sup>14</sup> Habermas regards Rawls's conception of justice as fairness as a "general moral theory," that is, a theory of right conduct ("justice-qua-morality," as Finlayson calls it). As a consequence of this, he "depoliticizes and moralizes Rawls's theory of justice."<sup>15</sup> However, Rawls's justice as fairness has been, from the beginning, a political conception of justice ("political-cum-legal justice," in Finlayson's terms). Unlike morality, the subject of justice is not all relations between individuals, but rather the basic structure of a society, namely a society's main political and economic institutions.<sup>16</sup> In other words, the principles of justice do not regulate all relations between individuals, but only a subset of them. And they do so indirectly by regulating the institutions which in turn regulate the conduct of individuals. These institutions can *legally* enforce the conformity to their rules so the principles of justice are *ipso facto* political.<sup>17</sup> So, concludes Finlayson, there is no point of comparison between Habermas's discourse ethics and Rawls's justice as fairness because when they use the term "justice," they have two significantly different things in mind.

After *Political Liberalism* and in his own *Between Facts and Norms* and articles, Habermas continues to view Rawls's *justice as fairness* as a Kantian

<sup>12</sup> Finlayson, *The Habermas-Rawls Debate*, 8–9.

<sup>13</sup> *Ibid.*, 49–50. See also: James Gledhill, "Procedure in Substance and Substance in Procedure. Reframing the Rawls-Habermas Debate," in *Habermas and Rawls: Disputing the Political*, ed. James Gordon Finlayson and Fabian Freyenhagen (New York: Routledge, 2011), 181–182; Christopher McMahon, "Habermas, Rawls and Moral Impartiality," in *Habermas and Rawls*, 201.

<sup>14</sup> He means by "the early debate" Habermas's writings about discourse ethics: *Moral Consciousness and Communicative Action*, trans. Christian Lenhardt and Shierry Weber Nicholsen (Oxford: Polity Press, 1990); *Justification and Application: Remarks on Discourse Ethics*, trans. Ciaran Cronin (Cambridge, MA: The MIT Press, 1993). Discourse ethics was developed by Habermas and appeared in German in the 1980s. I focus only on the alleged "misinterpretation" on the part of Habermas.

<sup>15</sup> Finlayson, *The Habermas-Rawls Debate*, 50.

<sup>16</sup> John Rawls, *A Theory of Justice* (Cambridge, MA: The Belknap Press, 1971), 7–9.

<sup>17</sup> See Finlayson, *The Habermas-Rawls Debate*, 74.

moral conception. It goes without saying that the resources of his discourse theory of law and democracy allow him to state the objections to *justice as fairness* differently than the resources of the discourse ethics did, or, in other words, they allow him to make objections from two angles: discourse ethics and the discourse theory of law and democracy, respectively. So, for example, in terms of discourse ethics, Habermas may claim that Rawls does not correctly conceptualize the moral point of view, while in terms of the discourse theory of law and democracy, he may claim that the conception of justice as fairness neglects the institutional framework of justice. I think Habermas is right here, since there is an ambiguity in Rawls's notion of justice. Rawls's conception of justice, notwithstanding his claims, seems to be more similar in some crucial respects to a moral conception than a political conception in the Habermasian sense, although it aspires to incorporate some functions of law into itself.

To evaluate Habermas's equation between justice and morality, one needs to first look at his distinction between morality and law, and then to see how the notion of justice works in the conception of justice as fairness. Though the distinction between morality and law cannot be easily mapped onto the distinction between "justice-qua-morality" and "political-cum-legal justice," we could try to trace similarities and differences in order to answer the question of whether Rawls's conception of justice is either a moral or a truly political conception.

According to Habermas, both moral and legal norms are "action norms," that is to say, they regulate interpersonal relations and adjudicate between conflicting claims. It is not, therefore, the role they play which differentiates moral from legal norms, but rather the way of achieving this goal. Morality is "only a symbolic system," or "a form of cultural *knowledge*" which means that morality has a weak motivational force, whereas law is not only a symbolic system but "an action system as well."<sup>18</sup> Law, thanks to its formal aspects, overcomes this motivational deficit. Habermas uses Kant's distinction between "will" (*Wille*) and "free choice" (*Willkür*),<sup>19</sup> "action" (*Handlung*) and "incentive" (*Triebfeder*), "duty" (*Pflicht*) and "inclination" (*Neigung*) in order to point to three formal differences between law and morality.<sup>20</sup> 1) Law, unlike morality, has to do not with a will but with free choice. Morality deals with a proper way of our self-determination, which, for example, is based on recognition of the universality of binding (moral) law, rather than simply with choices we make. It

<sup>18</sup> Habermas, *Between Facts and Norms*, 107.

<sup>19</sup> The distinction between will and free choice can be understood as the distinction between our legislative faculty, or our ability to give ourselves (moral) laws, and our executive faculty, or capacity for choice. See: Julian Wuerth, *Kant on Mind, Action, and Ethics* (New York: Oxford University Press, 2014), 236–254.

<sup>20</sup> Cf. Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (New York: Cambridge University Press, 1991), 45–47 (*Metaphysik der Sitten*, AA, 218–221).

is enough, from the legal point of view, that one *chooses* to obey legal norms. 2) Law regulates “*external relations* of one person to another,”<sup>21</sup> whereas morality deals mainly with our inner, normatively determined attitudes toward others, and deals only indirectly with external actions toward others. 3) From the perspective of law, it is not necessary that our conformity to legal norms has a specific kind of motivation, for example, our sense of duty. Acting in accordance with the law is enough.<sup>22</sup>

Yet, Habermas differs from Kant in one crucial respect. He does not conceive of the relation between morality and law in a hierarchical manner. This means, for Habermas, that law is not morality expressed in legal forms. Legal norms are action norms which are, from the outset, constituted through the form of law. They are not moral norms which are first established independently from their legal shape and then subsequently implemented in a constitution and enforced via legal coercion. Certainly, legal norms should not, or even must not, contradict moral norms, but this compatibility is not tantamount to the derivation of law from morality.<sup>23</sup> Morality and law are independent of each other in terms of their “origins.” We may explain their mutual independence by the different ways of justification of moral and legal norms.

As we know, the general condition of the validity of action norms is expressed by the discourse principle (D):

Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses.<sup>24</sup>

This principle is so specified that we get two other principles. The first of them is the principle of universalization (U):

A norm is valid when the foreseeable consequences and side effects of its general observance for the interest and value-orientations of *each individual* could be *jointly* accepted by *all* concerned without coercion.<sup>25</sup>

This principle expresses universality and impartiality which moral norms presuppose. In other words, when we combine the principle (D) with the requirements of universality and impartiality, we get the moral principle (U). On the other hand, when we combine the principle (D) with the “form of law,” i.e. formal aspects of legal norms, we get the democratic principle:

[...] only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted.<sup>26</sup>

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<sup>21</sup> Habermas, *Between Facts and Norms*, 105.

<sup>22</sup> *Ibid.*, 105–106, 112.

<sup>23</sup> *Ibid.*, 105–106.

<sup>24</sup> *Ibid.*, 107.

<sup>25</sup> Habermas, *The Inclusion*, 42.

<sup>26</sup> Habermas, *Between Facts and Norms*, 110.

Further elaboration is needed to explain the overall structures of morality and law, but this suffices, I think, to see how these two normative systems differ from one another. We may turn now to Rawls's notion of justice and see whether it is similar to "political-cum-legal justice" or "justice-qua-morality."

In *A Theory of Justice* Rawls regarded the principles of justice as a subset of principles of right. The concept of right with two other concepts of value and moral worth make up the whole of practical reasoning, or, we could say, practical conduct. It does not mean that the principles of justice are derived from the principles of right. Strictly speaking, there are no distinct principles of right which would be analogous to moral principles in Habermas's sense and could be distinguished from principles of (political) justice. "Right" is a general term that covers different kinds of principles. These principles are differentiated according to their domain of application. Some of them are applicable to political and economic institutions at the domestic level (the principles of justice) and at the international level (the law of nations, or the law of peoples), while others are applicable directly to individuals.<sup>27</sup> I think the "politicization" of the principles of justice in *Political Liberalism* has not changed anything here. The specificity of the principles of justice both in *A Theory of Justice* and in *Political Liberalism* is a result of their subject, i.e. a society's basic structure, not of their "political-cum-legal" aspect.

If we look at the role of the principles of justice, we will not be able to show their specificity in this way. The role of the principles of justice is to assign "rights and duties in the basic institutions of society" and to "define the appropriate distributions of the benefits and burdens of social cooperation."<sup>28</sup> In other words, the task of justice is to regulate interpersonal relationships by assigning rights and duties and to adjudicate between conflicting claims by designing a just scheme of distribution of social goods. The principles of justice, then, are simply general action norms in Habermas's sense.

However, the question remains as to whether the principles of justice are similar to moral norms or legal norms. I think the answer lies in how Rawls conceives of the relation between the principles of justice and legal norms. The principles of justice must be translated into positive law. Rawls envisages in *A Theory of Justice* the four-stage sequence of implementation of the principles of justice into legal institutions. This hierarchy of norms, from the principles of justice through a constitution to particular statutes, presupposes the relation between morality and law that Habermas criticized. The derivation of legitimate law from the principles of justice does not mean that they are the same or the same kind. On the contrary, the principles of justice must differ from the legal norms in which they are embodied. Whereas the justification of the principles of

<sup>27</sup> Rawls, *A Theory*, 108–111.

<sup>28</sup> *Ibid.*, 4.

justice is based mainly on reasonable and rational considerations behind the veil of ignorance, the translation of justice into law requires us to take into account not only reasonable and rational considerations but also other kinds of reason like ethical (based on some non-political values recognized in a society), pragmatic, and so on. We could say that the justification of principles of justice requires a different kind of discourse than the implementation of them into law.

Furthermore, it is redundant to attribute the predicate “just” to the principles of justice whereas it is appropriate to ask whether laws are just or at least are not unjust. However, while the question of justice of laws is one thing, their legitimacy is another. Laws may be unjust (at least to some extent) and legitimate at the same time. As such, the question of justice of law is different from, albeit related to, the question of the legitimacy of law.

One of the formulations of the principle of legitimacy holds that:

[...] political power is legitimate only when it is exercised in accordance with a constitution (written or unwritten) the essentials of which all citizens, as reasonable and rational, can endorse in light of their common human reason.<sup>29</sup>

Political power is exercised through law so the question of legitimacy of political power is thus the question of legitimacy of law. A constitution, or its principal elements, is justified on the grounds of the principles of justice. Then laws, which are enacted in accordance with the rules of a just constitution, are legitimate. It is worth noting that a just constitution confers legitimacy on laws. To be sure, laws may be just as well, but their justice results from the fact that they do not contradict the principles of justice, or, in other words, they may inherit their “justice” from the principles of justice indirectly.

Though the aforementioned formulation of the principle of legitimacy does not contain the requirement of discursive process of formation of law in which all citizens partake, Rawls adds the condition of the justifiability of law (through the use of public reason) which this requirement may entail:

Our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions – were we to state them as government officials – are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons.<sup>30</sup>

The idea of public reason specifies what kinds of reasons are appropriate when we discuss “constitutional essentials” and “matters of basic justice.”<sup>31</sup> These reasons are “expressed in public reasoning by a family of reasonable conceptions of political justice reasonably thought to satisfy the criterion of

<sup>29</sup> John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: The Belknap Press, 2001), 41.

<sup>30</sup> John Rawls, “The Idea of Public Reason Revisited,” in *Political Liberalism: Expanded Edition* (New York: Columbia University Press, 2005), 446.

<sup>31</sup> *Ibid.*, 442.



reciprocity.”<sup>32</sup> So the reasons which are appropriate in this discourse are, for the most part, determined by reasonable political conceptions of justice. The other kinds of reasons may be appropriate for other justifying discourses. Anyway, this shows that Rawls’s principle of legitimacy is analogous to Habermas’s democratic principle whereas Rawls’s way of justifying the principles of justice, *via* the original position, resembles Habermas’s principle of universalization. Thus, Rawls’s principles of justice are a kind of moral principles. Habermas’s objection – namely that Rawls moralizes justice – seems to be well-founded. As Habermas would say, the principles of justice lack the form of law to count as principles of *political* justice.

To sum up, I have argued that Rawls’s conception of justice is not political, at least in Habermas’s sense, but rather moral. The subject of justice, which is the basic structure of society, does not settle the question. Political justice, as we could say by analogy with law, is differentiated by its legal form. And this does not mean the necessity of implementation of justice into law but the conceptualization of justice through the form of law from the outset. In other words, we could say that Rawls’s conception of justice is political in the wrong way.

### 3. AN EPISTEMIC ASPECT OF THE PRINCIPLES OF JUSTICE

Habermas regards Rawls’s conception of justice as Kantian moral doctrine. If it is so, as I have tried to show, then the principles of justice must share with moral norms “deontological, cognitivistic, formalist, and universalistic qualities.”<sup>33</sup> In his debate with Rawls, Habermas discusses all of these qualities. He argues that Rawls does not fully articulate the meaning of these qualities. I will focus on one of them, namely a cognitivistic aspect of principles of justice. This deals with two questions posed by Habermas:

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<sup>32</sup> Ibid. The criterion of reciprocity is directly connected with the principle of legitimacy and the idea of public reason. It holds that when citizens view “one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice” (Ibid., 446). I will not pursue this in depth here, but I want only to suggest that reciprocity is a part of the idea of reasonableness and that reasonableness itself determines our proper attitude to others. We should treat others in a way that we can justify to them. As we have seen, morality deals with one’s attitudes toward others. Compare what Rawls says about the moral duty of civility: Rawls, *Political Liberalism*, 217; Rawls, “The Idea of Public Reason Revisited,” 444–445.

<sup>33</sup> Rainer Forst, “Discourse Ethics,” in *The Habermas Handbook*, ed. Hauke Brunkhorst et al. (New York: Columbia University Press, 2018), 538; Habermas, *Moral Consciousness*, 196.

I shall examine whether the overlapping consensus, on which the theory of justice depends, plays a cognitive or merely instrumental role: whether it primarily contributes to the further justification of the theory or whether it serves, in light of the prior justification of the theory, to explicate a necessary condition of social stability (1). Connected with this is the question of the sense in which Rawls uses the predicate “reasonable”: as a predicate for the validity of moral judgments or for the reflective attitude of enlightened tolerance (2).<sup>34</sup>

In order to understand the gist of Habermas’s argument, we need to provide a general overview of Rawls’s “political turn.”<sup>35</sup> Rawls faced the problem of a pluralism of irreconcilable doctrines (“comprehensive doctrines”) which are affirmed by citizens in a democratic and liberal society. Some of these comprehensive doctrines are entirely reasonable, i.e. their pluralism is “the inevitable long-run result of the powers of human reason at work within the background of enduring free institutions.”<sup>36</sup> In other words, citizens disagree over many matters of fundamental importance and this disagreement is fully compatible with human reason. The conception of justice, then, cannot be grounded on something so controversial. An analogy with the Reformation may be helpful here. When people shared the same religion, a political order could be based on it. When the unity of religion disintegrated into particular confessions, the common ground of a political order disappeared. Then the idea of religious tolerance began to form gradually. This was, without doubt, a painful process but its upshot was the acceptance of religious diversity, i.e. recognition of other confessions as reasonable. The other side of religious tolerance was a conviction that political community could not be organized around one religion. The foundation of unity had to be sought elsewhere. Religion began to be perceived as lying outside the domain of the political, though not necessarily in the private sphere.

Rawls generalizes the idea of religious tolerance. It is not only religion that divides us nowadays, but also other kinds of beliefs, for example concerning moral ideals, the good life, and philosophical problems. We should apply the idea of tolerance to those beliefs and recognize them as reasonable but, at the same time, exclude them from the domain of the political. They are no longer suitable for the organization of the political community. Once again, we need to look elsewhere for the common ground. Rawls locates it in some political ideas like the idea of a society as a fair system of cooperation or the idea of the person (or citizen) as free and equal with two moral powers: the capacity for a sense of justice and the capacity for a conception of the good. Rawls thinks it is possible

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<sup>34</sup> Habermas, “Reconciliation,” 119.

<sup>35</sup> Paul Weithman, *Why Political Liberalism? On John Rawls’s Political Turn* (New York: Oxford University Press, 2010) gives an excellent account of Rawls’s “political turn.”

<sup>36</sup> Rawls, *Political Liberalism*, 4.

to build the conception of justice solely out of these ideas.<sup>37</sup> This is the meaning of the term “freestanding.” In short, it means that the conception of justice is justified only in terms of political ideas in conjunction with principles of practical reason. Furthermore, “it is neither presented as, nor as derived from,”<sup>38</sup> any comprehensive doctrines. It must be shown, however, in the next step that the conception of justice may gain acceptance of such comprehensive doctrines, i.e. it must become a subject of an overlapping consensus of comprehensive doctrines. This raises a question as to whether this acceptance is a requirement of social stability or adds something to the justification of the principles of justice.

In his *Reply* Rawls attempts to dispel these doubts. He introduces the three kinds of justification:

[...] first, *pro tanto* justification of the political conception; second, full justification of that conception by an individual person in society; and, finally, public justification of the political conception by political society.<sup>39</sup>

In introducing these three kinds of justification, the aim is to show how the question of justification and the question of social stability are interconnected. The *pro tanto* justification corresponds to the freestanding justification of the conception of justice in terms of political ideas. Whereas the conception of justice is *pro tanto* justified from inside the domain of the political, the full justification is “carried out by an individual citizen as a member of civil society,”<sup>40</sup> i.e. from the perspective of a particular comprehensive doctrine.<sup>41</sup> To carry out the public justification, we need to return to the point of view of the political conception of justice. The justifying reason here is the fact that all citizens have carried out the full justification. In other words, the fact that the overlapping consensus of reasonable comprehensive doctrines obtains is an argument in favor of the political conception of justice.

There is no justification of the principles of justice without the fact of the overlapping consensus as this fact is a decisive reason for them. The acceptance

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<sup>37</sup> The epistemic status of these ideas is controversial. Rawls claims that these ideas are “implicit in the public culture of a democratic society” (Ibid., 15), which invites the contextualist interpretation of Rawls’s political turn *à la* Rorty. See: Richard Rorty, “The Priority of Democracy to Philosophy,” in *Objectivity, Relativism, and Truth: Philosophical Papers* (New York: Cambridge University Press, 1991), 175–196. I will leave this aside, though I agree with Habermas that Rawls does something more than simply articulate shared cultural beliefs. See: Habermas, “Reconciliation,” 119–120.

<sup>38</sup> Rawls, *Political Liberalism*, 12.

<sup>39</sup> Rawls, “Reply,” 142. I use interchangeably the terms “the justification of the (political) conception of justice” and “the justification of the principles of justice.”

<sup>40</sup> Ibid., 143.

<sup>41</sup> It is not clear how the shift between these two points of view occurs. It seems that we do not have access to a comprehensive doctrine other than from the outside. If so, then we do not have the possibility to ascertain whether the justification really has taken place or whether it has failed.

of the political conception by reasonable comprehensive doctrines, however, is not the same thing as its justification.<sup>42</sup> The first and third kinds of justification, I think, can be easily explained within the political conception of justice. The novelty of the second kind of justification causes some complications, which Habermas identifies as “a peculiar dependence of the ‘reasonable’ on the ‘true’”<sup>43</sup>:

Practical reason is robbed of its moral core and is deflated to a reasonableness that becomes dependent on moral truths justified otherwise. The moral validity of conceptions of justice is now no longer grounded in a universally binding practical reason but in the lucky convergence of reasonable worldviews whose moral components overlap to a sufficient degree.<sup>44</sup>

To unpack Habermas’s criticism, we need first to look at Rawls’s method of avoidance. This will help us to understand the shifting of the burden of justification from political conceptions of justice to comprehensive doctrines. The method of avoidance is a crucial element of Rawls’s political liberalism. Adopting this method means that “we try, so far as we can, neither to assert nor to deny any religious, philosophical, or moral views, or their associated philosophical accounts of truth and the status of values.”<sup>45</sup> It does not mean that the conception of justice does not presuppose philosophy at all. Rawls admits that some philosophy “is implied by the political itself”<sup>46</sup> but its assumptions are so uncontroversial and weak that it “leaves philosophy as it is.”<sup>47</sup> In other words, Rawls wants to secure acceptance of his conception of justice, so he needs to remove the sources of disagreement and not to engage in philosophical disputes. He then lays out the conception of justice as freestanding, which implies, as I have just said, some kind of epistemology and metaphysics, but also avoids long-standing philosophical controversies. However, Rawls would not agree with Rorty who claims we would fare much better without philosophy. Philosophy is necessary<sup>48</sup> but at the same time it is the source of disagreement. The truly demanding tasks of philosophy, like showing the truth of the

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<sup>42</sup> See Anthony Simon Laden, “The Justice of Justification,” in *Habermas and Rawls: Disputing the Political*, ed. James Gordon Finlayson and Fabian Freyenhagen (New York: Routledge, 2011), 142–152. There he tries to show how Rawls combines a political justification with a philosophical one. In other words, he argues that Rawls perceives justification in practical terms, i.e. its aim is not only to show the validity of the principles of justice, but also to provide a basis for an agreement between citizens.

<sup>43</sup> Habermas, *The Inclusion*, 77.

<sup>44</sup> *Ibid.*, 82–83.

<sup>45</sup> John Rawls, “The Idea of an Overlapping Consensus,” in *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999), 434.

<sup>46</sup> Rawls, *Political Liberalism*, 10. See Finlayson, *The Habermas-Rawls Debate*, 125.

<sup>47</sup> Rawls, “Reply,” 134.

<sup>48</sup> It is necessary because it responds to our need of justification of our actions, decisions and so on to others. See note 32.

conception of justice, are shifted to comprehensive doctrines. It seems to me, then, that the term “method of relegation” would better describe what Rawls really does than his own preferred term, namely “method of avoidance”. This also explains the meaning of the phrase “*pro tanto* justification.” It is a kind of incomplete justification which needs further elaboration, namely the full justification, which can be carried out from within comprehensive doctrines.

The nature of the full justification may be clarified by referring to the distinction between two kinds of validity terms: reasonableness and truth. The former refers mainly to the political conception of justice, while the latter is restricted to comprehensive doctrines. The political conception of justice is reasonable if it is *pro tanto* justified, i.e. it is the result of properly used procedure of construction (it would be chosen in the original position), and it is in political reflective equilibrium. It is worth noting that this kind of justification is public in the sense that Habermas has in mind. It is based on reasons which are shared by all reasonable and rational persons.<sup>49</sup> Comprehensive doctrines may (not) use the term “true” to predicate validity of normative statements. It is up to a particular comprehensive doctrine how to define “truth” in every case. Truth is thus not public in Habermas’s sense and reasons we regard as true, and what we believe to be true, may not be the same for every reasonable and rational person.

The terms “reasonable” and “true” are complementary in the sense that the conception of justice, which is reasonable, may be also true. The question is whether we need two validity terms and whether we are able to properly conceptualize the differences between them. For Rawls, it seems, the term “true” is stronger than term “reasonable” as we need the second kind of justification in order to go through the whole process of justification. This, however, turns the idea of justification upside down. Justification should be based on reasons which are public in Habermas’s sense. If we agree on the content of some propositions, but we do so for different reasons, we cannot be certain that our agreement is not superficial and that justification is not illusionary. The principles of justice may change their meaning within different contexts provided by comprehensive doctrines. If we take the principles of justice out of one context and put them into a different one, we may slightly (or radically) change their meaning. Think of, for example, the two principles of justice of Rawls’s conception of justice fully justified and endorsed by a Millian liberal comprehensive doctrine on the one hand, and by Catholic doctrine on the other. If it comes to an application of the principles of justice to solving some problems, for example an abortion, it

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<sup>49</sup> The term “reasonable” is so ambiguous and applied to so many subjects (a person/citizen, a society, a doctrine, principles of justice, constraints on choosing principles of justice in the original positions, pluralism, and so on) that its different meanings appear to lead to a vicious circle. See James W. Boettcher, “What is Reasonableness?,” *Philosophy & Social Criticism* 30, no. 5–6 (2004): 597–621.

may turn out that we are not able to reach any agreement on proposed solutions because our interpretations of the principles of justice differ so much.<sup>50</sup>

In order to overcome this difficulty, one may need to work out and justify the conception of justice in terms of public, accessible to all person reasons, and not in a monological but in a dialogical way.<sup>51</sup> This conforms to the requirements of moral discourse in which we try to settle the questions of justice. These requirements may be satisfied by *pro tanto* or freestanding justification with the original position, the veil of ignorance, and so on, if that kind of justification were sufficiently enriched or reinterpreted. This, however, raises a question: why do we need the full justification at all? From the point of view of Rawls's political liberalism, the answer seems to be obvious. We need the second kind of justification in order to ensure that the overlapping consensus obtains. But this presupposes that comprehensive doctrines, if they are reasonable, must remain intact. The political conception of justice must not intervene with reasonable comprehensive doctrines and must leave them as they are. As I have argued, this turns the idea of justification upside down.

We may turn to the last question posed by Habermas: what is "the sense in which Rawls uses the predicate 'reasonable': as a predicate for the validity of moral judgments or for the reflective attitude of enlightened tolerance"?<sup>52</sup> The short answer is: both. I leave aside the second alternative, which is explained by reasonableness understood as a part of the moral nature of persons, and focus only the validity meaning of the term of "reasonable." As I have said, Rawls uses two validity terms: "reasonable" and "true". Even if it can be said that Rawls understands the validity of moral judgments in terms of their justifiability, he appears to accept many ways of justification, for example moral realist, intuitionist, Kantian constructivism. These different kinds of justification aim at truth whereas his own political constructivism, namely freestanding justification, aims at reasonableness. The kinds of justification, which aim at truth, are incommensurable. By contrast, the freestanding justification may be reconciled with them. From this Rawls seems to draw a conclusion that "reasonable" and "true" operate at different levels.

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<sup>50</sup> Rawls might claim that these differences in the interpretation of the principles of justice can be accommodated into the reasonable and explained by the burdens of judgment. He admits that there is more than one political conception of justice. There is "a family of political conceptions of justice" (*Political Liberalism*, xlvī–xlvii, 450). I think the source of the pluralism of these political conceptions of justice lies in a different way of organizing fundamental ideas at the level of a political construction of principles (Ibid.). I have something different in mind, namely the differences in the interpretation of the principles of justice already identified at the level of the construction. These differences arise from within comprehensive doctrines.

<sup>51</sup> Habermas, *The Inclusion*, 86–94.

<sup>52</sup> Habermas, "Reconciliation," 119.

As we have seen, Habermas unambiguously identifies the validity of moral judgments with their justifiability. Unlike Rawls, however, he does not accept substantially differentiated ways of justification,<sup>53</sup> but only lays down the formal condition that if a moral judgment is to be valid, it must be justifiable. The process of justification must be actually carried out in an adequate discourse. In the case of principles of justice, it is a discourse governed by the principle (U). There is no place for different discourses for the same subject matter, i.e. the principles of justice. Therefore, in Habermas's view, the distinction between two validity terms, both of which pertain to principles of justice, seems to be incomprehensible because there is no need to introduce two different kinds of validity terms for the same kind of judgments.

#### 4. CONCLUSION

Remarking on the debate between Habermas and Rawls, Joseph Heat complains that much of it became "sidetracked," lapsing into "a relatively fruitless debate over the relationship between 'reasonableness' and 'truth'."<sup>54</sup> I cannot agree. The discussion about cognitivist aspects of the principles of justice is far from fruitless because it concerns a proper way of doing political philosophy under the condition of pluralism. Both Habermas and Rawls want to remain faithful to the Kantian notion of practical philosophy, but they differ in how to realize it. Habermas wants us to put the pluralism of worldviews through formal procedures of discourse in order to arrive at the jointly worked out we-perspective. Rawls leaves, within bounds of the reasonable, the pluralism as it is and seeks the common perspective elsewhere.

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<sup>53</sup> This is so because Rawls thinks that Habermas's theory is comprehensive. Rawls, "Reply," 132, 135.

<sup>54</sup> Heat, "Justice," 117.

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