

**Habermas**

by Kenneth Baynes

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By James Gordon Finlayson

Kenneth Baynes' book on Habermas is another outstanding addition to the Routledge Philosophers series. Baynes is the author of the most important early study of Kant, Rawls and Habermas, and of several 'must read' articles on various aspects Habermas's work. He translated Habermas's 1986 *Tanner Lectures*, which were crucial to the development of his political and legal theory. He is the co-editor of a superb collection of essays in English on *Between Facts and Norms*. He is probably the foremost scholar of Habermas's moral and political theory.<sup>1</sup>

The range of reference needed to contextualise and make sense of Habermas's work is broad and varied. Baynes has that range. He is as knowledgeable about Habermas's primary sources in German, about the vast secondary literature in both German and English, and about the areas of analytic philosophy that Habermas draws on, as he is scholarly and assured when writing about Heidegger and Hegel. Baynes's book is comprehensive in its coverage, ranging from Habermas's early critical theory to his recent work on post-secularism and cosmopolitanism. It is judicious in its selection of topics and clearly argued. The book is pitched at a somewhat higher level than some other volumes in the series. Several of its chapters read like articles. It is thus both an advanced introduction to Habermas's thought and a substantial scholarly work in its own right, which will be required reading for post-graduate students and professional scholars for the foreseeable future.

Baynes is a charitable interpreter of Habermas. However, he is not entirely uncritical. For example, he calls out Habermas for his misreadings of *Political Liberalism*. And he is both critical and combative in his defense of Habermas from his opponents. In the main, however, Baynes offers a friendly reconstruction and defense of Habermas's theory. This is no doubt one reason why it succeeds as an introduction, so much better than, say, Uwe Steinhoff's peevishly uncharitable *The Philosophy of Habermas. A Critical Introduction*. Baynes, by contrast, has a good eye for what is of enduring significance in Habermas – his social, moral and political theory – and forbears unproductive lines of criticism.

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As for the structure of the book, it consists of seven substantial chapters, framed by a biographical introduction and brief conclusion. Chapter Two deals with Habermas's 'initial attempts at a critical theory of society' and is focused mainly on the *Structural Transformation of the Public Sphere* (1962) and *Knowledge and Human Interests* (1968). The long third chapter explores the *Theory of Communicative Action* (1982) as Habermas's 'model of a critical social science'. Chapter Four is a freestanding general discussion of Habermas's 'Kantian pragmatism'.

Chapters Five and Six comprise respectively substantial discussions on Habermas's Discourse Ethics (on which Habermas worked mainly in the 80s) and *Between Facts and Norms* (1992). Chapter Seven focuses on 'Deliberative Democracy, Public Reason and Democracy Beyond the Nation State' and examines the exchange with Rawls, and the discussion of transnational and cosmopolitan justice, which took place between the mid-90s and the mid-00s. Chapter Eight, 'a sobered philosophy', is a conspectus of Habermas's critique of post-modernism, his methodological reflections on post-metaphysical thinking of the late 80s, and the ideas about post-secularity that he develops from the turn of the Millennium onwards.

Readers who know Baynes' work will notice that two chapters have been published before, in the *Cambridge Companion to Habermas* (1995) and *Cambridge Companion to Critical Theory* (2004) respectively. Not that incorporating previously published material is problematic, especially when it is high quality material, and when the author has reached a view and not changed his mind. That said, where the now classic article on 'Democracy and the *Rechtstaat*' fits seamlessly into the chronology of the book, the same cannot be said of Chapter Four. The discussion of Habermas's 'Kantian pragmatism' brings it into dialogue with the work of Korsgaard, Davidson, Brandom, and McDowell, among others. It is rewarding and enlightening in its own right, as an overview of Habermas's general approach to philosophy, and the guiding idea of Baynes's interpretation. However, it does not quite fit into the thematic development of the book, and arguably ousts the later discussion of 'post-metaphysical thinking' from its more natural place.

Finally, while the book is comprehensive in its coverage of Habermas's social, moral and political theory, and their theoretical underpinnings, it devotes less space to Habermas's career as a journalist, and to his political and historical interventions as a public intellectual. Of course, given Habermas's longevity and remarkable productivity selections have to be made. Anyway, in keeping with the series, the book focuses mainly on Habermas's social, moral and political theory.

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Baynes undertakes to contextualise, to expound and to defend Habermas's theory. He does the first two excellently, and the third only a little less well, though that may be because he is willing to defend some of Habermas's most controversial positions. He also makes some bold and original moves of his own, moves that provoked the following critical reflections on three sets of issues.

The first group concerns the question of just how 'critical' Habermas's social theory is. Such questions are raised by the subtle shift in the subtitles of the chapters which deal respectively with Habermas's 'initial attempt at a critical theory of society' and his 'model of critical social science'. Are these two projects 'critical' in the same way? Is the social science as set out in *The Theory of Communicative Action* 'critical' in the sense, for example, that it licenses negative evaluative judgments of late-modern capitalist society, of the kind that one finds in Horkheimer and Adorno? I would answer 'no' to both questions. I think this means that Habermas more or less gives up on the project of critical theory as understood by his predecessors, and develops his own in a different direction, Baynes demurs. That's why I now refer to Habermas as a first-generation Starnberg School, rather than a second-generation Frankfurt School thinker. Baynes give the impression that Habermasian social theory is a continuation of Frankfurt school criticism with the admixture of other means.

Two further questions arise in this context. A) How critical is Habermas's social theory? And B) How is it critical? To question A) Baynes answer is clear: it is as critical as any social theory can be (79). Note that the sense of 'criticism' outlined above is fairly undemanding. It falls a long way short, for example, of Walzer's conception of social criticism as a diagnosis linked to a remedy.<sup>2</sup> There need be nothing *constructive* about criticism in this undemanding sense; no counterproposals; no phalanstères, and no recipes for the cookbooks of the future. Such criticism need not call upon any program of remedial action or connect up with any transformative practice. And yet it is arguable that Habermas's 'critical' social science is not even critical in the sense that it issues in, or helps people to come to, warranted negative evaluations of the social world.

Here are some reasons why. First, TCA does not contain any such criticisms. Second, Habermas explicitly says that it is not the job of the social theorist to make such criticisms: at most it can hand over its findings as good advice to citizens, who can make their own judgments. (Habermas 1994a, 101; 1992, 202). Third, there are no obvious candidates in TCA for the normative basis of such criticisms; or, as I prefer to put it, for the appropriate

standard of such criticism.

The third consideration just canvassed is controversial, since Habermas's TCA is normally read in the light of his criticism of first-generation Frankfurt School critical theory that it failed to give 'an account of its own normative foundations'.<sup>3</sup> In TCA Habermas is taken to have filled that gap, and not to be vulnerable to the same objection.

The trouble is, as some of Habermas's critics have maintained, if that is the main task of Habermas in TCA, it is unclear how he attains it. None of the obvious candidates fit the bill. One could be a thick ethical conception, or a utopian vision of the good society that some have urged upon him. Habermas rejects this on the grounds that it is paternalistic, and that it overtaxes the resources of post-metaphysical theory; hence his rejection of communitarian social criticism, and its basis in neo-Aristotelian civic republicanism (182).

Second, it is claimed, for example by Axel Honneth, that Habermas grounds critical social theory on Discourse Ethics and its principle (U).<sup>4</sup> But this won't do, for Discourse Ethics is supposed to be 'strictly' procedural and not substantive: (U) is thus a reconstruction of a higher-order intersubjective procedure by which moral agents attempt to validate first-order candidate norms. On this point, Baynes maintains that Habermas's Discourse Ethics is not procedural 'all the way down' (172). That may well be right. Nonetheless, neither the practice of moral discourse nor the theory of Discourse Ethics furnishes the critical theorist with valid moral norms apt to justify their social criticisms. Even the norms that the procedure yields – and Habermas now admits there are very few (JA 91) – are not germane to the only criticisms that Habermas's theory implies, which as we will see are quasi-functional ones. Such valid norms as are evinced by the procedure of discourse lie in the hands of the moral agents and participants in discourse. All told then, Discourse Ethics, even if it turns out to be the correct moral theory, locates and reconstructs a procedure that puts the wrong kind of norms into the hands of not the critical social theorist but communicative agents, and consequently can hardly be said to justify 'the normative claims of social theory' in the sense that it warrants the kind of criticisms of society levied by the critical theorist.

Later Baynes claims, again adverting to Honneth, that Habermas bases his social criticism on "'reason in history' (or society)" (Baynes 48). Yet this socially embodied reason is not supposed to be an Hegelian philosophy of history; but neither is it supposed to be a conception of the good society, or a substantial morality.<sup>5</sup> So what is it? Honneth's general claim, that Habermas's project is to 'relocate procedural rationality as a discursive practice of justification into the social reproduction of society' sounds correct,

but does not say what the basis of the criticism is or what the criticism is.<sup>6</sup> Compare Habermas with Adorno and Horkheimer who make all kinds of substantial claims about the social world, that it is blind, chaotic, irrational, unjust, pervasively evil, and thoroughly false. Habermas makes no such claims. Or compare with Rawls, for that matter, who judges society against two substantial principles of justice, and claims that if social institutions are unjust they must be reformed or abolished (TJ 3). Habermas, by contrast, merely reconstructs rational procedures of communication and moral discourse that, he claims, play a functional role in social integration. But these procedures themselves, even when correctly reconstructed, don't justify negative evaluative judgments of the social world. So nothing here resembles either the critical theory of Horkheimer, Adorno, and Marcuse, or Rawls's theory of justice.

Let's turn to question B) How is it critical? What kind of criticisms does it make? Baynes claims, along with Honneth, that Habermas's theory identifies 'systematic disturbances' in processes of social rationalization, then connects these 'indirectly' with the experiences of social agents, who are adversely affected by such processes, and consequently, as in the examples of the feminist movement and the greens, demand change, and that this 'pretty much exhausts what Habermas thinks can be done to justify a critical theory' (79). In other words, it is critical insofar as it explains how demands for change arise. If it even counts as criticism, this is very oblique. The criticisms that it licenses, which remain entirely implicit, still stand in need of justification. Habermas could and should, for example, be much more forthcoming, about macro-level ideas of a good functioning social system, and of 'undisturbed' processes of social integration and societal rationalization that are in play. In short, he must spell out the positive ideas of social soundness and integrity presupposed by his diagnosis of social pathology. And he should say more about the idea of the human, and human agency, in the light of which in TCA he identifies alienation and anomie as abnormalities and distortions. Finally, he needs to say more about the causal relations in play between the macro-level distortions and disturbances of social processes, and micro-level damage to human lives.

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The second set of issues concerns the interpretation of Habermas's conception of political legitimacy, the relation of morality to political legitimacy, which touches on the question of the difference between Habermas's conception of political legitimacy and Rawls's.

Baynes begins by noting that for Habermas, consensus as ‘a regulative idea that can only approximated in practice’ is the central plank both of Discourse Ethics and of political legitimacy. Baynes denies that for Habermas political legitimacy requires a ‘de facto consensus’ (168). However, he endorses what I call Habermas’s ‘validity requirement’ both in the moral and in the political domain: ‘Anything valid should also be capable of public justification. Valid statements deserve the acceptance of everyone for the same reasons’ (178-9 & 191). Habermas sees this feature of moral statements as the basis of the analogy between rightness-claims and truth-claims. It is a complicated story why he maintains this. The story has to do with how he reconciles objectivism about morality with what I would call (though he does not) moral ‘non-cognitivism’ – i.e. the denial both that moral statements are truth-apt and that any are literally true – with moral anti-realism.<sup>7</sup> Anyway, the upshot is that Habermas claims that moral norms, to be valid, must be acceptable to all, or justified to all on the basis of the same reasons.

Baynes situates Habermas’s political theory between two stylized alternatives: the ‘liberal pluralists’, who claim there is nothing substantive on which citizens can all agree, and civic republicans, who argue that political association rests on a thick shared conception of the good. Habermas thinks that deep agreement on a conception of the good is not possible in modern, complex, differentiated, societies. But, Baynes claims, he allows that some kind of ‘meta-consensus’ (168) or at least the ‘search for a consensus’ on ‘justice’ or ‘constitutional essentials’ (169) is both possible and necessary. The view Baynes ultimately ascribes to Habermas, then, is that political legitimacy, and a ‘liberal political culture’ must be based on norms of civility or a ‘core morality’, which can be embraced from the perspective of ‘very different world views’ (182). In a nutshell, political legitimacy ‘requires that the reasons that justify at least the basic principles of justice and “constitutional essentials” be ones that all citizens can endorse for the same reasons...’ (179). The ideal of consensus, the validity requirement, and the core morality view of political legitimacy are interlocking central ideas in Baynes’s interpretation of Habermas’s conception of political legitimacy.

The idea of a core morality here is borrowed from Charles Larmore.<sup>8</sup> Larmore’s conception of Political Liberalism is a renewed and attenuated version of Natural Law theory. Larmore argues that Political Liberalism’s ideal of making coercive political norms acceptable to citizens only on the basis of reasons all can share, is motivated ultimately by the moral principles of equal respect for persons and rational dialogue. On Larmore’s view, these are thin, general, but substantial, moral principles that must be regarded ‘as

correct, not just widely shared'.<sup>9</sup> Since they are assumed to be correct, they are not prone to reasonable disagreement.

The question is, can Baynes co-opt Larmore's idea without making significant adjustments in Habermas's theory? Three considerations suggest he cannot. The first is Habermas's rejection of Natural Law approaches to political legitimacy, and his insistence on the contrary that the principle of democracy, and the concomitant conception of the political, are 'morally freestanding' (BNR 80). In other words, Habermas claims that the authority of political and legal norms is *sui generis*: it does not depend on the authority of an antecedent moral order.<sup>10</sup> The second is that Larmore's 'core morality' consists in thin, but substantial, moral principles, whereas Habermas's 'core morality' insofar as he countenances one, consists in a *procedure* of moral discourse. Habermas reconstructs that procedure, but officially at least, prescind from laying out the norms and principles that would be validated by it. That task is left entirely up to participants in discourse.

The price of introducing Larmore's idea of a 'core morality' into Habermas's conception of political legitimacy as Baynes does, then, is that he must relax Habermas's proceduralism about morality, and ignore Habermas's restrictions on the task of post-metaphysical thinking. We saw above that Baynes thinks that Discourse Ethics is not procedural 'all the way down' (172). That said, I don't think the admission that some moral substance is instantiated in the procedure, which is what Baynes probably means by this remark, will get Habermas as far as a 'core morality'. A procedure with nothing that comes out of it, is not a 'core morality' in Larmore's sense. A core morality needs some first order content. Thus Habermas needs to say not only that some moral norms are, or have been, validated by the discourse procedure; he needs to say what these are. As a matter of fact, he does point to the existence of human rights as examples of valid moral norms, albeit seldom, as if aware that he should not (MCCA 124, 205). Note also that if Baynes is correct, and Habermas acknowledges the existence of a core morality, then he is committed to a *de facto consensus* at least on the core moral norms. So Habermas's idea of consensus, after all (at least in his political theory) cannot be restricted to a counterfactual ideal that guides the practice of moral discourse (168).

The upshot is that there is a price to pay for building Larmore's 'core morality' notion into Habermas's conception of political legitimacy as Baynes does. And the price is higher than Baynes allows, since it conflicts with some of the ideas in Habermas he purports to defend. I don't find fault with him here since I agree it is a price worth paying. My point is that Baynes's project is a reconstruction of Habermas's position, and as such articulating the best version of Habermas's theory takes hermeneutical

priority over squaring his interpretation with everything Habermas says. Anyway, Baynes' reconstruction coheres with much of what Habermas has to say. Indeed, some of the revisions needed to accommodate the 'core morality' view are mandated by a crucial move that Habermas himself makes, one that seems to conflict with his own proceduralism, and his rejection of Natural Law approaches to political legitimacy. In *BFN* Habermas observes that legitimate laws must 'harmonize with the universal principles of justice and solidarity' and that 'a legal order can be legitimate only if it does not contradict basic moral principles' (BFN 99, 155). I take it that by 'moral principles' here Habermas is referring to the moral norms – note the plural (moralischen Grundsätzen) – that are validated by the universalizing procedure, and not the reconstructed principle (U) itself (BFN 106/FG 137).<sup>11</sup> In other words, he maintains that a necessary condition of the legitimacy of any law is that it be morally permissible. That has to be correct, since legitimate laws would not function (i.e. evince 'quasi-voluntary' compliance) if they at the same time allowed or enjoined citizens to act immorally. So the 'moral permissibility constraint' on political legitimacy points in the same direction as Baynes' Larmore-inspired revision of Habermas.

So far, so good. Observe, though, that Habermas's formulation of this constraint is ambiguous. It is presented both as a positive requirement of coherence, that legitimate law 'must harmonize with' morality, and as a prohibition against inconsistency, that no legitimate law may violate any moral norm. The latter condition is weak and is easily met by laws that have no moral bearing. Baynes takes the former and stronger view, namely that there should be some positive relation of fit between the core morality and legitimate laws. Indeed, he makes it stronger still by claiming that the public political culture must a) contain a moral component – the 'core morality' – and b) satisfy the validity requirement. 'Citizens must simultaneously both presuppose and strive to articulate a basic political consensus...focused on the idea of a core morality that all citizens can endorse as valid for the same (publicly available) reasons' (179).

At this point, Baynes's interpretation of Habermas's theory invites the objection that it makes agreement in the realm of politics hard to achieve. The kind of consensus required by the core morality view of political legitimacy is both very wide – comprising as it does all members of the moral community – and very deep – requiring every participant in discourse to accept a norm for the same reasons. The objection here is not that reasonable pluralism extends to morality – an objection that Baynes finds unconvincing (???) – but that political consensus need not be, and should not be, conceived as being so wide and so deep. Habermas is willing to admit that morality is

a scarce resource in modern, complex, differentiated, culturally pluralist societies (JA 91), but he does not, and should not, concede that political legitimacy is. For legitimate law, according to Habermas, functions in modern societies as a compensation for the diminishing moral (and shared ethical) substance, and thus helps achieve social integration, and it can only provide that help because it is more abundant and easier to 'produce' than valid moral norms. (BFN 98-99). So in introducing his revisions, Baynes weakens Habermas's sociological account of the socially-integrating function of law and democracy.

There is another more telling objection, though. In moving Habermas towards Larmore's attenuated natural law version of Political Liberalism, Baynes shifts him away from Rawls's pragmatic and metaphysically quietist conception of Political Liberalism. Recall that for Larmore the core morality is accepted because true or universally valid (Larmore 1992, 155). And insofar as Baynes's Habermas subscribes to the 'core morality' view, then he must also acknowledge the actual existence of some first-order moral norms. Things are very different with Rawls. The political ideas and values, though they are indeed, as Rawls puts it, moral ideas and values (PL 147-8), figure in political deliberation not as true or valid moral principles, but as 'political' ideas. This means first that, as part of the overlap of reasonable doctrines, they are widely shared among citizens; and second that they are germane to a liberal democratic constitution. Baynes, though, claims that his reconstruction brings Habermas closer to Rawls's metaphysical quietism. Twice he observes that Habermas – after the exchange with Rawls – comes to accept the idea of a political conception as 'freestanding', as a 'module' that can be slotted into (and detached from) all and any reasonable comprehensive doctrines (175 & 212). And he concludes that in the end, there is scarcely any difference between the two as regards the freestandingness of their respective political conceptions of justice (212).

I'm not convinced by the argument. It is dangerous to draw conclusions from Habermas's use of Rawls's vocabulary, partly because the vocabulary is wanting in precision, and partly because Habermas has a bad habit of adopting an existing terminology but giving it a different sense. This is a case in point.<sup>12</sup> For Rawls, an argument or conception of justice is 'freestanding' when it is drawn up only of ideas that are contained in the overlap of reasonable doctrines. Thus a 'freestanding' justification is indemnified from certain kinds of objections: it cannot be reasonably rejected on the basis of comprehensive arguments – i.e. on the basis of arguments based on non-public ideas and values, or those falling outwith the overlap. Rawls does not deny that 'political ideas' are also moral ideas, but he says nothing about how the political morality (the subset of moral ideas that fall

within the overlap of reasonable doctrines) relates to comprehensive morality. That is one important aspect of his 'quietism'. Habermas, for his part, resists making any distinction between comprehensive morality and political morality. And, as we have seen, even claims that the principle of democracy is 'morally freestanding' (BNR 80) - a quite different kind of freestandingness to the one envisaged by Rawls.

I'll return to this point below, but let us consider Baynes's strategy of emphasizing the similarity between his ('core morality') version of Habermas and Rawls. Baynes argues that the existence of a core morality that can be grasped by all citizens from the perspective of their different worldviews is 'the important lesson to be learned from Rawls' overlapping consensus that Habermas embraces as well' (182). I think that this smudges what is in fact a bright line between them. Baynes' 'core morality' interpretation of Habermas places political legitimacy on a much more metaphysically and morally robust basis than Rawls's overlapping consensus idea, and pulls in the opposite direction of Rawls' metaphysical quietism.<sup>13</sup>

Consider Rawls's chief objection that Habermas's political theory is *comprehensive*, while his 'is an account of the political and it is limited to that' [132]. It is difficult to see the force of Rawls's objection here because his notion of a comprehensive doctrine (philosophical or moral) covers a multitude of sins. For one thing, Rawls implies that Habermas's conception of political legitimacy, and his political theory, rests on a highly controversial moral theory, and some very rich assumptions about how moral philosophy, and philosophy more broadly, should be done. Reasonable people can reject both of these. If correct, that applies also to Habermas's 'core morality thesis' - the idea that a liberal political culture is based on a core morality, which Baynes attributes to Habermas. For another, as we have seen, Habermas assumes (as does Larmore) that the core morality is the true morality. Not only does he hold that Discourse Ethics is true, that he has correctly reconstructed the actually existing moral practice of modern, post-conventional society; he also holds - insofar as he subscribes to the core morality thesis - that there are at least some extant valid moral norms.

If Rawls' criticisms are correct, Habermas is not free to adopt Rawls's idea of the overlapping consensus and the correlative idea of the freestandingness of the political conception of justice, and their views cannot be as similar as Baynes maintains (175, 178, 212). Habermas may call his conception of political justice, and his conception of the political realm 'freestanding', but it is not freestanding in the same way as Rawls's, and in Rawls's view, it is not freestanding in the right way, and not freestanding enough (RH 134). Alternatively, if Baynes thinks Rawls's objection to

Habermas's theory – that Habermas's theory is comprehensive and philosophical, while Rawls's is merely political – Baynes needs to argue the point. Otherwise, Rawls' objections to Habermas stand firmly in the way of Baynes's attempt to bring Habermas closer to Rawls's metaphysically quietest conception of Political Liberalism.

In my view, Baynes has picked up on two lines of thought in Habermas's writings that head in different directions. On the one hand, the 'core morality' interpretation captures Habermas's attempt to make Discourse Ethics fruitful for a theory of democratic legitimacy in BFN, and his concomitant attempt to conceive the legitimacy of law along the lines of the validity of moral norms. On the other, Habermas's description of his theory as 'freestanding' expresses his idea of the autonomy of the political realm and his view that the grounds of political legitimacy are immanent to law. The latter sits well with Rawls's political quietism, but not the former.

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A similar tension can be seen in Baynes' discussion of Habermas's ideal of public reason. Habermas first tried to work out this ideal in the context Discourse Ethics in the 1980s. Discourse Ethics was a broadly Kantian moral theory. The scope of its central principle (U) and of the correlative notion of the validity of moral norms was very wide: it extended to every moral agent and participant in discourse. That is the residue of Habermas's Kantianism.

Now, because on Habermas's account the idealizing assumptions of discourse are so strong – consider the validity requirement as a condition of 'rationally motivated consensus' (170) – Habermas's ideal of public reason and his conception of public justification is a very demanding one. In my view, this ideal is so demanding that it cannot, as such, serve as the model of political agreement, and the ground of political legitimacy, in the world as we find it. And as we have already seen, this is Rawls's view. Rawls studied Habermas's Discourse Ethics intently in the run-up to their 1995 exchange and dedicated two graduate seminars in 1993 to the question of whether Habermas's idea of public reason (in Discourse Ethics) posed any challenges to the idea of public reason he sets out in chapter VI of *Political Liberalism*. Rawls's conclusion was that Habermas's ideal of public reason was 'utopian in the sense that public discussion in existing democratic societies cannot actually proceed on this basis'. It is utopian, he noted, insofar as it allows that 'anyone is free at any time to introduce into discussion any consideration'.<sup>14</sup> (Thus it violates what Rawls calls the moral duty of civility, namely that it is incumbent on citizens in the political realm, not to adduce reasons from their reasonable comprehensive doctrines (outwith the overlap)

which thus cannot be accepted by all citizens. It is utopian in two further respects also. It is utopian in scope since it aims to secure the agreement of every member of the moral community; and finally is utopian in aim, since it aims at agreement on the basis of the same reasons. In spite of this, Baynes claims that once Rawls's 'model of public reason' is properly understood (not as Habermas understands it) one can see that 'it does not differ significantly from Habermas's own account of public reason' (170).<sup>15</sup>

To see who is right here we need to look in more detail at Habermas's political theory, and in particular the role of the discourse theory of morality within it. For that is the locus of the model of public reason Rawls dismisses as utopian. Rawls' 1993 seminar notes, and certain passages of his 1995 *Reply to Habermas* indicate that he finds it hard to answer his own question whether Habermas's model poses a challenge to the conception of public reason in PL VI, for he cannot tell what Habermas's model of public reason will look like once the real world constraints on political discussion about matters of basic justice are factored in (Folder & RH 139-41). Rawls has hit on a real difficulty here. The condition of legitimacy set out in the principle of democracy, that laws are only legitimate if they 'can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted', needs filling out, because Habermas does not say enough about the nature of that assent (BFN 110). All he says in BFN is that moral, ethical and pragmatic reasons enter into the mix that is apt to justify political norms, and that moral reasons have priority (BFN 103, 108, 113; FG 64-6; TIO 42-3; JA 13). He also states two further conditions. '[R]easons that are convenient for the justification of legitimate law, must, on pain of cognitive dissonance, harmonize with the moral principles of universal justice and solidarity. They must also harmonize with the ethical principles of a consciously 'projected' life conduct...' (BFN 99).

As we noted above, Habermas appears to construe the moral permissibility constraint as a prohibition against inconsistency: no legitimate law may violate any valid moral norm. As for his surprising claim that legitimate law must 'harmonize with' ethical principles, that has to be understood in an even weaker sense, because Habermas accepts pluralism about ethics. It would be too much to ask legitimate laws to positively cohere with all (diverse and discrepant) ethical principles. What he must mean is that legitimate laws should strive to find some congruence with every citizen's ethical self-conception, though this will inevitably differ among cultural groups, and from person to person. Taken together this yields the view that a law is legitimate only if it is a) properly passed by a bona fide legal process; b) does not violate any valid moral norm, and c) achieves some measure of congruence from each citizens' ethical values. Note that laws can

satisfy all these conditions and still fail to meet the validity requirement, and the requirement that there be a positive fit between valid moral norms and legitimate law. The upshot is that the view of public reason that Baynes constructs on behalf of Habermas with the help of Larmore's 'core morality' idea, namely that 'basic political norms...are legitimate only if they ...could be agreed to by all citizens as participants in a practical discourse for the same (publicly available) reasons' (170) is very strong, and would be equally rejected by Rawls as utopian.

Of course, Baynes might still be right to claim that Rawls's position, properly understood, is not so different from Habermas's ideal of public reason in the political realm, however utopian Rawls thinks the idealisations in Discourse Ethics. It is true that there is a sense in which Rawls' pro-tanto justification of the political conception of justice meets the validity requirement: there are some shared reasons – the reasons implied by the common stock of political ideals and values in the overlap of reasonable doctrines. On that basis all citizens can agree to a political conception of justice *for the same reasons*.

Yet, the 'core morality' that Baynes ascribes to Habermas is not the 'political morality' we find in Rawls, a pool of shared ideas and values that bear on our common life together as citizens, that fall in the overlap of reasonable doctrines. The 'core morality' comprises some universally valid moral norms. Habermas repudiates what he calls the 'ingrained prejudice' that morality pertains only to 'social relationships for which one is personally responsible' whilst law and political justice (and not morality) pertain to 'institutionally mediate spheres of interaction' (BFN 108). Morality 'crosses the boundaries between public and private' (BFN 108.) It flows into the political and legislative process through the channels of representative democracy and is given legal form by the human rights enshrined as basic rights in democratic constitutions. The core morality, then, is in all these respects, what Rawls would call a comprehensive morality. It applies to every moral agent. It regulates all conduct, in every domain of social life, not just constitutional essentials and the house-rules of political association. Furthermore, agreement on the core morality is wider and deeper than politics can aspire to, and than political legitimacy requires. True, the later Habermas adopts Rawls's metaphor of the 'module' for the political conception of justice (175). But as we saw earlier, one must treat Habermas's use of Rawls's terminology with great care. Indeed, the very passage Baynes cites highlights the difference in their views. The 'module' Habermas is talking about comprises a 'universalistic legal order and egalitarian social morality', a 'module of secular justice' that can fit into each orthodox religious worldview even though 'it is constructed of reasons that are neutral

toward different worldviews' (BNR 112). The political values, which according to Rawls underwrite the pro-tanto justification (and freestanding) political conception of justice, are neither secular nor non-secular. Secularity does not come into it. Nor are they neutral in all senses (PL 191-4). Their peculiar political role heralds from the fact that they are held in common by reasonable people, and bear only on constitutional essentials. In other words, Rawls's 'module' the political conception of justice, is more narrowly circumscribed and has shallower roots than Habermas's.

\* \* \*

One of the main motivations for Baynes's 'core morality' interpretation of Habermas's conception of political legitimacy is that he, like Habermas, wants to make the discourse theory of democratic legitimacy retrospectively compatible with the central ideas of Discourse Ethics. But in trying, in addition, to show that it is similar to (175,178-9), indeed virtually indistinguishable from (212), Rawls' metaphysically quietist conception of political justice, he attempts in my view to build a bridge too far. The ideal of public reason that Habermas developed in Discourse Ethics is basically *Kantian* in its conception: it is universal, highly ideal, normatively taxing, and theory-laden. Baynes's interpretation of Habermas's political theory neither avoids nor deflates these features. The metaphysically quietist model of political legitimacy in the later Rawls, aspects of which certainly gain in appeal to Habermas after 1995, is, by contrast, more *pragmatist* in inspiration. Baynes has the merit of being sensitive to both aspects of Habermas's work and the hermeneutic generosity to attempt to reconcile them. Indeed, he is generous to a fault, for he ends up downplaying the tension between them rather than explaining or resolving it. In this respect, though not in all, Habermas's Kantianism and his pragmatism come apart.

That said, my criticisms assume that Rawls succeeds in being metaphysically quietist while Habermas does not. Habermas, in his reply to Rawls's *Reply*, denies that 'political theory can itself move entirely within the domain of the political and steer clear of stubborn philosophical controversies' (MW 93). Baynes might agree. Perhaps he thinks Rawls more of a comprehensive Kantian than he likes to let on. Rawls, after all, rests his arguments on a notoriously rich conception of 'the reasonable.' Perhaps Baynes assumes that Rawls is also an exponent of Kantian pragmatism, and this assumption underlies his claim about their fundamental similarity. In that case, we would differ only in that what Baynes sees in both Habermas and Rawls as a happy marriage of Kantianism and pragmatism, I view as an unholy alliance.

But it would be wrong to end this review on a negative note. Disagreements among Habermas scholars have the character of a ‘family quarrel’, more so than Habermas’s criticisms of Rawls. They concern small differences that matter more to the disputants than to most readers. And there is, after all, much to admire in this excellent book, and much to consider in the learned and thoughtful interpretation of Habermas that it advances.

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## Endnotes

<sup>1</sup> Baynes 1991, 1995, & 2002.

<sup>2</sup> ‘The special role of the critic is to describe what is wrong in ways that

suggest a remedy'. Walzer, 1989, 10.

<sup>3</sup> 'From the beginning, critical theory labored over the difficulty of giving an account of its own normative foundations' (TCA1, 374)

<sup>4</sup> Honneth 1991, 282.

<sup>5</sup> Amy Allen, while noting that Habermas officially renounces the philosophy of history in Hegel and Marx, nonetheless criticizes him (and Honneth) for the 'progressive, developmentalist understanding of history' with which he replaces it. Allen 2016, 3, 32, & 117.

<sup>6</sup> Honneth 2009, 49.

<sup>7</sup> Habermas frequently claims that he is a 'cognitivist' and he is in the sense that he thinks moral action is knowledge.

<sup>8</sup> Larmore 1992, 12-13.

<sup>9</sup> Larmore 1992, 135.

<sup>10</sup> Baynes expounds and seems to endorse this aspect of Habermas's analysis in *Between Facts and Norms*. (135)

<sup>11</sup> Later on, he makes an equivalent claim, i.e. that 'legal norms ... claim to be in accord with moral norms [Moralnormen], that is, not to violate them' (BFN 155) Again, this means that a *de facto* consensus on these norms must exist.

<sup>12</sup> Habermas's use of 'cognitivist' to designate a meta-ethical position that would normally be called 'non-cognitivist' is another.

<sup>13</sup> Robert B. Talisse, 'Rawls and Pragmatism' forthcoming in Scott Aikin and Robert B. Talisse, "Pragmatism, Pluralism, and the Nature of Philosophy".

<sup>14</sup> Harvard University Archives. Papers of John Rawls. Series VII, Box 51, Folder 9. Seminar 1993, Law of Peoples, Habermas, Political Liberalism and Public Reason I and II, [1993]

<sup>15</sup> Baynes' also writes that Habermas has a 'similar conception of public reason' to Rawls, which is, if anything, 'even stronger' (179). This is nearer

to the mark: it is much stronger than Rawls's and not so similar.