

# ON RAWLS AND HABERMAS: IMPLEMENTING MODELS OF PUBLIC DEBATE

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When it comes to theories of justice or social cooperation, I think that much of what we can say about them becomes evident when we consider the likely outcome of putting them into practice. To that end, I want to assess the practicality of the models of political debate presented in Habermas and Rawls. In the first two sections, I canvas the relevant features of Rawls' public reason and of Habermas' discourse ethics. In the third, I explore their disagreement on the limitations of the norms we may discuss in public political debate. While Habermas would have us introduce any norm we truly believe, Rawls' model has structural limitations that restrict the content of the norms we consider. In the final section, I consider the likely practical consequences of adopting either as the model of public debate. I suggest that Habermas' theory entrenches debaters to the point that no meaningful progress can be made. Moreover, effectively avoiding this pitfall requires adopting strategies that parallel those found in Rawls' public reason.

## 1. Rawls' Public Reason

Rawls feels that any society with longstanding institutions supporting free thought and expression will contain several competing comprehensive doctrines, each with its own conception of the good life.<sup>1</sup> Since our society will have a pluralism of competing comprehensive doctrines, we need to recognize the autonomy of individual doctrines while providing an arena to advance public social and political values. Public reason is designed to provide such a forum.

Public reason begins by acknowledging the existence of an overlapping consensus, centered around those tenets of public life that are already supported by the reasonable comprehensive doctrines found in society.<sup>2</sup> Comprehensive doctrines involve a tradition of thought, providing followers with a largely consistent framework for dealing with everyday aspects of life, and include official guidance on weighing the competing values within the framework. Alternatively, public reason focuses on a limited range of principles and has a limited range of applicability, and comes into play only when we consider issues of basic structure and constitutional essentials.<sup>3</sup> Since our comprehensive doctrines are complete, they are often at odds with one another on many issues, and cannot be accepted by all reasonable citizens. As a result, we cannot appeal to every tenet of our comprehensive doctrines, but instead we must appeal to principles supported in the overlapping consensus. In this way we are said to have a *political* consensus, in that we agree on basic principles and constitutional essentials, even though we need not have a *philosophical* consensus because we may each have different reasons (based on different comprehensive doctrines) for supporting the basic principles.<sup>4</sup> It is therefore imperative that reasonable people participating in public reason limit the suggestions they offer to the tenets of basic essentials derived from the overlapping consensus. While the overlapping consensus is central to public debate conducted via public reason, comprehensive doctrines play only an auxiliary role.<sup>5</sup>

Citizens using public reason must meet the criteria of reasonable persons and must limit their proposals to ones that everyone in the society can be reasonably expected to

accept. Reasonable persons are marked by two essential aspects: civility and accepting the burdens of judgment.<sup>6</sup> Civility can be seen as a willingness to engage in a public and honest debate with an open mind. This is captured by one's readiness to listen to the suggestions of others, to offer one's ideas on political policy as merely suggestions, and to accept that one may need to alter one's own view. The justifications offered for our proposed values must also be such that others could find them acceptable (Rawls, *Liberalism*, 2<sup>nd</sup> ed. 217). The burdens of judgment focus on the difficulties involved in assessing evidence. There can be reasonable disagreement over what the evidence is, how much significance each piece has, and so forth (Rawls, 2<sup>nd</sup> 56-7). Accepting the burdens of judgment then, means acknowledging that people may disagree on an issue while none can reasonably be said to be in error. Therefore, we must not only accept the fact that there will be disagreement between citizens in a democratically constituted society, but we must also recognize and accept the more common ways and places that disagreement arises. In offering my proposals and assessments of public political values, I acknowledge that I may have overlooked something, or improperly emphasized an element of my justification, etc. Moreover, I can feasibly be shown why I should alter my opinion as long as my interlocutor recognizes the burdens of judgment and argues civilly.

In summation, we should note that accepting the burdens of judgment and operating under civility means that the considerations we can offer in support of or views are limited. In accepting the constraints of reasonableness, I must appeal only to those tenets I feel everyone can reasonably be expected to accept, and I am generally forbidden from appealing to every available tenet of my comprehensive doctrine.<sup>7</sup> In limiting political debate in this way, public reason prevents me from foisting the value system of my comprehensive doctrine onto others.

## 2. Habermas' Universalization Principle

Habermas seeks a theory that will enable us to reach a reasoned agreement on practical issues. Only this cognitive approach permits society to develop impartial practical judgments based on reason. While every member of the speech community may participate in public political debate, participation in a discourse entails accepting some basic guidelines. Habermas' universalization principle of discourse ethics is derived from Alexy's principles of argumentation (37-40). The principles forbid contradicting oneself and equivocation, and command that one treat like cases alike, offer reasons for proposals, and limits consideration to believed principles. Furthermore, there are no limitations on content (Habermas 87-89).<sup>8</sup> These rules are offered as support for Habermas' universalization principles of norms:

(U) For a norm to be valid, the consequences and side effects that its *general* observance can be expected to have for the satisfaction of the particular interests of *each* person affected must be such that *all* affected can accept them freely (120).

Any person engaging in an argumentative discourse is said to accept (U), at least implicitly, and thereby also to accept the formative rules on which it is based.

There are at least four aspects of discourse ethics under (U) that bear highlighting. First, the method of discourse ethics is rational debate, and its goal is reasoned agreement. Therefore, *if* we can continue in our discourse, we will eventually agree. Thus, (U) implies that

parties will ultimately arrive at a consensus. Second, if our public discourse is teleological, it is also reasonable to think of it as a "success" term. If we fail to attain consensus, our discourse is not over and should continue. This implies that no norm will be valid until, and unless, a consensus is reached among all competent, affected parties. These features mark Habermas' discourse ethics as an "ideal" theory. Third, participants in public discourse come to the ideal speech situation with a preconceived idea of what is in everyone's interest. In order for us to propose only what we truly believe, we must know what we believe. We must each argue for our own conceptions and hope to prevail. All parties will see any agreement reached in this manner as legitimate since it derives from their having directly presented and discussed the issues.

The fourth feature—that there are no limitations on the content of our discourse—explains why reasoned agreement emerging from our public discourse is legitimate. By Alexy's principles of argumentation, there is no pressure to argue for or against any particular principle. There is no political pressure; there is no "received opinion," no social or familial pressure, etc. There is also nothing implicit in the very structure of our public political debate that prevents us from proposing any given norm. No content is taboo in the ideal speech situation which ensures that no one is left out of the discourse whether a Klansman or a Black-Muslim. I may propose any norm that I truly believe to be in the best interests of civil society. Under the open and respectful conditions established by (U), together with its implicit rules of argumentation, any proposal that generates consensus will, ipso facto, be a norm that we think is in our best interests.<sup>9</sup> So the ultimate outcome of public debate framed within the guidelines of discourse ethics is a unanimous consensus with agreement based solely on the force of rational debate and the pervasive power of the better argument.<sup>10</sup> This reasoned agreement constitutes the defining characteristic of a "right" or "valid" norm for Habermas.

## 3. Limited Considerations

There are several similarities between these two models for conducting our public political forum. For Rawls, reasonable persons who recognize civility and the burdens of judgment offer norms as proposals they think everyone would reasonably accept. For Habermas, we enter public discourse under the universalization principle with an idea of the good for everyone. So Rawls and Habermas each manage to retain Kant's moral principle of universalization while providing for stable democratic procedures in a well-ordered society.<sup>11</sup>

Although the structure of debate may be similar on these models, the most significant difference centers on content. This difference can be expressed in terms of scope, although it has two important manifestations. First, our goal differs significantly for Rawls and Habermas. Rawls seeks to justify norms relevant only to basic justice and constitutional essentials, so he proposes his conception of political justice from within contemporary Western morality. Habermas, on the other hand, seeks to justify a host of norms beyond mere constitutional essentials and, therefore, takes a position outside of our current moral perspective. Taking a position beyond our moral perspective permits the ideal speech situation to test even our most basic principles. In this way, Habermas hopes our political principles will have a firmer grounding. Secondly, our equipment for attaining the goal differs. The scope of the principles or norms participants are allowed to propose in defending their political conception of the

public good differs. This difference is most obvious in Alexy's rules of argumentation, which allow us to introduce any norm we see fit, while this is explicitly disallowed by Rawls. So, there are two important ways the scope of the proposed principles is limited for Rawls and not for Habermas.<sup>12</sup>

To all appearances, implementing Habermas' theory will mean that we institute more values, and that it will be easier to formulate our arguments in defense of those norms. Regardless of appearances, I think each of these conclusions is mistaken. In order for us to effectively implement Habermas' model, we will invariably have to defer to the kinds of limitations that Rawls imposes from the start. In the end then, the result of implementing Habermas' model will not be significantly different from the results of implementing Rawls' model.

#### 4. Implementing the Debate Models

In Rawls' scenario, we begin with an overlapping consensus that is constituted by shared norms already present in our public political culture. Since participants in public debate are not permitted to draw from further principles found in their comprehensive doctrines, all political debate must begin with principles found in the overlapping consensus. Presumably, these same principles would be immediately confirmed if we implemented Habermas' ideal speech situation. If the principles are already latent within our current political culture, then it seems a consensus already exists. Our starting points will be the same then, regardless of which model we implement.

The task of our public political debate, however, is to *extend* this foundation to include other, more specific, norms.<sup>13</sup> One key feature of Rawls' public reason is that many of the most contentious values are omitted from public debate. This follows from the provision against using any tenet found in our comprehensive doctrines. In Habermas' ideal speech situation, we can introduce unpopular norms. In both cases, it does not matter whether we are arguing for contentious norms specifically or appealing to them to argue for others. How then, can we extend our public political values?

A central difference between these models emerges when we consider what individuals engaged in debate do when a norm is *not* supported. For instance, Rawls leaves enough wiggle room for any individual to cling to his unsavory views regardless of the public support. Although the burden of civility implies that I offer ideas on policy as mere suggestions and accept that I may have to alter my view *in public debate*, within my comprehensive doctrine I may retain any norm whatever.<sup>14</sup> This retreat into the comprehensive doctrines allows us to agree to disagree. However, this option may be closed in Habermas' ideal speech situation. Under (U) norms are valid only when all affected parties can freely accept their consequences. Failure to reach consensus on a norm entails that the norm is not valid.

The concept of validity is vague here and has at least two relevant meanings. First, an invalid norm could simply be one that is improper as a *public* political norm. On this interpretation, I may cling to my unpopular values. However, this is tantamount to the Rawlsian model. Moreover, on this reading, consensus need not be unanimous which runs contrary to a natural reading of Habermas. Alternatively, it could be that any invalid norm is thereby an improper norm *simpliciter*. On this interpretation, as the force of better argument begins to alter my proposed norm, I cannot rescind the proposal and cling to my unpopular norm. Rather, I must stop believing in the value of the norm. Here, consensus is understood

as unanimity, and the end result of implementing the ideal speech situation is that there will be no pluralism because there will be no need for it. In considering which model makes more practical sense, we must now consider whether participants in public political debate will be satisfied when their proposals change during the discourse or whether they will merely rescind suggestions and keep unpopular versions in their comprehensive doctrines.

Our degree of commitment to our proposals is now a crucial feature. The moral and religious beliefs that are paradigmatic of comprehensive doctrines are strongly held. If we hold religious beliefs at all, we do so with great strength and devotion. Furthermore, moral beliefs often have a religious foundation which gives them the same devotion. If we add Habermas' insistence that we only propose values we believe, then we will be more likely to cling to our proposed norms and we will be unhappy with much change. Given that we hold beliefs with varying strengths, we are likely to begin our public political debate by proposing those beliefs we hold most intensely.<sup>15</sup> Consequently, Habermas' model almost guarantees that we begin public political debate with the most contentious parts of our comprehensive doctrines. This suggests that we will be unwilling to forsake our proposed norms, and requires that the relative "force" of the better argument be that much stronger. These considerations make reaching the consensus inherent in (U) much more problematic than reaching political agreement in Rawlsian public reason. These difficulties do not arise for Rawls. In the limited debate of public reason, we are not permitted to introduce the very principles that are most problematic, at least not until we have settled on a shared foundation of basic norms which provides a common ground for settling our disagreements on more contentious norms. As a result, the practical problems generated by the fully-open debate in the ideal speech situation are avoided.

Consider an example of public debate. How might I convince a devout Catholic that abortion is acceptable, on Habermas' model? If I start from principles that contradict fundamental tenets of her comprehensive doctrine, then we will become deeply entrenched in our opposing views. If I wish to succeed on Habermas' model, I must be prepared to begin my argument from principles already held by my Catholic interlocutor. In short, the fight must be waged on her turf.<sup>16</sup> So, if I can show her that certain tenets of *her* overall doctrine support an appropriate interpretation of persons and the respect they deserve, then I might be able to move forward to support a woman's right to choose abortion in very limited circumstances. However, if I try to argue for a more inclusive right to choice, my friend is likely to counter my proposals with various tenets from the more encompassing theoretical working of her complete comprehensive doctrine. Since I am unlikely to agree with these values or their weightings, this drives the debate towards entrenched positions again. Given the strength of her moral and religious convictions, the probable outcome is her continued veto of more inclusive abortion rights.

While this is only one example, it is indicative of the difficulties generated when public political debate centers on our most strongly held beliefs. The three central aspects of Habermas' discourse ethics converge to generate this fundamental problem. Given the conviction with which we hold moral and religious beliefs, the insistence that we propose only those norms we truly believe, and the open appeal to any and all tenets of our comprehensive doctrines, it seems that the outcome of public debate under Habermas' discourse ethics will consist in little more than the few issues already found in an overlapping consensus and that have already generated initial agreement.

Alternatively, Rawls' public reason makes it easier for us to reach a political agreement in this situation. I begin by addressing basic tenets of belief found in my interlocutor's religious doctrine *and the overlapping consensus*.<sup>17</sup> Since public reason requires her to forgo many of the principles found deeper within her doctrine,<sup>18</sup> a limited right to abortion emerges almost effortlessly. This does not mean that extending that right to encompass more sweeping access to abortion will be easy. The burdens of judgment continue to restrain our debate, and we may say that life begins at different points, we may weigh fetal and maternal rights differently, we may place more or less importance on the quality of the expected life, etc.<sup>19</sup> Nevertheless, my interlocutor will have to conduct this debate with principles I also accept by either appealing directly to values inherent in the overlapping consensus or by deriving principles from them. Here the fight is waged on *neutral ground*. Participants in Habermas' ideal speech situation *could* make a similar move. Once we realize that our entrenched positions will get us nowhere, we could restrict our debate to a foundation of very basic tenets on which we do agree. At least then we would have some common ground from which to begin. But, once again, the ideal speech situation will have turned into the Rawlsian approach.

In focusing on the disparity between Habermas and Rawls on the limitations of the norms, values, or principles, we may discuss in public political debate, we see that Rawls' model is more effective than Habermas'. Habermas permits us to introduce any norm we believe, but Rawls' structural limitations impose restrictions on the content of our norms. It seems that Habermas' theory entrenches debaters, and preventing this leads to strategies parallel to those found in public reason. Although accepting the Rawlsian model of public reason means accepting several technical principles and structural limitations, it is precisely these restrictions that allow us to respect the total view of others while making headway in establishing a productive framework for public life.

## NOTES

<sup>1</sup> Reasonable comprehensive doctrines provide followers with a largely consistent framework for dealing with every aspect of their lives, categorize the group's values in a holistic, intelligible, and coherent way; provide followers with official weighting of competing values within the doctrine, which gives the followers practical guidance for their daily lives; and derive from a tradition of thought, preventing them from being volatile or mutating ideologies (1<sup>st</sup> 59).

<sup>2</sup> Rawls goes to some lengths to ensure that the overlapping consensus is not understood merely as a "least common denominator" of the principles available in comprehensive doctrines (see especially 2<sup>nd</sup> 149-150, 170-172). While the overlapping consensus may well be more than this, as Rawls argues, it is at least this, for the principles found in the comprehensive doctrine are also found in all reasonable comprehensive doctrines. All that is required for my present purposes is that comprehensive doctrines go well beyond the overlapping consensus, and the minimal interpretation of the overlapping consensus as a least common denominator is sufficient to demonstrate how Rawls' conception of public political discourse is superior to Habermas' model in practice.

<sup>3</sup> See Rex Martin for an analysis of whether Rawls' idea of constitutional consensus undermines political stability.

<sup>4</sup> The overlapping consensus is more than a mere *modus vivendi* (Rawls, 2<sup>nd</sup> xxxix-xli, 170-172).

<sup>5</sup> For a discussion on the theoretical implications of this restriction on public debate, see David A. Reidy and Andrew Williams. Reidy argues that limiting public debate in this way hinders us from using public reason to settle our most basic political issues. Consequently, tenets from comprehensive doctrines that go beyond the overlapping consensus *must* play a larger role in public debate. Williams uncovers flaws in Reidy's argument that public reason is incomplete, but also points out that even if public reason were incomplete, it does not follow that our only recourse is to fall back onto the contentious tenets of our comprehensive doctrines.

<sup>6</sup> Reasonable persons engaging in public reason are also understood to be free and equal citizens in a democratic constitutional regime that is marked by pluralism. Citizens are free and equal when they have a sense of justice (understood as "the capacity to understand, to apply, and normally to be moved by an effective desire to act from the principles of justice as the fair terms of social cooperation") and a conception of the good (understood as "the capacity to form, to revise, and rationally to pursue such a conception [of justice] . . .") (Rawls, 2<sup>nd</sup> 19).

<sup>7</sup> This is true except for the exceedingly rare case in which the comprehensive doctrine I follow is coextensive with the overlapping consensus.

<sup>8</sup> Habermas' numbering differs from Alexy's. The rules Habermas uses are 1.1 No speaker may contradict himself; 1.2 Every speaker who applies predicate *F* to object *A* must be prepared to apply *F* to all other objects resembling *A* in all relevant respects; 1.3 A speaker must not use the same expression with different meanings; 2.1 A speaker may assert only what he really believes; 2.2 A person who disputes a proposition not under discussion must provide a reason for wanting to do so; 3.1 Every subject with a competence to speak and act is allowed to take part in a discourse; 3.2 (a) Everyone is allowed to question any assertion whatever, (b) Everyone is allowed to introduce any assertion whatever into the discourse, (c) Everyone is allowed to express his attitudes, desires, and needs; and 3.3 No speaker may be prevented, by internal or external coercion, from exercising his rights laid down in (3.1) and (3.2).

<sup>9</sup> Douglas Kellner provides a modern application of Habermas' concept of the public sphere, which he argues promotes greater democratic participation and debate.

<sup>10</sup> See Ståle Finke for a Kantian critique of Habermas' restriction that only discursively articulated endorsements may enter our public discourse and his reliance on the "force" of the better argument.

<sup>11</sup> See Nythamar De Oliveira for his analysis of this point.

<sup>12</sup> Another difference involves the manner in which norms are eliminated or introduced. Rawls proposes a model that permits a monological assessment of many norms. In this way, a single, idealized, rational agent can settle on the background conditions of the Rawlsian model. Criticism of this monological approach is a central aspect of Habermas' departure from Rawls. The Habermasian ideal speech situation *requires* that norms be debated. Only after a dialogue can norms be either eliminated or retained in our public political conception. Darrel Moellendorf argues that Habermas' commitment to actual debate undermines his commitment to the idea that moral judgments have a cognitive content analogous to truth. Since the content of our norms changes under the pressure of public debate, the cognitive content of our norms must therefore be revisionist.

<sup>13</sup> Frank I. Michelman argues that both Habermas' and Rawls' models rest on an unstable assumption: Each thinks that public agreement on the constitution is essential. This agreement is based on a shared sentiment arising from our public ethical assessment of the values instituted in the constitution. However, Michelman argues that a modern pluralistic society cannot have a settled agreement on its constitution, thereby undermining the possibility of a shared foundation.

<sup>14</sup> Thus the Klansman, disappointed that his separatist suggestions fell on deaf ears, may keep the norm and continue espousing the view with other believers.

<sup>15</sup> These firmly held beliefs are most likely to be foundational components of the complete workings of our comprehensive doctrines.

<sup>16</sup> As I mentioned earlier, Habermas' model almost ensures that we begin with something like Rawls' overlapping consensus because any norm already supported by the pluralism of doctrines will garner a steadfast

consensus. On Habermas' model, however, my Catholic interlocutor can immediately move beyond this overlapping consensus to counter any other suggestion I make. So, while I may begin with shared principles, the ultimate force of my argument is subject to coherence with her overall doctrine.

<sup>17</sup> As a matter of personal choice, my Catholic friend would never consider abortion, but that is because she personally assesses actions according to her fuller comprehensive doctrine, which invariably goes beyond the overlapping consensus to which we are now limited.

<sup>18</sup> Rawls (2<sup>nd</sup> xxxix) characterizes his task as describing "how it is possible for those affirming a religious doctrine that is based on religious authority to hold a reasonable political conception that supports a just democratic regime?" Citizens who have submitted in conscience to the authority of their comprehensive doctrine seem to fall under the jurisdiction of two distinct authorities, and the values of these two authorities must be appropriately balanced. This is an intriguing line of thought, for it is hard to see why members of a religious faith would willingly forsake many of the tenets designed to give them a complete framework for dealing with every aspect of their lives. This is what motivates Nicholas Wolterstorff to criticize Rawls' notion of public reason. Alternatively, Philip L. Quinn suggests that it would be good if religious citizens worked within the limitations of public reason, although he feels that refusing to operate within them does not violate a moral duty. Hennie Lotter suggests that society should promote internal control by citizens themselves. If we apply this reasoning to religious citizens, we would expect them to willingly adopt the limitation of public reason and conduct public debate according to its principles.

<sup>19</sup> The six explicit burdens of judgment include that evidence is often conflicting and can be difficult to assess; once the evidence is determined, different people may weigh varying pieces of evidence differently; assessing borderline cases involves judgment and interpretation, which vary among individuals; our separate and individual life experiences affect how we assess the world around us; differing sides of an issue often have comparable force for different reasons, and making an overall assessment is difficult; and social value systems limit the available options for citizens (Rawls, 2<sup>nd</sup> 56-57).

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