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Review of Kenneth Baynes, The Normative Grounds of Social Criticism: Kant, Rawls, and Habermas (1992)

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die Freiheit in ihrer „spielerischen“ Form beim Schönen, die Freiheit in ihrer „ernsten“ Form beim Erhabenen (also beide Freiheitsformen der Einbildungskraft), und schließlich die Freiheit in der „tragischen“ Form der Willkür. Wenn die zwei letzteren in der „Aufopferung“ ihren gemeinsamen Zug haben, taucht bei der Willkür außerdem auf überraschende Weise ein typischer Zug der Freiheit der Schönheit wieder auf, nämlich das Überschreiten der Gesetzmäßigkeit: Durch die Suche des „höchste[n] in der Welt mögliche[n] Gut[es]“, die in der (für die Willkür entscheidende) *Liebe* wurzelt, „erweitert sich“ die praktische Vernunft über das Gesetz hinaus (vgl. Ak VI, 7). Dabei lassen sich, so Chiereghin, „die formalen Kennzeichen der Freiheit der Einbildungskraft“ wieder erkennen (206). So werden drei Fäden zusammengeflochten, die Kant explizit nicht verbunden hatte, deren Zusammenhang aber ein neues Licht erzeugt. Durch die Herausstellung dieser nicht zu erzwingenden „Liebe zur Freiheit“ (207) wird ein Kant-Bild entworfen, in dem zwar der sogenannte „tragische“ Kant im Vordergrund bleibt, der angeblich „rigoristische“ und „formalistische“ Philosoph jedoch nicht mehr zu sehen ist. In diesem Portrait in den Farben der Liebe zur Freiheit hätte sich Kant ohne Zweifel gerne wiedererkannt.

Claudio La Rocca, Pisa

Kenneth Baynes: *The Normative Grounds of Social Criticism: Kant, Rawls, and Habermas*. Albany: State University of New York Press, 1992.

Baynes's two main objectives are to show that Kant, Rawls, and Habermas share the view that "the idea of an agreement among free and equal persons [i. e., autonomous persons] ... constitutes the normative ground of social criticism" (p. 8), and that this "constructivist" view is more adequately developed and defended with each successive theorist. The study, however, goes beyond these aims and can often fruitfully be read as a comparative study of Rawls and Habermas. Baynes discusses Kant's theory of justice, Rawls's justice as fairness, and Habermas's discourse ethics in the first three chapters, respectively. In the remaining two chapters, he seeks to show that Habermas's view is in many ways superior to Rawls's. His final conclusion is that social criticism requires a "deliberative democracy" centered around Habermas's model of the public sphere (p. 181).

In his chapter on Kant, Baynes argues that autonomy is the foundation of Kant's theory of justice (and, hence, of his social criticism) in that he held that just laws are those that can meet the consent of free and equal persons. Baynes considers some challenges to his view, one of which is Yirmiahu Yovel's argument in *Kant and the Philosophy of History* (1980) that Kant saw the task of organizing a just state as "merely a problem in *political technology*" (p. 188). Yovel bases his argument on Kant's statement in *Toward Perpetual Peace* (Ak VIII/366) that even a nation of devils can bring about the republican state if they are smart enough. The implication is that instrumental reason, or intelligent self-interest, suffices as the foundation of the just state. One way in which Baynes seeks to meet this argument is by rejecting Kant's teleological interpretation of history, rightly claiming that the statement about the nation of devils must be placed in the context of Kant's notion of a "providentially guided nature" (pp. 12, 23, 47). Baynes rejects Kant's teleological view of history at several other places, arguing that it has a negative impact on

his justification of property rights (see below) and that it made him trust in reform "from above" rather than support revolutionary action "from below" (pp. 46, 185n.5). It is true that Kant's idea of progress established through self-interest alone raises some problems for his political thought, but Baynes fails to note that this idea is regulative and meant to support hope and moral praxis. More generally, it should be recognized that Kant's philosophy of history unifies the critical system and offers important moral reflections on our fate as historical beings.

Baynes elaborates his thesis that autonomy is the cornerstone of Kant's *Rechtslehre* in a fine discussion of his contractarian justification of the right to property, comparing it with Locke's account. He concludes: "According to Locke, in the state of nature property rights are absolute and the sole end of government is to protect and preserve natural rights. For Kant, by contrast, property rights remain provisional until the formation of a civil society and, strictly speaking, until the creation of a federal league of nations" (p. 39). Baynes finds Kant's view an improvement over Locke's but nonetheless rejects it because it "implicitly relies upon a teleological conception of history" (p. 48). His point seems to be that on Kant's terms one can only view one's property rights as not unjust if one assumes that they will meet the consent of all nations at some future moment in history. However, a significant critical conclusion can be drawn instead: Kant intended to stress the provisional nature of property rights in his time because he condemned colonialism. Accordingly, Baynes's contention that "the nature or form of property rights [in Kant] never actually becomes subject to public debate and agreement [as in Habermas]" is of debatable merit (p. 48). Further, Baynes's rejection of Kant's historical teleology leads him to neglect another crucial distinction between Kant and Locke: Kant transcended Locke's "possessive individualism" by making moral emancipation, or the kingdom of ends, the ultimate purpose of the liberal state.

For Baynes, we must go beyond Kant not only because his historical teleology is objectionable but also because his notion of autonomy is monological, based on a sharp opposition between reason and needs, and rooted in an untenable two-world metaphysics. Baynes here follows Habermas (p. 111), who overstresses his case. The picture of the moral agent in the *Grundlegung* tells only part of the story; a richer picture emerges in the *First* and *Third Critiques* and the historical essays, where communication and the historical transformation of needs become part of moral praxis. Baynes holds that a final major reason to transcend Kant is his claim that the moral law is given as a fact of pure reason. On his account, Habermas offers a good alternative with his derivation of his principle of universalizability from the pragmatic presuppositions of speech and argumentation (pp. 112 ff.).

The next chapter on Rawls is primarily interpretive and pays most attention to his work prior to the political conception of justice. Baynes perceptively argues that many early critics of Rawls failed to fully recognize his Kantianism because they did not see that "the original position *taken as a whole* — not just the description of the rationality of the parties — represents, in a procedural device, Kant's notion of autonomy" (p. 53). His main criticism of Rawls at this juncture concerns the justification of the two principles of justice through the process of reaching a reflective equilibrium. Baynes states: "Why should we regard the principles as justified unless it is our beliefs that have been brought into a condition of reflective equilibrium as a result of a process in which we participated?" (p. 74). He concludes

that this justificatory requirement of "actual participation" indicates that Rawlsian constructivism becomes more acceptable when it is "pushed" in the direction of Habermas's discourse ethics (p. 76).

After a rich expository chapter on Habermas, Baynes rebuts some critics who reject Rawls's conception of persons altogether, including the communitarians Michael Sandel and Charles Taylor. His own sympathies lie with critics like Habermas, who accept Rawls's understanding of autonomy but reject its specific representation in the original position. Here Baynes returns to his objection that Rawls does not offer "actual participation" as the basis of justification, but now the target is Rawls's formulation of a list of primary social goods that must guide the decision-making in the original position and provide a basis for judging the fairness of the basic structure of society. Baynes contends that "in severing the list of primary goods from a notion of what all could agree to [in a free debate], Rawls once more unnecessarily privileges the external perspective of the philosopher" (p. 148). Habermas's alternative is to base social criticism on the notion of "generalizable interests," which are interests that express the common good and are accepted by all in a free debate. This poses the problem that no guideline is offered in the absence of actual debates. Baynes describes the solution: "Habermas's proposal is ... to carry out virtual or counterfactual discourses to help differentiate between generalizable and nongeneralizable interests, thereby identifying areas where real generalizable interests have been suppressed" (p. 150). Baynes calls this the "'advocacy' role of the critical social theorist" (p. 150), but how does it differ from the contested external perspective of the Rawlsian philosopher? Moreover, Baynes here undermines his earlier criticism that Rawls's justification of his principles of justice is unconvincing without our actual participation.

To clarify these issues, a distinction drawn by Philip Pettit between distributive and collective consensus is helpful. [See *Habermas on Truth and Justice*, in: *Marx and Marxisms* (1982), ed. by G. H. R. Parkinson.] A distributive consensus is reached when each person of a group assents to a norm, whether or not after discussion with others. A collective consensus is reached when a group discusses a norm and then together agree to the norm. Initially, it seems that Baynes rejects Rawls because he defends his principles of justice through the device of counterfactual consensus. However, since Habermas's social theorist also proceeds counterfactually, we should conclude that Baynes's real objection is that Rawls seeks only distributive consensus, while Habermas aims at collective consensus. Thus, roughly speaking, the Rawlsian philosopher would say that the statement that some norm is just involves that each individual would assent to it under some suitable conditions of choice, whereas Habermas's social theorist would say that it would be affirmed by a group in a free dialogue. Baynes objects to the Rawlsian perspective as a "privileged position" of the philosopher (p. 146), but in either perspective there is a similar attempt to convince the reader of what would be chosen by rational agents. He further claims that Habermas's social theorist will see her proposals as "tentative" or "fallible" (p. 151), but Rawls does not deny that his principles of justice are subject to revision.

Baynes holds that the crucial difference between the two perspectives concerns their institutional implications. He writes: "[T]he idea of agreement [in Habermas] must not remain wholly counterfactual. Rather, a central task of critical social

theory is to identify ways in which this ideal can be institutionalized within an actually functioning public sphere” (pp. 6–7). Of course, Rawls also seeks a society of actual agreement concerning his principles of justice, but Baynes maintains that “insofar as a discourse ethics requires that the validity of social norms be tested in actual discourses [aiming at collective consensus] rather than through monologically conducted thought experiments [which suffice for distributive consensus], [Habermas] emphasizes more strongly than ... Rawls the need to encourage and maintain a wide array of institutions that together constitute an active and robust public sphere” (p. 6). Baynes seems correct that Habermas’s ethics requires the institutionalization of discourse, but it should be noted that Rawls’s model of distributive consensus as such does not preclude that he also would have argued for a strong public sphere. After all, this model only concerns his two principles of justice, leaving room for many norms, policies, etc., that may need to be debated in the public sphere. Baynes’s valuable study would have gained from a systematic and detailed defense of why he thinks that reaching collective consensus is always superior to reaching distributive consensus, both counterfactually and actually.

A final problem is why discourse should take place primarily in the public sphere. In his concluding chapter, Baynes shows that Habermas sees in our society the potential for a “reconstituted civil society” or “posttraditional public sphere” (p. 176), in which the “formation of public opinion ... take[s] place within informal institutions or ‘secondary associations’ that are sufficiently shielded from the colonizing effects of the capitalist economy and administrative state” (p. 178). Rejecting both pluralist and neo-corporatist theories of democracy, Baynes proposes that this enlarged public sphere can be the basis for a “deliberative democracy” in that the debate and resulting social criticism of citizens in the secondary associations can influence the political agenda and decision-making of official parliamentary bodies. In my view, these associations of communicative rationality are not enough; what is also required for the realization of a truly democratic society of autonomous agents is that the totalizing economic and political subsystems are democratized from within. A Kantian proposal in this direction can be found in the works of Hermann Cohen and other democratic socialists of the Marburg School.

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