

**May a Political Conception of "Overlapping Consensus"  
be an adequate Basis for Global Justice?  
(An Argument with the later Rawls' Conception of  
"Political Liberalism")**

*Karl-Otto Apel*

**Sinopse:**

Este estudo sustenta a ideia de John Rawls acerca da possibilidade de uma concepção política poder ser considerada como universalmente válida a despeito de qualquer relação com a religião e os costumes. Para isso o autor trata de diversos temas-chaves da atualidade, como a globalização, e toca nos pontos cruciais da filosofia moral.

**Abstract:**

This essay sustains John Rawls' ideas concerning the possibility of a political conception as universally accepted, despite any relation with religion and habits. Some important themes are used as contemporary keys, as globalization, and some main points of moral philosophy are touched.

**I. The Conception of "overlapping consensus" as an innovation in  
the context of Rawls' Political Liberalism.**

In order to quickly enter the middle of my topic, let me quote some passages of John Rawls' writings after *A Theory of Justice* of 1971. In the paper "Justice as Fairness: Political not Metaphysical" of 1985, he wrote:

"The essential point is this: as a practical matter no general moral conception can provide the basis for a public conception of justice in a modern democratic society: The social and historical conditions of such a society [...] profoundly affect the requirements of a workable conception of political justice: such a conception must allow for a diversity of doctrines and a plurality of conflicting and indeed incommensurable conceptions of the good affirmed by the members of existing democratic societies".

This passage is supplemented by the following one, which introduces the conception of an "overlapping consensus" which constitutes the characteristic innovation of Rawls' book *Political Liberalism* of 1993:

"Justice as Fairness is a political conception partly because it starts out from a particular political tradition. We hope that it is supported at least by a, as I would like to call it, 'overlapping consensus', that is a consensus that includes all the controversial philosophical and religious doctrines which presumably will persist and find adherents in a more or less just constitutional democratic society."

From these passages at least this much becomes immediately clear: The new contention of Rawls' - after and in contradistinction to the *Theory of Justice* of 1971 -, namely, the claim that his conception of justice is not metaphysical, in fact not even a "general moral conception", this claim is meant as a response to the challenge of the fact of pluralism of controversial philosophical (i.e. metaphysical), or religious views or doctrines which makes up the background for a possible acceptance of a conception of justice in a modern democratic society.

Later, in his discussion with J.Habermas of 1995, Rawls makes it clear that he considers even Habermas' discourse-theoretical and proceduralistic conception of justice as a "comprehensive doctrine" which for this reason could not hope for an "overlapping consensus" in a pluralistic society. He now points out his own conception very rigidly in the following words: "The central idea is that political liberalism moves within the category of the political and leaves

philosophy as it is. It leaves untouched all kinds of doctrines, religious, metaphysical and moral, with their long traditions of development and interpretations. Political philosophy proceeds apart from all such doctrines, and presents itself in its own terms as freestanding. Hence; it cannot argue its case by invoking any comprehensive doctrines, or by criticizing or rejecting them ...".

A bit later, Rawls offers a reformulation and elucidation of his conception of the relationship between the "freestanding" political theory of justice and the "comprehensive doctrines". This elucidation is especially interesting because it seems to suggest a sophisticated answer to the question on hand as to how the "freestanding" political conception of justice may be grounded independently of the presupposition of a comprehensive philosophical doctrine. Rawls' answer, I understand as such, reads:

"It (sc. the political conception of justice) can be formulated independently of any particular comprehensive doctrine, religious, philosophical, or moral. While we suppose that it may be derived from, or supported by, or otherwise related to one or more comprehensive doctrines (indeed we hope it can be thus related to many such doctrines), it is not presented as depending upon, or as presupposing, any such view."

I understand that this answer corresponds to the Rawlsian method of "constructivism", which in his later writings was interpreted as a method of "avoidance" in respect of foundational questions of philosophy. It wants to avoid or by-pass philosophical foundations, which according to Rawls must belong to "comprehensive doctrines", by hypothetical constructions that try to provide a common platform for many or even for all citizens of a pluralistic society "notwithstanding the background of their different, or even incommensurable, world views". Thus the political conception of justice, on Rawls' account, could be accepted by all citizens not on the basis of their different comprehensive views but nevertheless in more or less accordance with them, and this means: on the basis of an "overlapping consensus".

Now, in the face of all these features of the reformulation of Rawls' theory of justice in Political Liberalism it is very self-suggestive to conceive of the conception of the "overlapping consensus" as being something like a device for a pragmatic-political compromise; that is to say, a methodical suggestion that dispenses with a moral-philosophical foundation of justice in favour of delivering or surrendering itself to the contingent circumstances of a constellation of comprehensive views in a particular situation of a pluralistic society.

There are many strong reasons for such an interpretation of Rawls' new conception, I suggest:

## **II. The Insufficiency of the Pragmatic-political Interpretation of Rawls' Innovation and the Recurrence of the Problem of a Philosophical Foundation**

E.g. the fact that he now - along with the communitarians - shares the opinion that all possible foundations of morality necessarily may be traced back to comprehensive and culture-dependent metaphysical or religious doctrines; and, furthermore, the undeniable fact that, in our day, we have got to cope somehow with the problem of ensuring common justice, and hence just institutions and laws, in and for a pluralistic, or even a multi-cultural society. Thusfar or purely pragmatic-political solution of the problem would not even be so contemptible as it has been considered by some critics. For, reaching a purely political solution of the problem constitutes, after all, a task that is posed by an ethics of responsibility. Finally I would like to mention at this place that any consensus-theory (of a possible redemption of normative validity-claims) must deliver itself, to a certain extent, to the contingent circumstances of a historical situation, if it does only aim at reaching a factual consensus (agreement) in space and time without being orientated, at the same time, toward the possibility of questioning any factual consensus in light of the "regulative principle" (Kant) of an ideal (and thusfar ultimate) consensus. (I shall come back to this point later).

Anyway, my last remark shows that, from a philosophical point of view, we could and should be dissatisfied with the purely pragmatic-political interpretation of Rawls' conception of the "overlapping consensus" (or with a similar interpretation of his "freestanding" conception of political justice as a whole). As a matter of fact, J.Rawls himself does not confirm our attempted pragmatic-political interpretation; he rather refuses it as "political in wrong way", because it does not take into account the demand that the "overlapping consensus" must be a "reasonable" one, reached among "reasonable" comprehensive doctrines on the basis of the right reasons. In his reply to Habermas Rawls in fact even seems to answer any objection against a merely factual consensus by a distinction between "two different ideas of consensus". He says: "One idea of consensus comes from everyday politics where the task of the politician is to find agreement [...]. This idea of consensus is the idea of an overlap that is already present or latent and could be articulated by the politician's skill in bringing together existing interests the politician knows intimately." This idea of consensus obviously corresponds to the purely pragmatic-political interpretation I suggested. But Rawls continues:

"The very different idea of consensus in political liberalism - the idea I call a reasonable overlapping consensus - is that the political conception of justice is worked out first as a free-standing view that can be justified pro tanto without looking to, or trying to fit, or even knowing what are, the existing comprehensive doctrines (PL 39f.). It tries to put no obstacles in the path of all reasonable doctrines endorsing a political conception by eliminating from this conception any idea which goes beyond the political and which not all reasonable doctrines could reasonably be expected to endorse. (To do that violates the idea of mutuality.) When the political conception meets these conditions and is also complete, we hope, the reasonable comprehensive doctrines affirmed by reasonable citizens in society can support it, and that in fact it will have the capacity to shape those doctrines toward itself. (PL IV: 6-7)"

This clarification is very informative; but, in the context of our problem, it obviously shifts again the weight of justification from the "overlapping consensus" to the "freestanding" conception of justice. This conception, according to Rawls, must be "worked out first" and, "justified pro tanto", which obviously means that it can be traced back to the theory of justice of 1971 or a reformulation of it. The conception of the "overlapping consensus" seems indeed - as Rawls suggests in many places - to be only a second stage of the whole theory of "justice as fairness", a stage that presupposes already the elaboration of the "freestanding" conception of justice on a first stage of the whole theory but becomes itself necessary as an answer to the question as to how the "stability" of the well ordered democratic society can be ensured.

Yet I think that also this interpretation is not completely satisfactory, neither hermeneutically nor as a settlement of the problem we have to cope with. For it does not explain why the "freestanding" conception of justice ought to be acceptable from the perspective of all reasonable "comprehensive views" as being somehow related to them, to the effect that in case it cannot be accepted by the citizens on the basis of their reasonable comprehensive views, this would be a good reason for changing the "freestanding" conception of justice.

Rawls himself declares that "the kind of stability required of justice as fairness is based; then, on its being a liberal political view, one that aims at being acceptable to citizens as reasonable and rational; as well as free and equal, and so addressed to their public reason [...] .. justice as fairness is not reasonable in the first place unless in a suitable way it can win its support by addressing each citizen's reason, as explained within its own framework."

Thus everything seems to come down to the need for an adequate philosophical consensus-theory, one that is primarily based not on pragmatic-political reasons but on a principled demand of public reason to be realized under the conditions of mutual acknowledgement of all citizens as

being equally free and reasonable. This would not mean that the political need for reaching a factual consensus again and again, in order to ensure the "stability" of a democratic order and its reproduction could be dispensed with; but it would mean indeed that the normative conditions of reaching a reasonable consensus, and hence also of possibly questioning each factual consensus, must be grounded philosophically, say by a conception of an ideal consensus that can serve as a regulative principle for searching and also for questioning an "overlapping consensus".

By this contention, I think, we have already questioned the rigid claim of Rawls' new political conception of justice: the claim that it leaves not only religion or metaphysics but moreover moral philosophy "as it is". Indeed Rawls himself, in the paper of 1985, says in one place the following about the "political conception of justice": "It is of course also a moral conception, but such one that was worked out for a particular area of subjects, namely for political, social, and economical institutions".

One could think that, on this account, the restriction to the "political" in Political Liberalism would be rather harmless, seen from an epistemological point of view. For it seems not to eliminate the problems of a moral-philosophical foundation of justice, as it is suggested by Rawls in other places, according to the method of "avoidance"; it now rather seems to suggest only an applicative restriction of the principles of moral philosophy (i.e. of a philosophy of the "right" or justice) to the political problems of justice. But again this interpretation is expressly denied by Rawls in the same context: He rather suggests the possibility that his conception of "justice as fairness", which was originally conceived in view of "the basic structure of a modern democratic constitutional state", might be "extended" to a general political conception for different forms of societies with different historical and social conditions or even to a general moral conception (or at least to an important part of it). (I shall come back to this suggestion).

### **III. The "Priority of the Right to the Good". A Philosophical Correction of Rawls' Political Self-Interpretation**

From a philosophical point of view, I would suggest to take the decisive hint for the solution of our problem from Rawls' original Theory of Justice, namely from his distinction between the "right" and the "good" and his claiming a priority of the "right". However, in Political Liberalism Rawls seems to weaken this claim, since he now suggests that ultimately the "truth" of a moral foundation of justice must be a matter of a "comprehensive doctrine" of the good, whereas the "political" conception of the "right" and its possible acceptance by all citizens can at best be "reasonable", i.e. based on the presupposition that - for reasons of tolerance and reciprocal recognition of autonomy - well ordered society is not entitled to impose a philosophical truth-claim on its citizens. This last verdict seems to me to be indeed a necessary implication of "political liberalism", but does this mean that a philosophical justification of just this verdict - i.e. of the neutrality of the democratic constitutional state with regard to philosophical theories - is not possible or not necessary? I think that this assessment of the situation rests on a confusion in regard of different levels of reflection: It is true, of course, that the citizens of a democracy, who want to follow a reasonable procedure of reaching an "overlapping" consensus based on mutual acknowledgement of free and equal persons, have got to bracket the truth-claims of their comprehensive background doctrines, as long as they want to be "reasonable". But this does not mean that the philosophical theory of justice, which is based on these and similar insights and therefore has to defend the priority of the "right" to the "good" of the "comprehensive doctrines", could or should dispense with a truth-claim (or, respectively, a truth-analogical rightness-claim) as well. To the contrary, I think, it can and should advance and defend its own truth-claim (or, respectively, rightness-claim) as a criterium for distinguishing between reasonable and unreasonable truth-claims of comprehensive doctrines: religious or metaphysical.

Thus it should understand its own rightness-claim not as an abstractive minimal part of the contents of all reasonable comprehensive doctrines of the good, but as an autonomous concern of justice and therefore as a public constraint on all goodness-claims of comprehensive doctrines held by the citizens as private persons. On this account, the difference between the right and the good would not be explained by a more or less of moral comprehensiveness, but by a distinction between different leading interests or perspectives of practical-reason: The plurality of the comprehensive doctrines of the good then corresponds to the given plurality of ways toward the good life or happiness chosen by individual persons in more or less accordance with socio-cultural forms of life and their traditions. The unitary liability of justice or the right, on the other hand, corresponds from the outset, to an intersubjectively valid universalization principle of moral norms.

In this sense then the moral and politically applicable principle of justice would indeed be "freestanding", i.e. independent from all doctrines of the good, although it, at the same time, would presuppose the complementary dimension of the different views and ways of the good life in a modern, pluralistic society.

If this should be an adequate interpretation of the priority of the right to the good, then our last question has to be addressed to what can be count as Rawls' own foundation of the "freestanding" conception of justice as fairness.

#### **IV. Rorty's Historicistic and Culture-centric Interpretation of Rawls' Political Liberalism and Rawls' Insinuation that it may be shown to be "universalistic" through its Globalized Extension as a "Law of Peoples"**

At a first reading of *A Theory of Justice* of 1971, one could think that Rawls by the constructive fiction of the "original position" wanted to base the choice of the principles of justice of a just society on the instrumental rationality of the economical decision theory. But Rawls soon made it clear that he only supposed this rationality as one of a person's capacities that has to be taken into account besides his "reasonableness" or "sense of justice". In the name, as it were, of this latter capacity he "framed", as he says, the rational choice of the parties "in the original situation", by restrictive conditions, as the "veil of ignorance" with regard to one's place in the society to be chosen, in order thereby to ensure the equality and thus the fairness of the original choice.

But how did Rawls explicate and justify his own presuppositions of "fairness" and of the "sense of justice"?

As we have seen already in the preceding, Rawls denies that a "general moral conception" can provide the basis for a public conception of justice in a modern democratic society". Instead he starts out from some central intuitive ideas of political justice that are implied in the tradition of western democracy. These ideas he tries to unite in a coherent conception through the method of establishing a "reflective equilibrium" between them. In his discussion with Habermas he points out that "justice as fairness is substantive and not procedural", in the sense "that it springs from and belongs to the tradition of liberal thought and the larger community of political culture of democratic societies". Therefore, Rawls concedes, his conception "fails then to be properly formal and truly universal, and thus to be part of the quasi-transcendental presuppositions (as Habermas sometimes says) established by the theory of communicative action." Such a "general conception", Rawls supposes, would belong to the metaphysical and hence culture-dependent comprehensive doctrines. However, one could object, is not Rawls' starting out from the tradition of western democracy a fortiori culture-dependent?

It is well known that R.Rorty has interpreted Rawls' position in *Political Liberalism* along the lines of an extreme form of historicism and affirmative culture-centrism. In his notorious paper

"The priority of Democracy to Philosophy" Rorty claims that the cultural tradition of western democracy is indeed the "contingent" but nevertheless solely possible basis of consent for all discussions about questions of political justice. Therefore, he suggests, Rawls did not need "Socratism", i.e. the idea that anybody who is willing to listen to reason - to hear all the arguments - can be brought around to the truth", because "the human self has a center (a divine spark, or a truth-tracking faculty called 'reason') and ... argumentation will, given time and patience, penetrate to this center ... we are free to see the self centerless, as a historical contingency all the way through."

Therefore, according to Rorty, westerners have to think "of enemies of liberal democracy like Nietzsche or Loyola as, to use Rawls' word, mad ... They are not crazy (Rorty adds) because they have mistaken the historical nature of human beings. They are crazy because the limits of sanity are set by what we can take seriously. This, in turn, is determined by our upbringing, our historical situation".

Rawls, to be sure, did not accept this interpretation, which - in my opinion - is politically disastrous because it makes it so easy for fundamentalists and nationalists of all stripes to defend their culture-centrism or ethno-centrism against the idea of liberal democracy and human rights. But Rawls suggested the following way out of his dilemma: The political conception of justice is "not political in a false sense (i.e. surrendering itself to the contingencies of a situation) but it is appropriately adapted to the public political culture its own principles shape and support. And although such a conception does not hold for all societies at all times and places, it is therefore not yet historicist or relativistic; rather it is universalistic insofar as it is possible to extend it appropriately toward a reasonable conception of justice for the relations between all nations."

By the last sentences Rawls obviously alludes to his contribution to the Oxford Amnesty Lectures on Human Rights of 1993 under the title "The Law of Peoples". Here, in my opinion, an adequate vantage point is reached indeed for a philosophical discussion of the problems of global justice; for, in our time, there is not only the fact of pluralism and multiculturalism with regard to particular societies, but, above all, there is the same problem as that of global justice, and, if I am right, then this problem belongs to the task of a second order globalization through which we have to provide a philosophically reflected response to the challenge of that globalization that has taken place, in advance of our reflection, as an irreversible fact of technology, ecology, and, recently, economy. Now, what about Rawls' step into that dimension, which may be found in "The Law of Peoples"?

## **V. Rawls' Globalization of his "Theory of Justice" in "The Law of Peoples"**

I have to say in advance that, from the point of view of those problems we have discussed, I find the Rawlsian way of globalization the problem of justice rather disappointing. The reason for this fact I would trace back to his method or strategy of extending the scope of his theory of justice to the global problems. For lack of time, I have to simplify my critical commentary very much:

First, I will summarize those viewpoints and arguments in Rawls' approach that I find promising. Thus e.g. the following remarks of Rawls' seem to me to express a great progress of insight beyond the usual naivety of the western equation of problems of justice with those of a domestic theory of democracy. Rawls justly states: "Every society must have a conception of how it is related to other societies and of how it is to conduct itself toward them ... it must formulate certain ideals and principles for guiding its policies toward other peoples." (loc.cit.44).

Therefore Rawls now sees his task in showing, how the topic of his original conception, the case, as he says, "of a hypothetically closed and self-sufficient liberal democratic society [...] can be extended in a convincing way as to cover a society's relation with other societies to yield a

reasonable law of peoples." Rawls now realizes that otherwise a liberal conception of political justice would appear to be historicist ..." (loc.cit.44). He also recognizes that, together with the global extension of the ideas of justice, he would have to extend these ideas "to future generations", which would raise "the problem of just savings" (p. 44). I myself would be inclined to supplement this remark with regard to the interests of the poor in the Third World which also could not be taken into account by the search for an "overlapping consensus" which would be restricted to "the case of a hypothetically closed and self-sufficient liberal democratic society".

But Rawls obviously doesn't want to subsume this problem under the normal or ideal case of extending the conception of justice to the law of peoples" but he mentions these kinds of problems under the head of the "second step" of his "nonideal theory", where he would have to deal with the case of "unfavorable conditions", e.g. with the problem of "how the poorer and less technologically advanced societies of the world can attain historical and social conditions that allow them to establish just and workable institutions ..." (loc.cit.52f., cf. also 74ff.).

Here for me the question arises, how Rawls can know how to proceed in his extension of his theory of justice, in order to project not only an "ideal theory" of the "law of peoples", but also a "nonideal theory", where he also can derive duties and obligations of the "wealthier societies" with regard to the other ones, in order to help them to reach the "conditions that make a wellordered society possible." (p.76)

It has to be noticed, in this context, that here again - as in the case of the domestic application of the principle of "overlapping consensus" - Rawls' problem is not primarily one of reaching a pragmatic-political solution dependent on contingent circumstances, for such a solution has even to be reached in the case of "outlaw societies" or of "tyrants" and "dictators", and that would even be a duty imposed on us by an ethics of responsibility, as I pointed out in the preceding. But Rawls expressly excludes these problems from his ideal extension project. By contrast, he is prepared to provide for the possibility, nay even necessarily, of a coexistence between "liberal-democratic" and "non-liberal-democratic", namely "hierarchical societies", and this concession even makes up the point of the "ideal" part of his extension project. But this project as a whole, even including the step from the "ideal" to the "nonideal theory", should obviously be understood as one that exposes itself to the possibility and necessity of a "reasonable overlapping consensus" of - I would say - all the affected - human beings. What then should be the unitary principle or yard-stick for this conception of justice?

Rawls' answer to the question concerning the foundation of his globalized theory is similar but, in my opinion, more informative than that given to Habermas in the case of the unextended conception of political justice. It reads:

"A constructivist view" does not begin from universal first principles having authority in all cases" [...] A constructivist liberal doctrine is universal in its reach once it is extended to give principles for all politically relevant subjects, including a law of peoples for the most comprehensive subject, the political society of peoples. Its authority rests on the principles and conceptions of practical reason, but always on these as suitably adjusted to apply to different subjects as they arise in sequence ..." (p.46).

In contradistinction to traditional comprehensive (say, metaphysical) theories of reason, "constructivism assumes ... that there are other forms of unity than that defined by completely general first principles forming a consistent scheme. Unity may also be given by an appropriate sequence of cases and by supposing that the parties in an original position [...] are to proceed through the sequence with the understanding that the principles for the subject of each later agreement are to be subordinate to those of subjects of all earlier agreements, or else coordinated with and adjusted to them by certain priority rules". (p.46f.)

The main example for the procedure characterized so far is Rawls' justification of the

necessary admission of "non-liberal-democratic" but "well ordered hierarchial" societies in the case of an extension of the original conception of political justice to the conception of the "law peoples". For his main argument is that the subordination of the new agreement to the earlier one can be realized by a certain argument by analogy: The new theory can only be liberal, according to Rawls, by applying the principle of liberalism that underlies the "overlapping consensus" within a democratic society to "the society of political societies": "As before, the parties [in the original position] are representatives, but now they are representatives of peoples whose basic institutions satisfy the principles of justice selected at the first level." (p.48) Thus it turns out, according to Rawls "that liberal and hierarchial societies can agree on the same law of peoples." (p.48)

Now, my question is: can the fact that the admission of the "hierarchial societies" would include a considerable reduction of the "human rights" - according to Rawls in particular a cancellation of the right of "free speech" (loc.cit.62. I would comment that this would imply all the rights of equal participation in the public sphere of politics which Rawls expressly claimed for his conception against Habermas' doubts) -, could this fact be plausibly justified by the argument by analogy I mentioned (i.e. the transfer of the liberal attitude from the level of citizens to the level of states)?

My answer is: in principle, this procedure cannot be justified; for that would imply that the "internal sovereignty of a government" in subjecting its citizens to a religious or secular form of totalitarianism could not be criticized at all by appeal to human rights. To be sure, this is not the contention of Rawls' theory. Rather he follows a right intuition in formulating certain incitive conditions for the possible toleration of "hierarchial" regimes. As far as I can see, the crucial criterion in this context is the demand that the "system of law" in question "meet the essentials" of legitimacy in the eyes of its own people" (p.79, my emphasis!)

This is indeed a plausible criterion, but why is it plausible? Obviously the criterion does not follow from that strategy of extension that is based on the argument of analogy or liberal transfer from the level of persons to the level of societies; it rather leads us back to the level of persons. But the new criterion is also incompatible with the "overlapping consensus" to be reached in the context of a "liberal democracy" of the western tradition, to which Rawls' original conception of the Theory of Justice was oriented. For this would have made impossible that kind of "liberal extension" to a global theory of the "law of peoples" Rawls has in mind. Thus it cannot be "subordinated" at all to the principles of the earlier cases of the sequence of Rawls' extension of his political theory of justice. The way out of this dilemma, in my opinion, can only be provided by a reflective philosophical recourse behind all political - and thus historical - concretizations of the problem of justice as fairness: a recourse to the moral presuppositions of that primordial discourse through which philosophy has to discuss these problems.

Here we find indeed a unitary point of departure for a "general theory of justice" (and of "human rights"). For the principle that could ultimately support Rawls' intuitive criterion of "legitimacy" for liberal-democratic and for non-liberal-democratic societies could be based on the postulate, acknowledged a priori in any practical discourse, that the proposed solutions of a theory of justice ideally should fulfill the condition that they would be acceptable for all affected persons, i.e. for the citizens of constitutional states and, before and beyond, even for all persons outside the limits of well-ordered constitutional states, as e.g. for the inhabitants of the so called "Third World". For there should be no factual agreements at the expense of non-represented but affected persons.

This would of course be only a "regulative principle" in the Kantian sense, and it would be grounded by a reflection that is not yet political but philosophical. But it would be a general foundation for any political consensus theory that would try to avoid the risk of being "political in the false sense". For it formulates a principle by appeal to which one cannot only strive for, but also, at any time, criticize a factual, and hence context-dependent, "overlapping consensus".

J.Rawls would presumably suspect at this point, that my approach must be based on

metaphysics, i.e. on some "comprehensive doctrin". And, in fact, I am even a worse fellow than Habermas, since I resort to a transcendental-pragmatic foundation of discourse ethics without any quasi-empirical recourse to sociology or linguistics. But I think it is a fatal error of our time to confuse the radical method of transcendental reflection on the validity conditions of argumentation with metaphysics, even with the metaphysics of Kant. By contrast, I consider it to be the only reliable way of avoiding any metaphysics, i.e. any "comprehensive", culture-dependent doctrine.

Of course, I cannot go into that in this place. I should only point out at the end of this paper that my proposal of a discourse-ethical foundation of the theory of justice does by no means depreciate the main arguments of Rawls' original theory of justice. For these arguments may have their place as proposals within a practical discourse, whose procedural principles have already been justified by self-reflective discourse ethics.