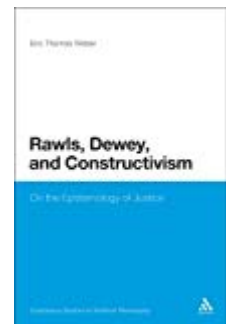


Robert S. Taylor. *Reconstructing Rawls: The Kantian Foundations of Justice as Fairness.* University Park: Pennsylvania State University Press, 2011. xxiii + 336 pp. \$74.95, cloth, ISBN 978-0-271-03771-4.



Eric Thomas Weber. *Rawls, Dewey, and Constructivism: On the Epistemology of Justice.* London: Continuum, 2010. 168 pp. \$120.00, cloth, ISBN 978-1-4411-6114-7.



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In 1980, the liberal political philosopher John Rawls delivered a remarkable series of lectures at Columbia University. The Dewey Lectures, subsequently published in the *Journal of Philosophy* as “Kantian Constructivism in Moral Theory,” detailed a metaethical procedure—or method for formulating principles—that informed his earlier *A Theory of Justice* (1971) and that would make possible its sequels, *Political Liberalism* (1993) and *The Law of Peoples* (1999). Rawls situated himself in the Kantian tradition and explained that many of his ideas and themes—such as the constructivist thesis that human agents make practical principles out of their own mental faculties rather than

discover them in the natural or supernatural realms—originated in Kant’s critical philosophy. Rawls began his lecture, however, by stating that he shared John Dewey’s ambition to overcome the dualisms in Kant’s philosophy, such as between reason and sensibility. Philosophers for over three decades have been debating whether one can combine Kantian and Deweyan materials to build a sturdy theoretical edifice. Taylor and Weber, in the excellent books under consideration here, answer no, though, intriguingly, from opposite sides of the spectrum on which Rawls tried to place himself in the middle. Taylor reworks Rawls’s philosophy to bring it closer to Enlightenment, or

Prussian, liberalism that endorses a Kantian conception of the person and the basic contours of his moral-political outlook. Weber argues that Rawls's philosophy, like Kant's, is marred by metaphysical realism, and that Dewey highlights how we may forge a robust constructivism that better serves the needs of democratic citizens. In this review, I describe Taylor's and Weber's critiques of Rawls's conception of constructivism, illuminate a common theme in their books, and defend the tragic vision that informs much of Rawls's work and bothers many of his critics.

Taylor's *Reconstructing Rawls* tells a story of Rawls's rise, fall, and possible redemption. Rawls's ascent occurs in *A Theory of Justice* through his essays in the late 1970s and early 1980s. In this period, Rawls follows Kant's lead in the *Doctrine of Right* by formulating principles that apply to external behavior but specifying them for the reconstruction of major social institutions. Rawls's next step, apparently, would have been to formulate a "doctrine of virtue" that touches upon family and personal life as well as the political and economic realms (p. 54). Yet Rawls made a "fateful decision" in his 1980 lectures to ground his political theory in democratic culture rather than in pure practical reason: to side, in other words, with Dewey rather than Kant (pp. 5, 54). Out was Enlightenment liberalism, the effort to formulate a philosophically rigorous comprehensive moral and political doctrine; in was political liberalism, the attempt to forge a hybrid political conception of justice that could satisfy nearly all citizens currently residing in liberal democratic societies. Taylor analyzes *A Theory of Justice* to see how Kantian Rawls's early work really was and anticipates a future Rawlsian liberalism that is more resolutely Kantian. What gives this project urgency?

Philosophically, according to Taylor, Rawls's theory of justice—justice as fairness—requires a Kantian conception of the person. The guiding intuition of justice as fairness is that justice is blind. A judge should wear a blindfold to avoid seeing

the elements of the case that do not matter to a fair judgment, and, likewise, citizens should imagine themselves behind a veil of ignorance when they deliberate about how society should distribute its rights and responsibilities. A non-Kantian conception of the person will allow peeking, so to speak, whereas a Kantian conception of the person will follow the dictates of pure practical reason. It is vital for Rawlsian liberals to see that the principles of justice as fairness—the equal-liberty principle, the fair-equality-of-opportunity principle, and the difference principle—require a Kantian conception of finite rational agency that delimits and organizes mental faculties to prevent extraneous influences from corrupting practical judgment. Unless, in other words, we embrace a certain conception of the person that is capable of moral autonomy, personal autonomy, and self-realization, in that order of importance, "we will be unable to give a solid foundation to justice as fairness as a whole" (p. 60). In part 1 of *Reconstructing Rawls*, Taylor shows how Rawls constructs the theory of justice as fairness using Kantian elements, and in part 2, Taylor describes how Rawls's arguments for his principles of justice tacitly use, or require, Kantian themes and ideas. Taylor's book is perhaps the first to apply the care and rigor of contemporary Kant scholarship to analyzing Rawls's work: the first chapter alone, "Rawls's Kantianism," provides a masterful interpretation of Rawls's *A Theory of Justice* in light of Kant's practical philosophy and Rawls's later metaethical reflections. Taylor's explorations of how Kant's practical philosophy may discard certain aspects of its most controversial elements but still retain its normative force—as in the discussion of "de-transcendentalizing Kantian liberalism" (pp. 309-312)—show that Taylor is on the cutting edge of Kantian political theory and scholarship.

Part 3 of *Reconstructing Rawls* lays bare the political import of the book: unless liberals embrace robust accounts of practical agency and their accompanying political doctrines, then illiberal forces are going to prevail domestically and

internationally. In *A Theory of Justice*, Rawls alludes to grounding his conception of the person on Kantian, transcendental foundations. Yet he ultimately chooses to ground his principles on the idea of reflective equilibrium. Reflective equilibrium aspires to formulate principles that accord with and systematize common-sense intuitions. For Taylor as for several of Rawls's other Kantian critics, this justificatory method leads to confirming the sentiments of the age, regardless of their moral content. "In avoiding what he took to be the Scylla of Kantian transcendentalism, he ... strayed into the Charybdis of ethical relativism" (p. 239). The poverty of political liberalism is that it weakens the foundations of Kantian liberalism and deludes itself into thinking that it may appeal to romantics, bourgeois individualists, theocrats, or other illiberal constituencies present in contemporary democracies. On the international scale, things become even worse: reflective equilibrium provides no traction when liberal democrats seek to formulate principles based on shared intuitions with anti-liberal peoples. Liberals should not exercise metaphysical and political restraint when dealing with antebellum Southerners (p. 295) or the Taliban (p. 293). "Being true to Lincoln's legacy (and that of the American Founders) requires us to reject political liberalism in favor of the sort of universalistic liberalism that can be found in, or can at least be reconstructed from, Rawls's writings during his earlier Kantian period" (p. 299). It is a great merit of Taylor's book to express the fighting spirit that animates much contemporary scholarship on Kant or the Enlightenment more broadly.

Though the literature on Rawls and Kant is fairly large, the literature on Rawls and the pragmatist tradition is surprisingly slender. Weber's *Rawls, Dewey and Constructivism* provides a welcome addition to the Rawls literature by offering a Deweyan critique of, and alternative to, Rawlsian constructivism. For Weber, there are several flaws with Rawls's social contract theory in *A Theory of Justice*: it dedicates too much attention to private

property; it is too abstract and thus risks replicating the obfuscation of the social contract tradition; it retains an unrealistic idea of human beings as atomistic individuals; and it articulates a static theory of justice (pp. 31-34). Ultimately, Rawls commits the same "philosopher's fallacy" that Dewey identifies in Kant: a transposition of local conditions of possibility to other times and places, a warrantless generalization from the local to the universal (p. 63). Rawls misses how democracies got to this point and, more importantly, how citizens can enrich the practice of democracy. Rather than focus on the transcendental, then, pragmatists focus on the organic conditions, such as "an open and public system of inquiry," that make possible sustainable and flourishing democracies (p. 134).

The major philosophical problem with Rawlsian constructivism, according to Weber, is its view of human beings as atomistic, rational beings independent of culture or history. Like earlier social contract theorists, Rawls "centers his thought on the fully rational, adult individual, untarnished by the hands of cultural influence" (p. 2). Rawls assumes that political philosophy can proceed by following the faculty of pure practical reason on its peregrinations. Yet Rawls overlooks Hegel and Dewey's key insight that we are really "historical creations, contextual, changing, and organically whole" (p. 31). We always start in a particular time and place and must attend to the social milieu that permeates our minds and bodies. Kantians such as Rawls aim to construct principles; pragmatists have wider ambitions, aiming to construct persons, communities, meanings, as well as theories of justice. Human beings are always already being educated by society: democrats should bravely recognize this fact and promote a conversation about what kind of education we want for what kind of political community.[1]

Weber emphasizes this point by calling for a recommitment to civic education. Rawls offers a

thin educational theory that is more concerned with restraining itself than instilling particular values or habits. In his view, liberal democracies may teach children about constitutional and civic rights but should not try to inculcate any particular worldview. Yet democracies require citizens who can think for themselves and with others about matters of common concern, and this requires cultivating certain abilities and dispositions. Pragmatists extol the “project of preparing citizens in a robust way for the various challenges that can only be overcome through intelligent, cooperative, social action” (p. 138). In the contemporary political and economic climate, Weber’s call for strengthening the American tradition of public, humanistic education is refreshing.

Despite their different sources of inspiration, Taylor and Weber express discontent with Rawls’s metaethical procedure and ambitions.[2] Taylor thinks that Rawlsian constructivism cannot retain the language of autonomy when its procedure is manifestly heteronomous, and Weber thinks that Rawls fails to address the “Euthyphro problem” that asks whether constructivism is justified because its principles are true, in which case it is synonymous with realism, or because the principles are self-chosen, for perhaps arbitrary reasons. Taylor and Weber state that they can solve the problem that confounds Rawls; the former, by grounding Kantian liberalism on the necessity of the practical presupposition of freedom, and the latter, by advancing a more radical account of constructivism. And yet both books acknowledge that providing a fully adequate alternative to Rawlsian constructivism is a project that must be put off for another day. Neither Taylor nor Weber describes in much detail how political theory may avoid entirely the dangers of (dogmatic) realism or (nihilistic) relativism. Both critics, however, think that we must: Weber conceives of a robust constructivist epistemology that may “approach political philosophy without the tensions that Rawls maintains” (Weber, p. 35), and Taylor thinks that a Kantian reconstruction of Rawls’s

political philosophy may “steer clear of both hazards” (Taylor, p. 239).

What happens, though, if reflective individuals cannot escape *entirely* their “precarious standpoint” as beings embedded in the natural world but capable of partially transcending it in thought?[3] What, happens, in other words, if human beings cannot fashion political principles that have the ontological status of categorical imperatives or organic expressions of the public? One response may be to insist that one favored theory of justice provides apodictic or democratic guidance—but this approach can easily translate into punitive measures against those who disagree. Or, one could become despondent that human beings can really live up to ethical standards. Friedrich Nietzsche called the first alternative active nihilism and the latter passive nihilism.[4] In the remainder of this review, I would like to say more about why I think that constructivism provides a way to stand up to the dangers of nihilism. [5]

Constructivism, Rawls states in *Political Liberalism*, has its roots in Kant’s notion of transcendental idealism, even if it is not reducible to it.[6] Let us consider, for a moment, the impact of the *Critique of Pure Reason* on the history of philosophy. Kant defines transcendental philosophy as occupied not so much with cognition of objects as with “our mode of cognition of objects insofar as this is to be possible *a priori*.” Kant, in other words, is concerned not so much with how objects present themselves to us but rather how *we* grasp objects through cognition. Kant’s Copernican revolution redirects focus from objects to the human mind that knows them. Kant qualifies transcendental philosophy as an idealism to emphasize that the categories and forms of intuition shape everything that we perceive, and that how things are in themselves is forever unknown to us. “We can accordingly speak of space, extended beings, and so on, only from the human standpoint.” Like Plato, Kant thinks that ideas transcend the phe-

nomenal world; unlike Plato, Kant holds that these ideas emanate from the mind rather than are found by it. Kant grants the possibility, nay the necessity, of empirical realism, the doctrine that “matter, as appearance, [has] a reality which need not be inferred, but is immediately perceived.”[7] Yet the shocking implication of the *Critique of Pure Reason* is that our minds are forever cut off from cognitive contact with reality. Everything we know transpires in space and time, but we also know that reality is not spatial or temporal (otherwise freedom would not be possible). For over two centuries, philosophers and theologians have pondered and protested the Kantian view of humanity as fundamentally estranged from the universe.[8]

In a notebook entry from the 1870s, Nietzsche presents an interesting take on the consequences of Kant’s Copernican revolution in philosophy: “Man’s longing to be completely truthful in the midst of a mendacious natural order is something noble and heroic. But this is *possible* only in a *very relative sense*. That is tragic. That is *Kant’s tragic problem*! Art now acquires an entirely *new* dignity. The sciences in contrast are *degraded* to a degree.”[9]

On the one hand, Kant’s epistemology confirms what modern science teaches: the world as it exists in itself far exceeds our conceptual or intuitive reach. We see the world in three dimensions, along a chronological line of time, with causal relations between events, and so forth: but this is just humanity’s way of negotiating a complex and mystifying universe. The old Platonic tale of eternal blueprints, or ideas, or the ancient belief systems, Christian and otherwise, that see linkages and harmonies between all things—these philosophies and theologies are declared theoretically bankrupt in Kant’s court of pure reason. On the other, Nietzsche celebrates the human power to forge categories and ideas. Kant himself was on the fence about his discovery, sometimes wishing to retain the idea that metaphysics must put forth

timeless, unchangeable categories.[10] For Nietzsche, however, the artistic power of the human soul, understood capaciously, to write principles, make ideas, invent values, and so forth, is “noble and heroic.” Yet the human mind is permeable to history, culture, food, language, and other myriad forces: Nietzsche, like many post-Kantians, discards the idea of the *a priori* as a Platonic remnant in the critical philosophy. What this means, however, is that the process of concept-formation is a chancy game, with no guarantee that things will turn out right (whatever that may mean). Philosophers are artists. Sometimes they will make beautiful, useful, or ethical concepts. Sometimes not. “Kant’s tragic problem” is that philosophers must make concepts with the resources at hand. Often, perhaps all the time, bad results will be folded into good ones.[11]

A tragic vision, according to William E. Connolly, strives “to cultivate wisdom about a world that is neither designed for our benefit nor plastic enough to be putty in our hands.” Unlike nihilism, a tragic vision holds that “reflective action, taken in concert at the strategic moments might, given a measure of good luck, promote a better world or forestall the worst.”[12] Is Rawls a tragic thinker? The suggestion seems implausible given Rawls’s early claim that the principles of justice as fairness are analogous to categorical imperatives and his early and late obsession with creating the conditions of possibility for a well-ordered society. There is a lot of Creon in Rawls’s political philosophy. Yet Rawls’s method of generating principles acknowledges that human beings, at least in their roles as political agents, write their principles in pencil rather than ink. The idea of reflective equilibrium presses reflective agents to achieve harmony between principles and judgments. Yet *wide* reflective equilibrium, Rawls’s explicit goal, demands that we keep our minds open to new events, ideas, perspectives, movements, historical trends, and so forth, that force us to reconsider our principles and convictions.[13] On Rawls’s reworking of the Kantian tradition, metaphysical

categories become conceptual tools and weapons that change as circumstances dictate. In this respect, Rawls is a pragmatist. Yet Rawls still thinks that intellectual devices such as the original position or the ideal of public reason may help human beings elevate above the here and now. This bivalent position bothers many of Rawls's critics who wish that he would either commit himself to Kant or Dewey, transcendental or historical argumentation. For Rawls, however, the task of post-Kantian constructivism is to go back and forth, in an interminable process, between the present and the untimely realm where human beings can envision new possibilities for ethical and political life. While philosophers should refrain from providing conclusive answers to the great existential questions, they may still formulate political conceptions of justice that promote a better world. [14]

In the Dewey Lectures, Rawls lays bare the constructivist wager: rather than seek knowledge of "an independent order of objects and relations, whether natural or divine," constructivists seek "reasonable grounds for reaching agreement rooted in our conception of ourselves and in our relation to society." [15] Rawls thinks that Platonists, Kantians, theocrats, and other moral realists may not legislate over the political realm. But this does not mean that opinions reign or anything goes: philosophers must still generate frameworks to enable reflective and systematic political judgment. But these frameworks are liable to change as our conceptions of self and society morph over time. The authors under review try to overcome the tragic vision embedded in Rawls's version of constructivism, Taylor, by scrapping the idea of reflective equilibrium and reconstructing Rawlsianism on a self-evident first principle (the practical postulate of freedom), and Weber, by trusting that democratic publics and inquiry may avoid the Euthyphro problem. Yet Taylor and Weber may be courting nihilism if the problem of formulating objective principles in a post-Kantian philosophical universe may not be solved. The task

awaiting these young scholars, I think, is to see whether more fully developed versions of constructivism can improve upon Rawls's efforts to help human political agents navigate an unfathomable universe.

Notes

For comments on earlier drafts of this essay, I thank Jeffrey Flynn and James Bourke.

[1]. *Rawls, Dewey and Constructivism*, unfortunately, does not engage in a sustained conversation with other communitarians--such as Michael Sandel, Charles Taylor, or Alasdair Macintyre--who have raised the charge of atomistic individualism against Rawls since the early 1980s. Nor does Weber's book consider Rawls's interpretation of Hegel's *Philosophy of Right* in his *Lectures in the History of Moral Philosophy* or how Rawls may be a kind of Hegelian. See Sibyl A. Schwarzenbach, "Rawls, Hegel, and Communitarianism" *Political Theory* 19, no. 4 (1991): 539-571. I raise this point as an invitation to Weber to elaborate how a Deweyan perspective could enrich the liberal-communitarian debate about such matters as public funding for religious schools, the legitimacy of religious discourse in the public sphere, and the state's role in economic distribution.

[2]. Taylor and Weber reiterate a charge famously leveled against Rawls by Michael Sandel in *Liberalism and the Limits of Justice* (New York: Cambridge University Press, 1982), 13-14. According to Sandel, Rawls must choose either between Kantian deontology, a strong but controversial metaphysical doctrine, or Humean empiricism, appealing to Anglo-American philosophic sensibilities but incapable of formulating strong moral principles. In this review, I wish to argue that the realism-relativism, Kant-Hume problem is one to negotiate rather than solve. I elaborate this point in *Advancing the Enlightenment: Kantian Courage in Contemporary Political Life* (New York: Fordham University Press, forthcoming), chapter 3.

[3]. Immanuel Kant, *Groundwork for the Metaphysics of Morals*, trans. Allen W. Wood (New Haven: Yale University Press, 2002), 43.

[4]. William E. Connolly, *The Ethos of Pluralization* (Minneapolis: University of Minnesota Press, 1995), 29-30.

[5]. See also Nicholas Tampio, "A Defense of Political Constructivism," *Contemporary Political Theory*, forthcoming.

[6]. Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), 100.

[7]. Immanuel Kant, *Critique of Pure Reason*, trans. and ed. Paul Guyer and Allen W. Wood (New York: Cambridge University Press, 1998), 149, 159, 427.

[8]. For a recent critique of how Kant's Copernican revolution has estranged contemporary philosophers from "the great outdoors, the absolute outside of pre-critical thinkers," see Quentin Meillassoux, *After Finitude: An Essay on the Necessity of Contingency*, trans. Ray Brassier (New York: Continuum, 2008), 7. Meillassoux protests this state of affairs and calls for a speculative materialism that accords science, or more precisely mathematics, knowledge of the object in itself. Yet pointing to the existence of the universe and the earth before humanity's presence does not answer the question of how human beings may attain unmediated knowledge of the "arche-fossil" or the "ancestral." To Meillassoux's supposedly knock-out question--"Did the accretion of the earth happen, yes or no?" (16)--Kantian scientists may reply: "To the best of our knowledge, yes, but human cognition is always mediated by categories and forms of intuition. We simply don't know what really happened at the beginning of the universe." Meillassoux, furthermore, ignores Rawls's question in *Political Liberalism* of how different people are to forge common political principles when they disagree profoundly about metaphysical accounts of, say, the origin of the earth.

[9]. Friedrich Nietzsche, *Philosophy and Truth: Selections from Nietzsche's Notebooks of the Early 1870s*, ed. Daniel Breazeale (Amherst: Humanity Books, 1979), 28.

[10]. On Kant's oscillation between representationalism (or realism) and constructivism, see Tom Rockmore, *On Constructivist Epistemology* (Lanham: Rowman & Littlefield, 2006).

[11]. Consider, for instance, the ongoing debate about healthcare in the United States: Should we allow states to be laboratories of experimentation, or do we want a single model to apply to all citizens? Should this model be a single-payer model along the lines of the Canadian system, or should the government encourage the private sphere to fill that role? We need concepts and principles to address these questions, but our intellectual tools are liable to keep changing as we reflect more and the world changes. Sometimes we'll make principled choices--even the right one, all things considered--that create injustice and misery. That's the tragic side of politics and political theory. Yet "resignation is not a lesson of the tragic, but a misunderstanding of it!" Friedrich Nietzsche, *The Will to Power*, trans. Walter Kaufmann (New York: Vintage, 1966), 526-27.

[12]. William E. Connolly, *Christianity and Capitalism, American-Style* (Durham: Duke University Press, 2008), 121.

[13]. Rawls first discusses the idea of wide reflective equilibrium in "The Independence of Moral Theory," in *Collected Papers*, ed. Samuel Freeman (Cambridge: Harvard University Press, 1999).

[14]. Consider, for instance, Rawls's claim that "successful practice over time ... normally suffices for objectivity." Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), 120. Human beings have no better guarantee for the sufficiency of, say, a constitution, than successful practice. Yet abnormal situations may force citizens to call for a constitutional convention to practice higher lawmaking. Many Platonists, Kantians, and

theocrats protest the project of redefining in more modest ways such notions as objectivity and higher lawmaking. Rawls replies that “one of philosophy’s tasks is to quiet our distress at this thought.” Rawls, *Political Liberalism*, 121.

[15]. Rawls, “Kantian Constructivism in Moral Theory,” in *Collected Papers*, 306.

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