

No Proviso: Habermas on Rawls, Religion and Public Reason

I argue that a common view of Habermas's theory of public reason, which takes it to be similar to Rawls's 'proviso', is mistaken. I explain why that mistake arises, and show that those who have made it have consequently overlooked the distinctiveness of Habermas's theory and approach. Thus they wrongly infer that objections directed at Rawls's proviso apply also to Habermas's 'institutional translation proviso'.

Ironically, it is Habermas's very attempt to rebut those objections that leads him to advance a peculiar and ultimately indefensible thesis about the cognitive requirements that democratic citizenship implies for secular citizens. I suggest that the underlying problem that Habermas takes the peculiar thesis to solve is not that the public reason requirements of the secular state are unfair towards religious citizens and biased towards secular views of the world, but that the nature of religious arguments, and of scientism, as Habermas understands these, prevents citizens who hold them from participating in discourse. I end by suggesting a simpler, less controversial solution to that problem.

1. The central ideas of Rawls's account of public reason in *Political Liberalism* are 'The Liberal Principle of Legitimacy' and the duty of civility. The first states: 'Our use of political power is ... proper only when ... exercised in accordance with a constitution the essentials of which all citizens ... may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason' (Rawls, 2005: 137). Rawls (2005: 217) holds that this principle implies the duty of civility, namely the duty 'to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason'.

What does it mean to explain to others that the principles and policies one advocates 'can be supported by the political values of public reason'? The answer is that they must be able to be supported by the values and ideas that fall within the overlapping consensus of all reasonable comprehensive doctrines, and which therefore form the normative common ground of all reasonable citizens. I take it that the ideas of a

reasonable comprehensive doctrine and of an overlapping consensus of such doctrines are familiar and relatively clear. The political ideas and values of public reason are those that happen to fall in the overlap between reasonable comprehensive doctrines, and are thus part of a common stock of ideas and values held by all reasonable citizens.¹ They include the values of justice, equal political liberty, fair equality of opportunity, and economic reciprocity. They form the components of the political conception of justice, which is an arrangement of those ideas into a theory. A justification is political (or 'public') when it appeals only to the values and ideas that fall within the overlap, and to none that do not, and is thus 'public' because shared by all reasonable citizens.

Now consider the relation between the political conception of justice and reasonable comprehensive doctrines. The former is a 'module' that fits in different ways in all the various reasonable comprehensive doctrines (Rawls, 2005: 12, 145, 387). This is important because there is an ambiguity in the way Rawls uses the term 'comprehensive doctrine'. One can think of a reasonable comprehensive doctrine either as being separate from and merely compatible with the 'module' or as including and being congruent with it. The full sense of 'reasonable comprehensive doctrine' should be the inclusive sense because otherwise the doctrine is neither 'reasonable' nor 'comprehensive' strictly speaking. Thus there are inclusive and exclusive senses of 'reasonable comprehensive doctrine', and Rawls uses now one, now the other.² The relevance of this ambiguity is that most religious reasons are comprehensive in the exclusive sense, i.e. non-political.

Rawls (2005: 217) says that the duty of civility is 'a moral, not a legal duty', which forms part of a political morality not of a general moral theory of right conduct (Rawls, 2005 xv). As a moral duty it is not enforceable by law. The duty falls on judges, 'government officials', 'legislators', and 'candidates for public office', but also on ordinary citizens (Rawls, 2005: 443; 217). However, it only applies in 'political' contexts, namely where citizens advocate indirectly or directly for policies that call for coercive legislation. It does not apply in the background culture. Political contexts, though, include voting (Rawls, 2005: 216). Finally, the duty imposes two different demands. As a *principle of pursuit*, it requires citizens (and public officials) in the public political realm to make a good faith attempt to find public justifications

for their favoured laws or policies. As a *doctrine of restraint*, it obliges them to refrain from offering comprehensive, and hence non-public and non-political, justifications (Eberle, 2002: 68).³

Rawls does not endorse a strictly exclusivist prohibition on religious (comprehensive) reasons. In *Political Liberalism*, he endorses the more permissive view that ‘non-public, thus comprehensive reasons’ can be offered by citizens in the course of political advocacy if done ‘in ways that strengthen the ideal of public reason itself’ (Rawls, 2005: 247 & n. 11). Later, in ‘The Idea of Public Reason Revisited’, he relaxes the view further, adopting a view he calls ‘the proviso’, according to which ‘reasonable comprehensive doctrines may be introduced in public political discussion at any time, provided that in due course proper political reasons – and not reasons given solely by comprehensive doctrines – are presented, that are sufficient to support whatever the comprehensive doctrines are said to support’ (Rawls, 2005: 462, 1). Rawls’s main concern with ‘the proviso’ is to leave more space for the use of religious reasons in the political forum proper, for ‘the proviso’ contains no injunction on individual citizens themselves to exercise *restraint* even in the political forum; and the duty to *pursue* public justifications can now be deferred and devolved to others.

The ‘proviso’ raises many questions we must pass over for reasons of space. Is restraint now enjoined at all? At what point? Is it called for once citizens have made a good-faith attempt to provide a public justification and have failed? How far into the future can the obligation be deferred? On whom does the duty now fall? Rawls’s somewhat unsatisfying answer is that ‘the details of how to satisfy this proviso must be worked out in practice’, though he insists that it must be satisfied ‘in good faith’ (Rawls, 2005: 462).

2. In the 1990s Rawls’s thesis that there is a moral duty on citizens to pursue public justifications for laws or policies, and to refrain from offering any such justifications based solely on comprehensive reasons, came under attack from critics such as Nicholas Wolterstorff and Paul Weithman, who assumed that this discriminated against religious citizens offering faith-based political justifications.⁴ Wolterstorff’s formulation of the criticism is as follows: ‘It belongs to the religious convictions of a good many religious people that they ought to base their decisions

concerning fundamental issues of justice on their religious convictions ... If they have a choice, they will make their decisions about constitutional essentials and matters of basic justice on the basis of their religious convictions, and make their decisions on more peripheral matters on other grounds – exactly the opposite of what Rawls lays down (Audi and Wolterstorff, 1997: 105).⁵

There is more than one objection in play here. I shall discuss only two, the ones that are explicitly taken up by Habermas. First, the split-identity objection is that the duty of civility ‘obliges’ religious citizens to adduce reasons that are not truly theirs, and thereby undermines their integrity and threatens their identities as religious citizens (Perry, 1988: 181–2; Yates, 2007: 883).⁶ A related criticism is that this obliges religious citizens to become disingenuous in their political advocacy because it makes them leverage reasons that they do not actually endorse, and stops them adducing reasons they do actually endorse (Lafont, 2007: 246; Murphy, 1998: 260; Skorupski, 2017: 189).

Second, the asymmetry/unfairness objection is that the psychological and cognitive burdens imposed by the duty of civility fall asymmetrically on religious and secular citizens. The former, but not the latter, are obliged to make a good-faith attempt to pursue public justifications in support of their religiously held views when advocating for coercive legislation or otherwise acting in the public political forum. If that pursuit fails, they, but not their secular counterparts, are required to exercise restraint. But this, the argument goes, is unfair to religious citizens.

Numerous commentators try to defend Rawls by pointing out, first, that he does not distinguish between religious and secular reasons but between comprehensive and political reasons and, second, that the duty of civility does not apply in the background culture anyway (Boettcher, 2009; Lafont, 2007; Loobuyck and Rummens, 2011). These points, while true, do not invalidate the objections. On the first point, it is true, as noted earlier, that Rawls allows that some secular doctrines are ‘comprehensive’ in the exclusive sense, hence non-political, while some religious reasons are political, but these are rare exceptions, and broadly speaking most religious reasons are non-public and most public reasons secular rather than religious.⁷ On the second point, the duty of civility does apply to citizens in the ballot

box and indeed everywhere they advocate for or against laws, so it is not as if its application is so limited as not to matter (Rawls, 2005: 216). So on both counts Rawls still has a case to answer.

Fortunately, Rawls has available to him more robust and straightforward replies to both objections. Take the split-identity objection first. The views of reasonable religious citizens are at least compatible and perhaps even congruent with the political values. Consequently, the political conception, which is an arrangement of those values, should chime with the moral-political identity of reasonable religious citizens, since those values are both central and important to that identity. The duty of civility requires religious citizens to act on reasons that speak to their moral and political identity, which they share with other reasonable citizens, rather than on reasons anchored in their comprehensive identity (in the exclusive sense). Why should that undermine the integrity or destroy the identity of reasonable religious citizens? And why should requiring them to adduce political reasons in defense of their favoured coercive laws force them to be disingenuous?⁸

Second, let's consider the unfairness objection. Suppose that there is an asymmetry of burdens insofar as religious citizens find it cognitively more difficult to adduce adequate public justifications for the laws they support, since the pool of reasons they endorse as religious citizens is smaller, and psychologically more difficult since the reasons they have to adduce may conflict with at least some of their comprehensive religious views. Even so, a requirement to pursue public justifications, and where and when necessary to refrain from offering religious (comprehensive) justifications, may be asymmetrical without being unfair.⁹

3. Rawls's theory adumbrated above is the backdrop to Habermas's 2006 article 'Religion in the Public Sphere: Cognitive Presuppositions for the "Public Use of Reason" by Religious and Secular Citizens' (reprinted in Habermas, 2008: 114–48).

Every citizen must know and accept that only secular reasons count beyond the institutional threshold separating the informal public sphere from parliaments, courts, ministries and administrations. This only calls for the epistemic ability to consider one's own religious convictions reflexively from

the outside and to connect them with secular views. Religious citizens can certainly acknowledge this ‘institutional translation proviso’ without having to split their identity into public and private parts the moment they participate in public discourses. They should therefore also be allowed to express and justify their convictions in a religious language even when they cannot find secular ‘translations’ for them (Habermas, 2008: 130).

By labeling his own position the ‘institutional translation proviso’, Habermas deliberately calls to mind Rawls’s ‘proviso’ and thereby suggests that he is offering a closely related alternative, albeit one that is not vulnerable to the split-identity objection and the unfairness objection, which he claims are ‘compelling’ criticisms of Rawls (Habermas, 2008: 128). This leads many commentators to assume that Habermas’s ‘institutional translation proviso’ is similar to Rawls’s proviso, and to focus attention on whether it successfully answers those criticisms.¹⁰ In my eyes, the assumption is mistaken, because Habermas’s theory is in several significant respects quite distinct from Rawls’s, and moreover the focus of attention is misdirected.¹¹

To understand the distinctiveness of Habermas’s position one needs to be aware of the theory of democracy in *Between Facts and Norms* from which it stems. Habermas’s conception of democracy has two interlocking components: a hard institutional core – the political system (or ‘formal public sphere’), where decisions are made – and a soft social periphery in which the political system is embedded. The social periphery is ‘civil society’ (or the ‘informal public sphere’), where ‘wild’ and ‘anarchic’ flows of communication and discourse, moral, ethical, and theoretical, circulate around the formal public sphere (Habermas, 1998: 187). Public opinion and political will are shaped by the discourses circulating in the informal public sphere. As he puts it, these flows of communication and discourse ‘besiege the political system, without ... intending to conquer it’ (Habermas, 1998: 487). In this way public reasons flow from civil society into the political system and ‘program’ it in the common interest of citizens, with the result that the political system produces legitimate laws that elicit compliance from most citizens, because they understand and accept the reasons for them.

Note that Habermas's distinction between the formal and informal public spheres does not map neatly on to Rawls's central distinctions between the political conception of justice and the reasonable comprehensive doctrines (exclusively conceived) or between the background culture of society and the political domain or the 'public political forum' (Rawls, 2005: 244, 433).¹² Why? Because Habermas's formal public sphere (the political system) is more than a 'political conception' of justice: it is an institutional reality, while its counterpart, the informal public sphere, is part of the political domain proper – albeit distinct from the political system (e.g. parliament) that lies at its centre. The informal public sphere is thus quite unlike Rawls's background culture, which is not governed by principles of public reason. So although each theorist distinguishes in his own way between civil society and the state, they have quite different conceptions of their respective functions, domains and relations.

3.1. Like the theory of democracy that undergirds it, Habermas's 'institutional translation proviso' also has two interlocking components, corresponding to the formal and the informal public spheres. Let us examine them separately, and ask in each case whether the split-identity and unfairness objections obtain.

3.1.1. According to Habermas, the political system (the state) is entirely secular. The principle of the separation of church and state means that in the political system 'only secular reasons count' (Habermas, 2008: 126, 130–1).¹³ This does not imply that no religious reasons can be adduced and discussed in the formal public sphere, but that they may not be written into the laws and statutes that issue from it. No religious reasons may enter into the process of drafting, laying down, and enacting legislation. Speakers of parliaments, he notes, have the power 'to strike religious positions or justifications from the official transcript' (Habermas, 2008: 131).

In a modern democratic state, government officials are tasked with providing secular justifications for laws. This is a legal requirement with an institutional basis. More broadly it is a 'functional requirement of social integration' since it enables the production of legitimate law. It forms a filter between the informal and the formal public spheres that keeps religious reasons out, and lets secular reasons in, and thus acts as a semi-permeable barrier between church – or religious discourses in civil

society – and state (Habermas, 2006: 10, 2009: 79). The institutional filter has two effects. On the one hand, it keeps all religious reasons and religious arguments out of the political (parliamentary) system. On the other, it means that in civil society, which is still part of the political domain proper on Habermas's account, citizens are free to adduce religious arguments in any context of open discussion, including that of political advocacy.¹⁴

Habermas's thesis that in the political system only secular reasons count is not just an empirical claim. Habermas justifies the claim as follows. Secular reasons, on Habermas's understanding of the term 'secular', form a kind of neutral common ground out of which a background consensus between people of all faiths and persuasions can arise. They do not merely 'expand the perspective' of one community, namely the secular one, but 'push for mutual perspective taking so that different communities can develop a more inclusive perspective by transcending their own universe of discourse' (Habermas and Taylor, 2011: 66). Religious reasons, as Habermas understands them, do not have that character, and thus cannot form the basis of a consensus.

The reasons Habermas offers for the claim that citizens in the public sphere should be free from any obligation to pursue secular justifications and to refrain from offering religious justification are numerous.

First, in the context of Habermas's wider theory of democratic legitimacy, given that the state protects the 'basic right' of religious citizens to free expression and worship, it cannot, he claims – on pain of being in conflict with itself – at the same time 'expect all citizens in addition to justify their political positions independently of their religious convictions or world views' (Habermas, 2008: 128, see also 2012: 110). Second, religious worldviews and arguments are conceived as ethical discourses that make validity claims to authenticity (not truth) and hence make possible authentic ways of life (Habermas, 1993: 1–15, 1998: 108–9). On this view, it makes sense for a secular state to allow religious arguments to circulate in civil society, in order to facilitate a variety of authentic ways of life. Third, Habermas's theory of legitimacy includes an 'ethical harmonization requirement', namely that for a law to be legitimate, it must resonate with the ethical worldviews of all its citizens (Habermas,

1998: 99; see Finlayson, 2016: 172–3). No law could meet such a requirement if there was a standing moral obligation on religious citizens to refrain from voicing their religious arguments. Such an obligation would impede the production of legitimate law. In short Habermas’s democratic theory requires that (untranslated) religious reasons be excluded from the formal public sphere, just as it permits them, and indeed needs them, to circulate freely in the informal public sphere.

The institutional component of Habermas’s ‘institutional translation proviso’ clearly shows what is distinctive about Habermas’s conception of public reason and how Habermas’s ‘proviso’ differs from Rawls’s.

a. In spite of the label Habermas attaches to it, it is not a ‘proviso’. Rawls’s proviso consists in a moral permission, subject to a condition, namely that individuals pursue public justifications for their favoured coercive laws in good faith and, in the event that public justification fails, they refrain from offering non-public justifications. None of this applies to Habermas’s theory. The proposed ‘filter’ is a legal, not a moral requirement, and it has an institutional and administrative basis.

If one replaces the label ‘proviso’ with the more accurate term ‘filter’, it becomes clear that what is at issue here is not a conditional permission. To be sure, some of Habermas’s statements suggest that the institutional filter constitutes a proviso. For example he writes: ‘They may express themselves in a religious idiom only on the condition that they recognize the institutional translation proviso’ (Habermas, 2008: 130). But this claim is misleading, since once the filter is in place, it fulfills its task whether or not citizens recognize and accept it, not *provided that they do*. If by ‘recognize’ here Habermas means ‘comply with’ rather than ‘willingly endorse’, the condition is always met.

b. Whereas Rawls’s theory obliges citizens to provide public justifications and to refrain from offering non-public ones – or at least some such obligation falls on some citizens at some point of the process – Habermas’s theory grants religious citizens unconditional freedom to adduce whatever reasons they want, religious or not, in support of ‘binding political decisions ... enforceable by law’ in the informal public sphere.

c. The ‘requirement’ to provide secular translations falls exclusively on government officials, not on the religious citizens themselves or their fellow citizens.

d. Finally, on Habermas’s view what is required is the translation of religious arguments into ‘generally accessible’ – which in his eyes means ‘secular’ – language.

Some people have criticized the assumption that secular reasons are generally accessible while religious reasons are not (Cooke, 2006; Chambers, 2010; Waldron, 2012; Skorupski, 2017). Kevin Vallier (2011: 386–7) has argued that, understood as the requirement that reasons be intelligible to all, the general accessibility requirement is so lax as to permit most religious reasons, whereas understood as the requirement that reasons be acceptable to all, it will hardly ever be satisfied. Anja Hennig (2015: 100) uses the examples of the Vatican’s opposition to laws permitting abortion, assisted fertilization, and gay marriage to show that for strategic reasons many religious activists present arguments for positions they hold on religious grounds in secular language. This is supposed to show that Habermas’s translation requirement is too weak for the purpose he assigns it. No doubt Habermas’s assumption that religious arguments are not intelligible to all, while secular arguments are, is questionable. However, in itself this is an ineffective objection to Habermas, whose position is that translation of an argument into secular language is a *necessary* but not a *sufficient* condition of its being a public justification. Once reasons are formulated in secular language they must still be taken up into discourse if they are to count as good reasons. As such they must be amenable to ‘rationally motivated consensus’. Thus Habermas’s translation requirement has to work in concert with the principle of democracy, as a further acceptability requirement.¹⁵ They are jointly necessary conditions of legitimacy.

There is overwhelming evidence, then, to show that Habermas’s filter is quite unlike Rawls’s ‘proviso’. It is not only different in all the above respects; it is not a ‘proviso’ strictly speaking.¹⁶ So the common view that Habermas’s position is similar to Rawls’s is wrong.

3.1.2. So much for the institutional component of Habermas's theory of public reason. As it stands, it lacks detail. Yet it is, in my view, the load-bearing component of Habermas's idea of public reason, and the one that gives the most clear-cut answers to the two objections that worry him: the split-identity and asymmetry/unfairness objections. It answers them, however, by showing that neither applies, since with the filter in place, citizens are unconditionally free – legally and morally permitted – to adduce religious reasons in civil society and in the political system.

That said, although it is the crucial and most distinctive part of Habermas's theory, it has not been the focus of critical attention. Why is that? Part of the answer is that, as Hugh Baxter (2011: 208) observes, Habermas has failed 'to acknowledge explicitly that he has in effect fully repudiated the Rawls/Audi view that citizens must place special restrictions on their use of religious reasons in public political discourse'. Beyond that, Habermas himself appears dissatisfied with this view. He thinks that more needs to be said if the theory is to answer Wolterstorff's objections convincingly, and so he puts the onus on the second component of the theory to do just that. And this is what has attracted most critical attention.

Habermas also has qualms about the strictly secularist understanding of the political system, and though he is not prepared to jettison it, he thinks it needs both softening and modifying. Furthermore, he now rejects a central tenet of his earlier theory of modernization as unduly Weberian (Habermas, 2002: 79, 141). That theory construed modernization as a process in the course of which religious meaning is gradually separated out into scientific truth claims and universal moral claims, and in which religious and traditional authorities are gradually replaced by procedures of communication and discourse. Now, instead of seeing religion as a social binding force that is destined to wither away, he argues that religion persists because it continues to perform a vital social function in modern societies, whose capacity to generate their own normative resources has greatly diminished.¹⁷ In a post-secular society religions play an indispensable role in replenishing the fast-depleting values and meanings of the lifeworld. So citizens in civil society cannot afford to turn a deaf ear to religious discourse containing 'possibly undiscovered treasures' and 'possible truth contents' (Habermas, 2003: 143, 2008: 241) even if these must be translated into secular terms if they are to be understood and affirmed by all citizens (Habermas,

2008: 131).¹⁸ At the same time, Habermas also stops subsuming religious worldviews entirely under the category of ethical discourses, which, unlike theoretical and moral discourses, lack ‘cognitive meaning’ since they make claims to authenticity rather than to truth (see Habermas, 1993: 1–15, 1998: 96–98). Now, by contrast, he sees religious discourses as also being repositories of possible truth contents and hence important sources of ‘cognitive content’ (Habermas, 2008: 245).

Hence, in the second interlocking component of his conception of public reason, Habermas sets himself a difficult and complex task: to modify and attenuate the strict secularism of his earlier modernization theory in such a way that it remains compatible with his secularist understanding of the state (that is, the ‘political system’ or ‘formal public sphere’), while demonstrably and definitively answering the Wolterstorff/Weithman objections to Rawls’s proviso.

3.1.3. The second component of Habermas’s conception of public reason concerns the ‘informal public sphere’ or ‘civil society’. The subtitle of his 2006 article ‘Religion in the Public Sphere’ announces it as an account of ‘the cognitive presuppositions for the “public use of reason” by religious and secular citizens’ (Habermas, 2008: 114). Habermas (2008: 131) contends that the cognitive content of the religious contributions that citizens of faith make in civil society ‘can enter into the institutionalized practice of deliberation and decision-making only when the necessary translation already occurs in the pre-parliamentary domain, i.e., in the political public sphere itself’. This shunts the ‘translation requirement’ into the informal public sphere, and shifts the cognitive burden of meeting it onto citizens, religious and secular.

One might think that such a move brings Habermas closer to Rawls’s ‘proviso’. However, Habermas does not construe the fulfillment of his ‘institutional translation proviso’ as the compliance by individual citizens with their moral obligations but as the achievement of broader modernization processes that more or less require religious and secular citizens, conscious of the persistence of a plurality of religious and secular worldviews, to take a reflexive stance towards their own worldviews. In other words, the institutional translation filter can only work as it should if socialization and modernization processes meet it halfway. As we have seen, these

modernization processes are not mono-dimensional secularization processes that dissolve and replace religious traditions. Rather, modernization now takes the form of two ‘complementary learning processes’, which place cognitive burdens, albeit of different stripes, on both religious and secular citizens (see Habermas, 2008: 6, 140, 144–50).

Religious believers, claims Habermas, have to reflexively acknowledge three social facts of post-secular society:

- a) the existence and legitimate standing of other faiths;
- b) the epistemic standing of modern science as an institutionalized monopoly on knowledge; and
- c) the normative principles of the liberal democratic order: egalitarian law and universalistic morality (Habermas, 2008: 136–7).

According to Habermas, religious citizens have been forced to become reflexive and to process ‘cognitive dissonances’ that arise from the challenge posed to their self-understanding by these three social facts. By contrast ‘enlightened secular citizens’ are spared such ‘cognitive dissonances’ inasmuch as their secular worldview is not similarly challenged by these three social facts of modern society (Habermas, 2008: 138). This is not to claim that no cognitive burdens fall on any secular citizens or that they experience no cognitive dissonance at all. All secular citizens are also required to facilitate the translation process, and some, namely the subgroup Habermas calls ‘secularists’, are required to abandon their narrow secularist outlook in favour of a ‘politically agnostic’ view of religion: that is, they must open their minds to the possibility ‘that contributions formulated in religious language could have a rational content’ (Habermas, 2008: 5, 140).¹⁹

So how does Habermas’s account of ‘the cognitive presuppositions for the “public use of reason”’ answer Wolterstorff’s objections? Do the cognitive requirements of democratic citizenship in post-secular society force religious citizens to split their identities? Habermas’s (2008: 130) given answer is ‘no’, not just because no moral obligation falls on religious citizens in civil society to pursue public justifications and exercise restraint, but also because citizens in post-secular society are reflexively well adjusted to the three social facts outlined above.²⁰ I believe he is right about this. As I argued earlier against Rawls, the requirement to pursue public – which in Habermas’s

case means secular – justifications should present no threat to the complex identities of modern democratic citizens, which are not uniform and fixed like the identities of inhabitants of societies with closed, ethnically homogenous cultures (Mautner, 2013: 24).²¹

What about the other objection? Are the cognitive demands of citizenship in post-secular society asymmetrical, and must religious citizens therefore shoulder unfair burdens if they are to meet the requirements of public reason? Habermas (2008: 138) somewhat curiously claims this question is still ‘open’.

If so, his second attempt to close it is unclear. Some of Habermas’s statements suggest his considered answer is ‘no’. He claims, for example, that ‘the recognition by secular citizens that they live in a post-secular society’ requires ‘a change of mentality that is *no less cognitively exacting* than the adaptation of religious consciousness to the challenges of an environment that is becoming progressively more secular (Habermas, 2008: 139, my emphasis).²² Most commentators take this as his considered view, and criticize him for holding it.²³ Other statements seem to suggest his answer is ‘yes’. For instance, he states that the cognitive burdens experienced by religious citizens are appreciably greater and that their secular fellow citizens are ‘spared similar cognitive dissonances’ (Habermas, 2008: 138).²⁴ Most secular citizens find it fairly easy to reasonably disagree with each other and with their religious compatriots. Religious citizens who believe they have the true faith, by contrast, bear a ‘heavier burden’ in accommodating reasonable pluralism (Habermas, 2008: 309). If these statements are not to be contradictory, his overall position must be something like the following: the cognitive burdens that public reason imposes do not fall equally on religious and secular citizens. The former bear the heavier burden. Nevertheless, some burden falls on secular citizens. And although ‘the expectation of tolerance’ is not neutral between believers and unbelievers, this ‘does not reflect an injustice per se’ – the very point I earlier claimed Rawls should make against Wolterstorff (Habermas, 2008: 309).

3.2. Most of Habermas’s critics, including Wolterstorff, remain unconvinced by the two simple counterarguments I’ve presented: that modern religious citizens have complex identities that are not threatened by the requirement to formulate political

justifications in secular terms, and that an asymmetry in the distribution of cognitive burdens does not amount to an unfairness. They are also unpersuaded by Habermas's own complex and somewhat cagey responses. In spite of the fact that the 'institutional translation proviso' is designed explicitly to address the objections, they still criticize it for imposing *asymmetrical* and hence *unfair* demands on religious citizens (see Wolterstorff HR 102; Yates, 2007: 880).

However, there is third, somewhat more complex but nonetheless decisive counterargument to be made. The two objections rest on a basic misunderstanding of the kind of theory Habermas is proposing. Habermas's theoretical approach is one of 'rational reconstruction' of the norms and principles implicit in social practices (see Pedersen, 2008; Rees, 2018: 58–68). Examples are principles (D) and (U) and the principle of democracy. His account of the cognitive presuppositions of democratic citizenship is of a similar ilk, though in this case he does not formulate these requirements as principles but rather lays them out as cognitive requirements. It follows that neither he nor his theory 'imposes' or 'assigns' any cognitive burdens. He merely reconstructs them. Habermas is not doing normative theory that imposes moral demands and gives citizens reasons for action. Nor does what he says have direct public policy implications.²⁵ He is thus quite unlike Rawls, who is doing normative theory that imposes moral demands and has public policy implications.

Indeed, the differences are starker, for Rawls's arguments are themselves justified on the basis of the political values alone, and so satisfy the principles of public reason. Rawls, in justifying his idea of public reason, obeys the duty of civility. He writes, as a political philosopher, from the perspective of a citizen offering fellow citizens first- and second-personal reasons for action. Not Habermas. He makes a strict distinction between the perspective of the theorist and that of a citizen. As an expert he offers theoretical justifications for his theory of public reason, but prescinds from making normative demands on citizens, which would be to adopt the perspective of a participant rather than a theorist. This is why Habermas (Habermas, 2013: 373) replies to his critics that the cognitive attitudes required by the complementary learning processes of modernity 'cannot be prescribed by political theory'.²⁶

The many critics who take Habermas's conception of public reason to be a modification of Rawls's 'proviso' overlook this crucial difference in approach. Once factored in, we can see that even if Habermas's reconstruction did diagnose an asymmetry in cognitive burdens that constituted an unfairness (which I have argued it does not) it would not be one for which either Habermas, or his theory, was responsible. Habermas is only to be faulted for the incorrectness of his account of the cognitive burdens of democratic citizenship (if indeed it is incorrect). Any asymmetries in the distribution of cognitive burdens lie where they lie not because of the theory.

Admittedly, Habermas encourages this misunderstanding of his position in two ways: first, by making it look more similar to Rawls's than it is – by calling it a 'proviso' for instance – and second by being unclear about the normative status of the requirements of public reason. For example, in spite of occasional clarificatory remarks, he does not succeed in throwing much light on the questions of whether his theory is normative political theory, and if so, what kind of normative claims it makes (Habermas, 2008: 304; 2013: 385). Does it, for example, impose moral or ethical demands on citizens, and if so how do these relate to the 'cognitive requirements' of public reason that the theory reconstructs? On the one hand, Habermas (2005: 142; 2008: 136) says things like the 'duty [die Pflicht] to make public use of one's reason can be fulfilled only under certain cognitive preconditions', which makes it look as if the requirements of public reason are moral requirements. Such a view is also implied by his claim that 'epistemic obligations follow from the demand that they must show each other mutual respect [gegenseitiger Achtung]' (Habermas, 2005: 11; 2008: 4). On the other hand, Habermas (2005: 145, 2008: 139) frequently talks of a 'democratic civic ethos [demokratische Staatsbürgerethos]', suggesting that its demands are 'ethical' as distinct from moral (see Wolterstorff, 2013: 102; Yates, 2007: 880). The trouble is that the requirements in question *cannot* be moral ones, for that would flatly contradict his argument in *Between Facts and Norms* and the main lines of his critique of Rawls for basing his account of political legitimacy on the normative authority of an antecedently given moral order (Habermas, 1998: 80, 89). Nor, however, can the requirements be 'ethical', in Habermas's technical sense of the term 'ethics'. For on his view ethical worldviews form a plurality of rival and sometimes discrepant comprehensive doctrines.²⁷ So despite Habermas's incautious talk of

morality and ethics, which makes it look as if his conception of public reason is a normative theory like Rawls's, the cognitive requirements of democratic citizenship cannot, by his own lights, be straightforward moral and ethical demands.

If this line of interpretation is correct, we can put the methodological differences between Rawls's and Habermas's approach to public reason in stark outline. To the devout Catholic who wants to ban physician-assisted suicide on the grounds of the sanctity of human life, and to the Israeli settler who tries to justify settlements on disputed territories on grounds of the Bible/Torah, Rawls says, both as citizen and political theorist: you ought not to argue on such grounds! It violates your duty of civility and vitiates the possibility of living in a 'true community' where citizens who hold different comprehensive views 'can face one another openly' (Rawls, 2001: 59). As a theorist, Habermas can say no such thing. He can merely observe that liberal democratic states function better, i.e. are better at producing legitimate law and thereby achieving social integration, when they permit legislation to be written only in secular language and justified only on secular grounds, and that some religious content can be rescued for democracy by translation into secular language. At the same time, if this interpretation is right, it is entirely inappropriate to blame Habermas for being unfair towards religious citizens.

3.3. I've offered three separate arguments for the claim that Habermas does not have to worry about the split-identity and unfairness objections. I've shown that neither objection applies to the first component of Habermas's theory. I've offered two relatively simple counterarguments to both objections. And I've argued that consideration of Habermas's method of rational reconstruction immunizes him from both criticisms as they are usually made.

Yet Habermas continues to be worried especially by the unfairness charge. Why is that? One thought here is that he has a deeper underlying worry, namely that the version of the liberal democratic state his theory reconstructs violates the ideal that the state should be neutral between competing worldviews – to which Habermas subscribes – because it only allows secular reasons in the formal public sphere.

If that is the underlying worry, however, why does Habermas not suggest that the requirement that in the political system ‘only secular reasons count’ be relaxed? Is it because, perhaps, he is worried that once written into legislation reasons are petrified and no longer open to debate? I doubt it. At least that should not be a worry for him, since he has a dynamic and open conception of the constitution and of jurisgenesis, and specifically argues that political decisions, and by extension legislation, represent only a ‘temporary caesura’ in an ongoing process of argumentation and democratic discussion (Habermas, 1998: 415).

Even more puzzlingly, if Habermas’s underlying worry is one about the bias – or the lack of neutrality – towards worldviews, why does this not tell against the requirement on secularists to drop their scientific naturalism in favour of ‘political agnosticism’? Critics have argued that this is not only ‘peculiar’ and ‘surprising’ but also unfair and illiberal (Lafont, 2007: 248; Yates, 2007: 887; Holst and Molander, 2015). However, in the light of the methodological considerations outlined above, we must be careful not to attribute responsibility to Habermas or to blame the theory on this point either: the requirements of modernization are the reconstructed social facts. The pertinent question is whether Habermas’s account of the cognitive requirements of modernization is correct.

In my view, he has not show that it is correct. For none of the various arguments Habermas offers to support the peculiar thesis are convincing. Let’s consider the three main ones.

a. Habermas (2008: 139) argues that the freedom of religious expression guaranteed by the liberal state ‘only makes sense if all citizens can be reasonably expected not to exclude the possibility that these contributions may have cognitive substance’. That does not follow, for, as we have seen, Habermas also claims that religions make authentic ways of life possible. That is not only good per se but essential to the process of generating legitimate law (Habermas, 1998: 99, 155). These goods are conferred by the mere presence of religious discourses as ethical discourses in civil society. It is not the case that these goods exist only if secularist citizens adopt a ‘politically agnostic’ stance towards the possible truth of religion and participate in the translation of religious reasons into secular ones.

b. Habermas argues that, but for the cognitive requirement on secularists and secular citizens, the possible truth of religion and a vital source of social meaning would be lost. But it would not be lost if religious discourses continued to circulate in civil society. And the claim cannot be that the possible truth and social meaning of religions will be lost unless they are successfully translated into secular arguments that make their way into law. For, as numerous commentators have pointed out, and as Habermas has himself acknowledged, success in translating religious arguments into secular language is very hard to achieve (see Cooke, 2011: 485; Harrington, 2007: 552; Lafont, 2007: 245; Rees, 2018: 143–65).

c. Habermas claims that, on pain of experiencing cognitive dissonance, secularists must overcome ‘their rigid and exclusive secular understanding’ by opening their minds to the possible truth contents of religion and by being willing participants in the process of sacred-to-secular translation (Habermas, 2008 138-9).

Recall that rational reconstruction is supposed to work alongside the empirical natural and social sciences. So it is natural to take Habermas’s many appeals to ‘cognitive dissonance’ as arguments based on empirical behavioural psychology. Leon Festinger’s classic work on cognitive dissonance is just such an empirical theory. Festinger’s (2005: 3) theory says that when two elements of ‘knowledge’ conflict, the knower will experience pressure to reduce or eliminate the dissonance. People can do this in various ways. One way is indeed to change a cognitive element by modifying one’s actions and/or views. But there are other ways: for example, adding a new cognitive element that reconciles the conflicting elements or mitigates the conflict. Or, if one has control over it, one can change one’s social or physical environment, so that the reality to which the cognitive element responds alters (Festinger, 2005: 19).

Classical cognitive dissonance theory indeed supports some of Habermas’s claims. A religious believer’s faith might well provoke dissonance because it conflicts with the results of natural science. Since the institutionalized authority of natural science is a comparatively permanent and pervasive feature of modern life, and consequently difficult to deny or ignore, it is easier for religious citizens to reduce dissonance by ‘reconstructing articles of faith’, as Habermas (2008: 138) puts it, than by attempting

to refute or ignore natural science. But the theory of cognitive dissonance does not support the thesis that modernization *requires* that secularists abandon their scientific naturalism in favour of ‘political agnosticism’. For one thing, secularists may not experience cognitive dissonance at all, since unlike citizens of faith their views are not out of kilter with the broader cultural mainstream (Habermas 2003: 108–9). And even if they do, the theory of cognitive dissonance clearly states that there are several different ways in which people can reduce, eliminate or manage dissonance: changing one’s views is only one way. And, unlike religious believers, the situation in which secularists find themselves does not incline them towards a change of view as the easiest and hence most likely option.²⁸

Thus the arguments Habermas offers for his peculiar thesis that there is a cognitive requirement on secularists to abandon their scientific naturalism in favour of ‘political agnosticism’ are at best inconclusive. Moreover, a more serious problem besets the thesis. On the face of it, such a requirement would itself violate the rules of discourse, which guarantee equal participation and freedom of expression to all participants in discourse.²⁹ Surely the requirements of modernization cannot directly conflict with the communicative infrastructure of modern society as Habermas has hitherto conceived it.

3.4. As a matter of fact I don’t think Habermas’s underlying worry can be that the conception of the state he defends fails to live up to the ideal of neutrality towards competing worldviews. Otherwise he would not advance a theory that does not allay that worry so much as exacerbate it. For on his view the political system remains institutionally biased against religious reasons and towards secular ones, while modernization processes contain a peculiar and surprising bias against secularism and scientific naturalism.

To understand what the underlying issue is, it helps to ask what it is about religious reasons, and about scientism, that makes Habermas consider them each to be resistant to the requirements of public reason and problematic for democratic citizenship in post-secular society. So far as the former are concerned, Habermas construes religious reasons as essentially private reasons. Because of their ‘reference to the dogmatic authority of an inviolable core of infallible revealed truths’, they ‘evade that kind of

unreserved discursive examination' to which secular conceptions of the good are exposed (Habermas, 2008: 129; 2013: 348). In brief, religious citizens who rely exclusively on reasons of faith refuse to enter into discourse about their religious views with their fellow citizens.

The problem with the secularists is somewhat different. Recently Habermas has argued that the problem with scientific naturalism is that its proponents 'pretend to look upon the world from nowhere' and that they overextend themselves by adopting this stance towards the world as a whole. 'For the "nowhere" that is then still assumed without reflection, and from which hard-core proponents of scientism project their naturalistic worldview, is nothing but the clandestine accomplice of the vacant "divine standpoint" of metaphysics' (Habermas, 2012: 64). So the scientific naturalists, Habermas thinks, are guilty of a cognitive misstep equivalent to that made by religious believers – they refuse to enter into discourse with other participants. because they consider their perspective as the whole truth. In addition to this, however, scientific naturalists make a further misstep. They try to understand the religious views of their fellow citizens by means of natural-scientific descriptions. But adopting the observer's perspective towards the religious discourse of one's fellow citizens 'leads to a reifying description of something in the world' that calls for recognition rather than description (Foessel and Habermas, 2005). They treat religions as 'the archaic relic of pre-modern societies persisting into the present' (Habermas, 2008: 138). The problem is not that this stance is condescending. It is that secularists thereby refuse, like the religious citizens, to enter into discourse themselves; and they also refuse to allow religious citizens entry into discourse. This is ultimately what Habermas finds so problematic about scientism/scientific naturalism, and what he believes secularists share with certain kinds of 'monolingual' (non-modernized and unreflexive) religious believers (Habermas, 2008: 130).

In short, Habermas's peculiar thesis that modernization requires secularists to abandoning their scientific naturalism in favour of 'political agnosticism' is not a good answer to the underlying problem, if indeed that is the problem. For this modification of his earlier modernization theory does not make his theory of the state any more neutral with respect to competing world-views. However, a far less controversial answer is to hand, one that is in tune with Habermas's conception of

post-metaphysical philosophy. Habermas can merely note that, as scientific naturalists, secularists are ‘cognitively’ required to be fallibilists, not just about their own views, but in general. As fallibilists they would not have to abandon their scientific view of the world, but just admit that they might be wrong about religion and the truth of religious discourse. Even if they believe that the overwhelming evidence tells in favour of their view, and against religious worldviews, as fallibilists they would have some reason to engage their religious fellow citizens in discourse. That alone would, on Habermas’s own account of discourse, involve entering into discourse and exchanging perspectives with other participants. Such a view would fit well Habermas’s overall theory. It would be consistent with the rules of discourse, as he conceives them. There is a clear sense in which fallibilism is a *cognitive* requirement, since it is implied by the empirical stance of the scientific naturalist. At the same time, however, Habermas can argue that it has a normative dimension, since it is also a requirement of democratic citizenship to treat one’s fellow citizens as equal participants in discourse. There are, to be sure, still gaps in the theory. The normative status of this requirement remains unclarified, but that is part of a deeper and wider problem concerning the relation between morality, ethics and political norms. The advantage of this solution is that it eliminates the peculiar thesis, since it is no longer a ‘requirement’ of democratic citizenship that secularists undergo a *change of view*: they merely have to reflexively embrace the implications of their own scientific naturalism. And this is almost symmetrical to the cognitive requirement Habermas says falls on religious citizens, namely to consider their “religious convictions reflexively from the outside and to connect them with secular views” (Habermas, 2008: 130). That said, for the reasons given above, it would be a mistake to present this as a solution to the asymmetry/unfairness objection, or indeed to think that this is a problem that Habermas’s theory need or can solve.

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¹ They form a subset which meet two further criteria: they are moral ideas, which are ‘not easily overridden’, and are apt to support a democratic constitution (Rawls, 2005: 217, 139).

² Rawls (2005 [1993]: 246, 144) uses the inclusive sense when claiming that a ‘reasonable and effective political conception may bend comprehensive doctrines toward itself’. He uses the exclusive sense when writing that non-public reasons can be offered by citizens in the course of political advocacy if done ‘in ways that strengthen the ideal of public reason itself’ (Rawls, 2005: 247n).

³ Eberle himself denies that the duty of civility implies a doctrine of restraint.

⁴ They take this to be Rawls’s and Robert Audi’s position (see Audi, 1989, 1993,). Weithman (2004: 6) calls this ‘the standard approach’. They object both to Rawls’s proviso and to Audi’s ‘principle of secular rationale’ (Audi, 1989: 279, 1993: 691, Audi and Wolterstorff 1997: 6–8). In what follows, to keep things concise, I shall only consider the objections as they apply to Rawls.

⁵ Weithman holds a similar view (Weithman, 2004: 3).

⁶ For a synopsis of critics who level the split-identity objection see Yates (2007: 883), and Perry (1988: 181–2).

⁷ See Rawls's (2005: 452, 461) notes on Catholic doctrines of the common good and on the Qur'an.

⁸ Rawls (2005: 152, 386) concedes that some religious citizens with 'partially comprehensive' doctrines hold religious values that may override their political values in certain situations. But such views, Rawls (2005: 175) says, are rare and not typical of religious and philosophical doctrines, which n'tend to be general and fully comprehensive'.

⁹ For example, hoteliers are legally and morally obliged to offer rooms to couples whether these couples are married or unmarried, gay or straight. An hotelier may on religious grounds disapprove of homosexuality, or think it immoral for unmarried couples to share a room, and so might find it psychologically painful to rent rooms to such people. Even so, it is not unfair that he should be obligated to do so.

¹⁰ Peter E Gordon (2013: 175, 193), among others, claims that Habermas 'continues to insist on the Rawlsian proviso' and that '[t]he idea of a translation proviso ... is borrowed from the later Rawls'. Boettcher (2009: 216) claims that, in spite of their differences, the two positions end up 'not so different'. Sikka (2012: 95) claims that Habermas's position is 'closer to that of Rawls than the use of the term "secular" might suggest' and that he 'argues for something like a duty of civility'.

¹¹ Two rare dissenters who argue for the distinctiveness of Habermas's position are Hugh Baxter (2011: 208) and Adil Usturali (2017: 567).

¹² Many commentators maintain the opposite (such as Lafont, 2007: 241; Boettcher, 2009: 238; Loobuyck and Rummens, 2011: 241; Sikka, 2012: 95).

¹³ In a discussion with Charles Taylor, Habermas makes clear that by 'secular' he means language as a repository of reasons 'shared not only by different religious communities but by believers and non-believers alike' (Mendieta and Van Antwerpen, 2011: 66).

¹⁴ Compare with Rawls's duty of civility, which is moral, not legal, and has no institutional basis.

¹⁵ This position is implied by two passages (Habermas, 2008: 5, 122). In the first, Habermas claims that one must formulate 'all laws ... in a public language that is

equally accessible to all citizens, and ... in addition ... open to justification in secular terms’.

¹⁶ Jeremy Gaines’s translation of ‘Religion in the Public Sphere’ renders the passage thus: ‘They should therefore be allowed to express and justify their convictions in a religious language if they cannot find secular “translations” for them’ (Habermas, 2006: 9–10). However, this is not what Habermas means. In the German original he states not ‘if’ but ‘even when’ [*auch dann ... wenn*] (Habermas, 2005: 136). Ciaran Cronin’s translation renders Habermas’s thought accurately (Habermas, 2008: 130).

¹⁷ This development in Habermas’s view of modernization corresponds to a change in his response to E.W. Böckenförde’s thesis that ‘the liberal secularized state is nourished by presuppositions it cannot itself guarantee’. Habermas’s response up to about 2001 is to deny this, and to point to the integrating function of communication, discourse, and legitimate law. He now treats the issue an open empirical question (Habermas and Raztinger, 2006: 21-47 esp. 38).

¹⁸ In what follows I call this openness to the possible truth of religion ‘political agnosticism’. The label is faithful to Habermas’s claim that ‘the secular counterpart to religious thinking is an agnostic, but non-reductionist form of post-metaphysical thinking’ (Habermas, 2008: 140).

¹⁹ See also Habermas and Ratzinger, 2006: 51. For Habermas ‘secularists’ base their atheistic worldview on scientism, that is, reductionist naturalism. He advances various different criticisms of scientism as a worldview (Habermas, 2003: 106-7, 2005: 155–87).

²⁰ Habermas (2008: 138) calls these ‘modern conditions of life to which there are no alternatives’.

²¹ Amartya Sen (2006: 45), for example, points out that a common mistake about identity is to assume it rests on an individual’s ‘singular affiliation’ to just one community.

²² He also claims it is ‘reasonable to expect ... an ethics of citizenship of all citizens equally, only if it is supported by these complementary learning processes’ (Habermas, 2008: 140).

²³ For instance Yates (2007: 887), Lafont (2007: 247), and Gordon (2016, 470) all assume that Habermas’s considered answer is that the cognitive burdens are shared

equally. JM Bernstein also does, but he rejects the ‘thesis of the equality of burdens as patently false’ (Bernstein, 2013: 159).

²⁴ Habermas (2003: 109) also writes that only if secular citizens ‘remain sensitive to the force of articulation inherent in religious languages will the search for reasons that aim at universal acceptability not lead to an unfair exclusion of religions from the public sphere’.

²⁵ Yates (2007: 887), Holst and Molander (2015: 556), and Gordon (2016: 470) all claim that Habermas’s theory imposes or assigns the burdens.

²⁶ Lafont (2007: 254) makes this point clearly in the conclusion of her article.

²⁷ Moreover, this would conflict with Habermas’s response to Bockenförde’s thesis, which is to deny that the liberal democratic state has pre-political foundations in an overarching ethical worldview (Habermas, 2008: 101).

²⁸ Festinger (1985: 28) argues that the least likely element to be modified is the one that is most resistant to change. The easiest element to change is thus the most likely to be altered.

²⁹ ‘Everyone is allowed to introduce any assertion whatever into the discourse’ (Habermas, 1990: 89).