UNIVERSITY OF SOUTHAMPTON

Disenchantment and Democracy : Public Reason under Conditions of Pluralism

Jocelyn Maclure

Thesis Submitted for the Qualification of:
Doctor of Philosophy

Department of Politics

July 2003

UNIVERSITY OF SOUTHAMPTON

ABSTRACT

FACULTY OF SOCIAL SCIENCES

POLITICS

Doctor of Philosophy

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An examination of the relationship between the disenchantment of the world and democracy is necessary in order to appreciate the source and scope of the contemporary challenge of pluralism. In the absence of indisputable markers of certainty and authority, the possibility of justice and social integration is predicated upon a form of public reasoning that enables citizens to work out the terms of their political association together. However, I argue that the dominant conceptions of public practical reasoning (John Rawl's notion of public reason and Jürgen Habermas' discourse ethics) end up imposing unjustified limits on the activity of exchanging public reasons. This has the effect of undermining public reason's community-sustaining role. I suggest that a less constraining and more agonistic conception of public reason is needed. I elaborate this agonistic conception of public reason in terms of a focus on the activity of citizenship in which struggles within and over the terms of citizenship are taken to be a central feature of constitutional democratic political identity. In doing so, I seek to problematize the picture of social harmony prevailing in contemporary political philosophy. I then try to illustrate and to enrich this argument through a discussion of current debates around multiculturalism and the struggles for recognition of cultural minorities. Aboriginal politics in Canada is used as a case-study. The importance of the practice of citizenship, as opposed to the end-results, is stressed throughout the thesis.

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Acknowledgments

This thesis is the provisional outcome of a 3 years and half dialogue with my supervisor David Owen. Dr. Owen discussed the issues and questions raised in the text with me like if it was his own writing project. Such a generosity and collegiality are rare and precious. I can hardly express what I gained from that dialogue. I also want to thank him for his never faltering support and availability. His guidance helped me to find my way in the labyrinthine process of completing a PhD.

I feel fortunate that I could also benefit from Andrew Mason's observations, criticisms and suggestions. The simple fact that I knew Dr. Mason would read my chapters made my writing slightly better. More generally, his rigor and lucidity improved my thinking.

I am much indebted to James Tully who generously offered to read the entire manuscript. His comments went right at the heart of the matter and enabled me to disentangle myself, as far as possible, from the spiral of my own writing.

I would be satisfied if only parcels of Drs. Owen, Mason and Tully's insightfulness shine through the following pages.

My thanks also go to Isabelle Dumont for her unwavering support and care. She made the PhD process a rather pleasant one after all. I also wish to thank David and Caroline, Emmanuel and Valérie, and Stéphan and Julie who repeatedly and warmly greeted me in their home in respectively Winchester, London and Montreal.

Finally, I want to thank the Social Sciences and Humanities Research Council of Canada, the Overseas Research Students Awards Scheme and the Department of Politics at the University of Southampton for the financial support that allowed me to complete this research.

This thesis is the result of work done while I was in registered postgraduate candidature at the University of Southampton.

Introduction

This is a challenging time for doing political philosophy.[1] Perhaps I am being self-justifying, but I see two reasons for thinking that political philosophy, as a field, remains spirited. First, the complex world in which we live places high demands on practical philosophy (Toulmin 2001). The modern world, especially in its current phase of globalization, brings forth an array of demanding ethical and political questions, while the disenchanting power of modernity dries up traditional sources of meaning and authority. Just to name a few examples, the advance of science (particularly bio-sciences), the spread of the means of communication and new technologies, the increasing movement of people across borders, as well as the growth of borderless capitalism, all pose difficult ethico-political problems that convey the appearance of intractability. Less material phenomena such as the erosion of authoritative landmarks of meaning and orientation, and the corollary pluralism of worldviews and values, raise equally urgent and difficult dilemmas.

To be sure, fields of thought such as ethics and political philosophy cannot provide straightforward and indisputably decisive answers to such questions. They can nonetheless propose ways to go on thinking and discussing ethical and political hard-cases. In a Weberian spirit, they can bring to bear considerations that extend beyond the regime of truth immanent to particular spheres of normativity, such as science, politics, economy, law, techno-bureaucracy, religion and so on. In sum, they can feed the deliberations of citizens over problems that cut across facts and norms. Seen under that light, political philosophy is *relevant*.

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[1] No distinction between "political philosophy" and "political theory" will be made throughout this thesis. The former will be used for reasons of uniformity.

Second, political philosophers are also kept busy with an array of epistemological challenges that pervade the humanities and social sciences. Perhaps I am here lacking distance and circumspection, but we seem to be tentatively moving beyond the entrenched debate over the universality (or parochialism) of "Reason".[2] The multi-fold critique of metaphysics, coming from both the continental and analytic traditions, has been successful in putting into question some of the ambitions of modern philosophy, while, at the same time, most recognize that strongly relativistic perspectives lead to a paralysis of judgement that undermines the very relevance of critical thinking. Differently put, there is an emerging consciousness that there are certain things philosophy can no longer do, but there is also a resolute desire to bring philosophy into the vicinity of the most pressing and demanding problems of the time. To be sure, cross-purposes and disagreements between different approaches and theories are no less prominent, but the cleaved debates of the 1980s and early 1990s have perhaps paved the way to a more sober and modest form of thought that nevertheless tries to say something significant.

1. Overview of the Thesis

Pluralism is one of these hardly avoidable themes for contemporary political philosophers. This is not a new theme of interrogation. Hobbes, Locke and Leibniz, for instance, wrestled with the problem of securing peace, justice and stability throughout and in the wake of the wars of religion. Contemporary pluralism presents itself under a different guise: the diversity of values, beliefs, schemes of interpretation, practices, identities and interest both within and across states puts into question the universality of the sources of integration usually stressed and discussed by political philosophers: republican notions of the common good,

[2] The epitome of this debate is probably Jürgen Habermas' attack on post-modernist and post-structuralist approaches in *The Philosophical Discourse of Modernity*. His later book *Postmetaphysical Thinking* reasserts and refines the basic tenets of his universal pragmatics, but the tonality of the argument with regard to the divergences between schools is much more conversational.

communitarian and conservative visions of the good life, liberal commitments to the priority of proceduralism, and so on.

Perhaps as a result of the pioneer work of thinkers such as Isaiah Berlin and Hannah Arendt, the "fact" of pluralism is now one of the basic premises of most political philosophers. Nonetheless, the literature is replete with theorists who, coming from a wide variety of perspectives (political liberalism, deliberative democracy, republicanism, communitarianism, liberal nationalism, liberal multiculturalism, cosmopolitan democracy, radical democracy, deep ecology, and so forth), argue that this or that model or solution is, in the final analysis, immune from pluralism, and should therefore seen be seen as a touchstone for the just and stable resolution of disagreements. This propensity incited me to go back to the roots of contemporary pluralism and to assess its scope and depth. I try to do so in Chapter One through a close reading of one of the most striking formulations of modernity's eroding power over the meta-social landmarks of certainty and authority: Nietzsche's parable of the Madman. I argue that Nietzsche's hyperbole is meant to convey an inchoate and incipient relationship to self, others and the world according to which the various blends of transcendentalism lose their regulative capacity at both the individual and collective levels. For political philosophy, the broad understanding of "death of God" entails that no form of authority can secure its foundations by falling back on an allegedly perfect attunement with a natural order of things. The locus of power is thus irradiated by a continuous debate between overlapping and conflicting orientations. If authority cannot be imported from transcendental reason or religion in a non-mediated way, it must then be either forcefully imposed or democratically worked out.

In a brief transition chapter, I survey the work of three French political thinkers—Claude Lefort, Jacques Rancière and Cornelius Castoriadis—who have insightfully

thematized the intimate relationship between the disenchantment of the world and democratic legitimacy. Castoriadis' reflection on the influence of polytheism on the birth of an agonistic form democracy in Ancient Greece throws some light on our current predicament. Lefort's and Rancière's more phenomenological analyses show how the transformation of the public space is, first and foremost, a matter of gaining voice and visibility in an already symbolically and materially constituted order. I come back to this dimension of the democratic form of life in the section on the struggles for recognition of cultural minorities.

Chapter 3 examines the montage of John Rawls's notion of "public reason" and of Jürgen Habermas' discourse ethics. Rawls and Habermas have both rightly pointed out that the possibility of justice and integration, under conditions of ethical pluralism, delicately hinges on a form of reasoning-together that enables citizens to work out the terms of their political association together. Over and above the divergences that stemmed out of their 1995 debate, both argue that agreement over moral issues or basic political principles remains a condition of justice and integration in pluralistic societies. As they are well aware that it is not to be expected that citizens will rally behind a single comprehensive doctrine or vision of the good life, they burden the procedures of public argumentation with the task of securing consensus over divisive public issues. This is achieved through the imposition of a test of generalization, imported from Kant's moral philosophy, that rules the most contentious claims or arguments out of public discussion.

The first three chapters set the stage for a discussion of deliberative democracy in Chapter 4. I first underline some civic virtues that derive from public deliberation, but then argue that theories of deliberative democracy need a firmer anchorage in the rough conditions of real-time, power-laden democratic politics. Democracy, however, is not the only condition of modern political legitimacy. As Habermas has argued, constitutionalism, or the rule of law, stands in a relation of equiprimordiality with popular sovereignty. I suggest that recognizing

this agonistic tension enables deliberative democrats to demur from the claim that they neglect private autonomy, a precondition to the exercise of democratic citizenship.

However, that everyone affected by a given regulation ought to be in a position to participate to its fashioning does not entail that all need to agree over it. In section 2 of Chapter 4, I try to show that the postulation that the dissolution of disagreement is a condition of legitimacy and stability is neither necessary nor desirable. This leads me to a critique of the discipline Rawls and Habermas impose on public speech. Neither of them have been successful in showing that the rules of public reason that they want to insulate from public scrutiny are truly capable of fostering either, first, impartiality or, second, concrete decisions that all reasonable citizens ought to deem acceptable. The burdens of judgement, I argue, also corrode *public* reasoning. In conclusion, I sketch out a broader conception of public reason that seeks to avoid generating political alienation by eschewing the very distinction between public and non-public reasons. The point that I want to make is not that every possible constraints on public argumentation should be removed, but rather that the prior tension between democracy and the rule of law renders the theoretically-derived discipline of public reason unnecessary. In the Conclusion to Section One, I offer indications on how to think social integration and stability while acknowledging the persistence of reasonable disagreements between citizens.

In order to restrict the scope of analysis and to discuss particular cases related to the difficulty of achieving justice and integration under conditions of pluralism, I examine (in Section 2) struggles over the recognition and accommodation of cultural diversity. Such an investigation demands a clarification of frequently invoked notions such as "identity," "belonging," "culture" and the "rights of minority cultures". Chapter 5 is thus devoted to the introduction of culture in political philosophy. This work of conceptual clarification and definition enables me, in Chapter 6, to reflect on the meaning and impact of what has been

labelled as "identity politics" or "struggles for recognition". Although I try to debunk the claim that the politicization of identity is logically underwritten by the essentialization of identity, I nevertheless highlight some of the limits of the language of recognition that is widely used both in theory and in practice to articulate identity-related political demands. Relating my analysis back to the arguments for a more agonistic form of deliberative democracy in Chapter 4, I suggest that identity politics need to be more consistently situated within the broader array of democratic practices of freedom.

In conclusion, a more historical and descriptive study of the struggles for recognition and autonomy of aboriginal peoples in Canada exemplifies several points and arguments on culture and identity politics made in Chapters 5 and 6. The rise of "aboriginal rights" as a legal category is a patent illustration of the new norms related to the respect of cultural diversity that emerged in the past 30 years. Yet, rather than approaching the aboriginal question through a juridical lens, I instead suggest that the partial achievement of justice for aboriginal peoples in Canada requires a political approach and examine different ways of conceiving a just political relationship between aboriginal and non-aboriginal peoples.

In the end, the three chapters of Section Two converge to lend plausibility to the idea that justice and integration ultimately rest on a processual political framework according to which citizens can always reconstruct the pillars of their political association.

2. The Approach

> le secret et le centre d'une philosophie n'est pas une inspiration prénatale, [...] il se déplace à mesure que l'œuvre progresse, [...]elle est un sens en devenir qui se construit lui-même en accord avec lui-même et en réaction contre lui-même, [...] une philosophie est nécessairement une histoire (philosophique), un échange entre problèmes et solutions, chaque solution partielle transformant le problème initial, de sorte que le sens de l'ensemble ne lui préexiste pas, sinon comme un style préexiste à des œuvres et paraît après coup les annoncer.

- Maurice Merleau-Ponty (1953 : 26)

The activity of political philosophy can be carried out through different styles and oriented towards a variety of goals. It should probably not be a surprise that the approach I took as a guide turned out to gain clarity and substance *as* I wrote the thesis. What was at the outset a cluster of intuitions, anticipations, inchoate ideas and uncritically accepted postures were brought to the test of writing. I have somewhat tried to formalize the results of this test in a number of passages dispersed throughout Section 2.

Via negativa, the approach that was tentatively put into application in this thesis can be characterized as skeptical of the kind of normative theorizing roughly shared by both analytical political philosophy and critical theory. Its aim is not to build systematic theories—minutely laid out articulations of abstract principles—that can be applied in all relevant contexts in order to produce just political results or be used as yardsticks for judging the degree of justice of varied concrete arrangements (institutions, policies, rights, etc.). Rather, it is "practice-oriented": it seeks to gain understanding of practical problems erupting in concrete fields of interaction by paying attention to the speeches and deeds of the relevant agents, and it confronts this knowledge with the diverse proposed practical and theoretical solutions to the problem in question. In that sense, it is a modulation of the phenomenological watchword "back to the things themselves" (understood in a non-metaphysically realist fashion) and of Wittgenstein's exhortation to (re)focalise our attention on the knots of ordinary (practical) life. It is not so much a grammar as it is an attitude that is carried on from one field of investigation to the next. In contrast to the other reconstructive approaches discussed in this thesis (those of Rawls and Habermas), the norms retrieved from practice are seen as elements that must be acknowledged and taken into consideration in the practical

conflict or political disagreement under scrutiny, rather than as building material for a general theory.

Also spurred by Nietzsche and Foucault's genealogical thinking, this approach manifests some prudence with regard to principles or truths that claim universal validity. It looks for the elements of contingency often concealed by universality claims and it pays equal attention to the similarities and to the differences between language-games. That said, it nonetheless belongs to the family of modes of *critical* reflection, as it does not claim to be free of any trace of normativity. As alluded to, the understanding gained from the investigation of specific language-games can be put to critical uses. In the sphere of academic research, it participates in the ongoing debate with alternative approaches and theories. In the public sphere, it can feed the discussions over the interpretation of concrete problems as well as over their proposed resolutions. The reflexivity built into the fabric of this approach—call it "critical phenomenology" for the time being—confers upon it a particular role *in* the public exchange of reasons, as it problematizes and puts into perspective universal validity claims, approaches the issue from a variety of vantage points, directs public attention to unnoticed aspects, and raises second-order questions about the language of deliberation when needed, but does not see these as having a different status to first-order claims: theorists must, like other citizens, comply with requirement of argumentation and persuasion. This is, to some extent, trivial, but normative theorists are not always clear on the civic status of normative theory. Theory in general is a particularly reflexive form of practical reason (Heidegger 1985; Taylor 1995: 34-60; Toulmin 2001)—not a distinct and separate register of activity—and it must consequently be seen as wholly submerged by public practical reasoning.

It would demand a full thesis to retrieve the multiple sources of this approach, *inter alia*, in the later Wittgenstein's comparative and therapeutic genre of reasoning, the de-

transcendentalization of phenomenology inaugurated by the early Heidegger, the socio-historical investigations of Foucault and Bourdieu, and to assess its contemporary manifestations, extensions and applications to political philosophy in the writings of theorists such as James Tully.[3] In the limited scope of this thesis, however, I will rather tentatively try to put it into practice.

[3] See Tully (1989, 2002a and 2003) for different sketches of this approach.

Section 1

Modernity, Pluralism and Democracy

Chapter 1

Nietzsche's Challenge.

Modernity and the Problem of Authority

1. Aphorism 125 of the *Gay Science*

The madman. -- Have you not heard of that madman who lit a lantern in the bright morning hours, ran to the market place, and cried incessantly: "I seek God! I seek God!" – As many of those who did not believe in God were standing around just then, he provoked much laughter. Has he got lost? asked one. Did he lose his way like a child? asked another. Or is he hiding? Is he afraid of us? Has he gone on a voyage? Emigrated? – Thus they yelled and laughed.

The madman jumped into their midst and pierced them with his eyes. "Whither is God?" he cried; "I will tell you. *We have killed him* – you and I. All of us are his murderers. But how did we do this? How could we drink up the sea? Who gave us the sponge to wipe away the entire horizon? What were we doing when we unchained this earth from its sun? Whither is it moving now? Whither are we moving? Away from all suns? Are we not plunging continually? Backward, sideward, forward, in all directions? Is there still any up or down? Are we not straying as through an empty space? Do we not feel the breath of empty space? Has it not become colder? Is not night continually closing in on us? Do we not need to light lanterns in the morning? Do we hear nothing as yet of the noise of the gravediggers who are burying God? Do we smell nothing as yet of the divine decomposition? Gods, too, decompose. God is dead. God remains dead. And we have killed him.

"How shall we comfort ourselves, the murderers of all murderers? What was holiest and mightiest of all that the world has yet owned has bled to

> death under our knives: who will wipe this blood off us? What water is there for us to clean ourselves? What festivals of atonement, what sacred games shall we have to invent? Is not the greatness of this deed simply too great for us? Must we not ourselves become gods simply to appear worthy of it? There has never been a greater deed; and whoever is born after us – for the sake of this deed he will belong to a higher history than all history hitherto."
>
> Here, the madman fell silent and looked at his listeners; and they, too, were silent and stared at him in astonishment. At last he threw his lantern on the ground, and it broke into pieces and went out. "I have come too early," he said then; "my time is not yet. This tremendous event is still on its way, still wandering; it has not yet reached the ears of men. Lightning and thunder require time; the light of stars requires time; deeds, though done, still require time to be seen and heard. This deed is still more distant from then than the most distant stars – *and yet they have done it themselves.*"
>
> It has been related further that on the same day the madman forced his way into several churches and there struck up his *requiem aeternam deo.* Led out and called to account, he is said always to have replied nothing but: "What after all are these churches now if they are not the tombs and sepulchers of God?" (GS 125).[4]

Aphorism 125 of the *Gay Science* is one of Nietzsche's most often cited passages. Perhaps nowhere in modern philosophy is the modern predicament of having to think and act without transcendental guarantees so clearly and powerfully stated. Not only does Nietzsche diagnose and thematize what was to become one of the most important mutations in modern culture (the death of God), but he also presents us with a challenge: can we mourn the death of God or, differently put, can we govern ourselves without recourse to transcendentalism ? What I want to do in the following sections is to present an interpretation of the parable of the madman and flesh out some of its main implications. As the meaning of Nietzsche's thought

[4] The abbreviations used in this chapter: GS: *The Gay Science*; GM: *On the Genealogy of Morals*; BGE: *Beyond Good and Evil*; TI: *Untimely Meditations*; AC: *The AntiChrist*; Z: *Thus Spoke Zarathustra.*

on the dissolution of the divine reference is multifaceted, I will mainly focus my attention on the epistemological and ethical issues it raised for God's orphans.

2. Science and Religion: On the Will to Truth

On a number of occasions in the parable of the madman Nietzsche goes back to the idea, or the accusation, that "we" are responsible for the death of God. This deed is, according to him, faraway from his contemporaries and predecessors, further "than the most distant stars" and yet they have committed it themselves. The first question that must be raised, before carrying out the task of interpreting Nietzsche's aphorism, is how is it that we are God's murderers ? What are the conditions under which we have rendered God's authority fragile ?

Although Nietzsche remains silent, in aphorism 125, about how finite beings could murder a suprasensory being, he frequently stresses elsewhere that the will to truth, the elevation of truth as the most fundamental value, is what came to fissure the foundation of Christianity. If, at the outset, scientific investigation was supposed to confirm the scriptures and yield better access to divinity, it ended up historicising and problematising the Christian cosmology. As Karl Löwith notes in a commentary on Max Weber's position on science:

> Copernicus, Kepler, Galileo and Newton were all equally convinced that God had ordained the world mathematically and that they could come to know Him by reading from what, by analogy with the Bible, they termed the "book" of Nature. The biologist Swammerdamm's triumphant declaration "I bring you here proof of God's Providence in the anatomy of a louse," gives an indication of the confidence with which a belief in natural science as a pathway to God could be assumed before Kant produced his critique of physico-teleological arguments for God's existence (1989: 142).

An "intimate association" was thus assumed between scientific knowledge, morality (acting faithfully) and happiness (GS 37). But, as has now become typical, science produced unforeseeable consequences and the route leading to God was diverted. The confessional

ethos inscribed in Christianity stimulated the will to truth which, in turn, revealed the contingent and hypothetical (rather than absolute and necessary) character of the Christian moral system. The will to truth thus turned against its own conditions of emergence. We can see, concludes Nietzsche, "what it was that really triumphed over the Christian god : Christian morality itself, the concept of truthfulness that was understood ever more rigorously, the father confessor's refinement of the Christian conscience, translated and sublimated into a scientific conscience, into intellectual cleanliness at any price" (*Ibid.*: s. 357). The Christian morality, out of which the insatiable will to truth unfolded, bore the seeds of the Christian dogma's deliquescence (GM 3: 27). Confidence in science prompted alternative explanations of self and world, and these alternative explanations often clashed, rather than dovetailed with, the closed Christian system of interpretation. The existence of God became a topic open to rational scientific argument rather than its ontological pre-condition. As Charles Taylor reminds us, something important had to change, at the dawn of the 18th century, for that exchange between Napoleon and the French scientist Laplace to take place: "M. Laplace, what do you make of God [in your new theory of determinism]? " "Sire, I have not needed this hypothesis" (Taylor 1989: 324). God did not only become a useless hypothesis, Nietzsche adds, but also an hypothesis that could be invalidated through scientific inquiry. The will to truth, once secularised, stood in contradistinction with the Christian world-picture. Mainly as a consequence of Christianity's commitment to truthfulness, the question of the value of God as a foundational mode of authority (partly inadvertently) became inescapable. However, raising the question of the value of God could not coherently be the last step in that process of critical self-examination. As I will address in Section 5, the question of the value of truth and, ultimately, of all values remained to be asked by the secular subjects who not only witnessed the waning of a form of authority, but also came to experience a mode of problematisation of their relationship to the world—a mode of problematization epitomized by Kant in the preface

to his first *Critique*: "our age is the genuine age of critique, and to critique everything must submit" (1999).

3. How to Interpret the Death of God ?

Nietzsche's discussion of the death of God has led to various interpretations. There is a danger that what Nietzsche is trying to say in GS 125 may be easily caricatured. For example, perhaps the most tempting (and misleading) way to understand Nietzsche's word is to equate it with atheism, that is, with the simple negation of God's existence and authority. This is of course encouraged by the rather morbid and peremptory tone of the locution "death of God". Although he had some ambiguous formulations, I will contend that this is not what Nietzsche had in mind.

I want to argue that Nietzsche cannot, despite his ambiguous and often polemical formulations, pretend that God's authority has fully dissolved. In the first section of book five of the *Gay Science*, which was written five years after the original publication of the book, Nietzsche writes that

> The greatest recent event—that "god is dead", that the belief in the Christian god has become unbelievable—is already beginning to cast its shadows over Europe. For the few at least, whose eyes—the *suspicion* on whose eyes is strong and subtle enough for this spectacle, some sun seems to have set and *some ancient and profound trust has been turned into doubt*; to them our old world must appear daily more like evening, more mistrustful, stranger, 'older' (GS 343, my emphasis).

We can see in this passage why Nietzsche's thought on the meaning and implications of the death of God led on to diverse interpretations. On the one hand, Nietszche makes the bold statement that the Christian God has lost any kind of credibility ("the belief in the Christian God has become unbelievable"). One could rightly point out that this interpretation can be backed up by several passages taken from, for example, in *The AntiChrist*, where Nietzsche

writes that being Christian is "indecent" nowadays (AC: 38, 9). On the other hand, he suggests, more prudently, that an old and deep confidence has turned into an ephectic moment of doubt. Whilst the first interpretation seems to lead to the conclusion that it has become either impossible or incoherent to believe in God, the second one directs our attention to the problematic character of faith in a secular and disenchanted age. Nietzsche's further developments in the *Gay Science* tend to confirm the second interpretation. In paragraph 375, he stresses that "we are cautious, we modern men, about ultimate convictions. Our mistrust lies in wait for the enchantments and deceptions of the conscience that are involved in every strong faith, every unconditional Yes and No". The will to truth, or the modern subject's "jubilant curiosity", lies at the source of our reluctance to do without the question mark. The modern subject is "proudly conscious of its practice in having reservation" (GS 375). This attachment to the interrogation mark renders us suspicious of enchanting myths and ultimate convictions but does not *ipso facto* invalidate religious beliefs altogether. The core issue is that a deep confidence in an ethical system has been converted into a moment of doubt—a moment of doubt which can lead to a suspension of judgement, a reaffirmation, a transformation, or the abjuration of that ethical system. Religious beliefs did not fully vanish with the progression and dissemination of the ethics of truthfulness, but became increasingly subject to critical examination. In other words, religious, mythical or cosmological outlooks became more intensely contested and controversial. As Heidegger succinctly puts it, the loss of the gods "does not mean the mere doing away with the gods, gross atheism. [...] The loss of the gods is the situation of indecision regarding God and the gods" (1977b: 116-117). The theme of the death of God refers the growing impossibility of abandoning oneself to an ultimate and transcendental mode of authority without passing through a potentially troubling and disquieting situation of indecision. Jean-François Lyotard, in spite of the various aporias

in his understanding of postmodernity, dwell on the expansive *incredulity* towards masternarratives, and not on their straightforward erasure (1979: 7).[5] People, then, might still cling to such a transcendental authority, but this allegiance is predicated upon a process of more or less reflexive endorsement which cannot but *singularise* this particular form of faith and, in so doing, instil doubt into the believer's mind.[6] In other words, the process of reflexive endorsement situates the unconditional attachment to a form of authority within a broader field of possible attachments. The death of God, as it was alluded to at the outset, thus raises the issues of perspectivism, practical judgement, pluralism and (re)orientation. The end of the 19th century was, according to Nietzsche, a period of transition in which various sources of authority have seen their capacity to compel altered (GS 356). The action-guiding character of these sources of authority, in other words, has been weakened. For sure, Nietzsche was inexhaustible in his critique of Christianity. However, contrary to Descartes, Kant and most of the post-Greek philosophical tradition, he was not concerned with the proof of God's existence or inexistence so much as with Christianity as a practice, a way of life and a historical phenomenon. For him, "to reduce being a Christian, Christianness, to a holding something to be true, to a mere phenomenality of consciousness, means to negate Christianness" (AC: 39).

Perspectivism would then be the epistemic working out of the death of God. Nietzsche, as is well known, did not think that we could consistently hold on to a correspondence theory of truth (i.e. truth as independent of the subject's cognitive capacities, but as nonetheless graspable by a correct use of her cognitive apparatus). According to Nietzsche, there is no "pure reason", "absolute spirituality", "knowledge in itself", but "*only* a

[5]To translate "l'incrédulité à l'égard des métarécits" by the "*end* of masternarratives", as it is often done, is thus greatly misleading.

[6] As Taylor puts it, "more and more people are forced out of comfortable niches in which they can be believers or unbelievers with minimal challenge from their surroundings" (2002: 63). The faith of believers has been fragilized not only because they are confronted with intelligent and well-intentioned people who disagree with them, but also because some of their own reflections and inclinations are reflected in the views of non-believers or of adherents to other religious or spiritual sources (*Ibid.*: 57).

perspective seeing, *only* a perspective 'knowing'; and the *more* affects we allow to speak about one thing, the *more* eyes, different eyes, we can use to observe one thing, the more complete will our 'concept' of this thing, our 'objectivity,' be. But to eliminate the will altogether, to suspend each and every affect, supposing we were capable of this—what would that mean but to *castrate* the intellect" (GM 3: 12). Any truth-claim, such as the truth-claim made with respect to the existence and the authority of God, depends on the perspective in which one finds oneself, on the system of purposes in which one raises the question (Ridley 1998: 110-114). As there is no view from nowhere, truth is immanent to the language games in which the question is inescapably raised (GS 374). The priest, the philosopher and the scientist, using different grammars, hold on to divergent, yet potentially coherent, interpretations of the holy texts. The world, as Nietzsche puts is, has become "infinite, inasmuch as we cannot reject the possibility that *it may include infinite interpretations*" (GS 374). Nietzsche, then, could not hold on to his perspectival doctrine of truth and simultaneously claim that God's inexistence can be proven objectively or absolutely. Note however that this does not commit Nietzsche to epistemological relativism. Since Nietzsche affirms (*contra* the Christian ascetic ideal) that there is no view from nowhere or absolute conception of the world, perspectivism is for him a theory of knowledge which has universal validity, not a perspective on truth amongst others. Affirming Perspectivism, for Nietzsche, is the form of our epistemic *amor fati*.[7]

4. A Shift in Form of Life: The Madman and the Urbane Atheists

When Nietzsche's madman breaks in the market place, it must be recalled, he does not mingle with a crowd of churchgoing Christians, but with a group of strollers among which many "did

[7] People, then, can still cling to an absolute authority, a point of view outside the realm of immanence. Yet, perspectivism remains our epistemic predicament because there is no agreement on such an authority and transcendental arguments for convincing others of the absoluteness of that point of view are lacking. What is missing, in other words, is a type of argument that all would regard as authoritative and regulative, a view which could not be brought back to a particular perspective, a view, thus, from nowhere.

not believe in God". The fact that Nietzsche did not choose to confront his madman with a cluster of believers is not innocent. The choice of that encounter suggests that the urbane atheists have missed something from the process of disenchantment built in the ethos of modernity. The "secularisation of the European mind", as it was subsequently called, was particularly intense in the 19th century (Chadwick 1975). Nietzsche's point, however, is that the urbane atheists did not fully capture the implications of the "divine decomposition". The act of killing God, the greatest deed of all, opened up a moral space in which authority became a problem. As we have seen, during the life of God—that is, the time when the validity of God as a principle of judgement could only be doubted by fools, heretics and madmen (Owen forthcoming)—the space of authority was filled by the divine reference. Christianity was not only a system of beliefs but, to use Ludwig Wittgenstein's words, a "form of life" or, better still, the background agreement in a form of life. A world-picture or system of judgements, such as Christianity, is "the inherited background against which I distinguish between true and false" (Wittgenstein 1969: par. 94). As David Owen suggests, a detour through Wittgenstein might be the best route to an understanding of what Nietzsche is trying to get at in the parable of the madman.[8]

In *On Certainty*, Wittgenstein argues that:

> We do not learn the practice of making empirical judgements by learning rules: we are taught *judgements* and their connexion with other judgements. A *totality* of judgements is made plausible to us (140, see also 274).
>
> When we first begin to believe anything, what we believe is not a single proposition, it is a whole system of propositions. (Light dawns gradually over the whole.) (141, see also 102, 103)
>
> It is not single axioms that strike me as obvious, it is a system in which consequences and premises give one another *mutual* support (142).

[8]I am greatly indebted to Owen (forthcoming) for this interpretation of Nietzsche through Wittgenstein.

Wittgenstein continues, "[t]he system [of judgements], is not so much the point of departure, as the element in which arguments have their life" (105). The death of God, seen from that perspective, does not only signify the abjuration of a set of beliefs, but also a shift in forms of life, in the ways we relate to ourselves, others and the world. This reading is confirmed by Nietzsche, who writes, that "Christianity is a system, a consistently thought out and complete view of things. If one breaks out of it a fundamental idea, the belief in God, one thereby breaks the whole thing to pieces" (TI: Expeditions 5). Christianity is a practice, "a doing, above all a *not*-doing of many things", and not solely a state of consciousness (AC: 39). The problem with the urban atheists is that they have renounced God as a personal conviction, but still apprehend modern life from within a Christian worldview. In other words, Christianity as a dogma has perished while Christianity as morality is still holding sway (GM 3: 27). God is dead, but his shadow darkens our relation to modern life (GS 108, 109).[9] As James Conant observes, "what those who do not believe in God do not know—and as yet, according to the madman, are unable to understand—is that God does not all of a sudden, at some point, simply cease to exist. Rather, God *dies*, and his death is a slow business" (1995: 262).

As Owen, Conant and Robert Pippin (1999) stress, this demise of one form of life must in the end initiate in a work of mourning and reorientation. If, as Nietzsche believes, Christianity constitutes the normative background against which the modern subject gains intelligibility about herself and the world, then the collapse of Christianity as an indisputable form of authority and source of meaning cannot but raise the question of (re)orientation. This explains why the madman assailed the market place armed with a lit lantern in the bright

[9] Dostoyevsky's considerable influence on Nietzsche here is palpable. In his speech to Alyosha, Father Païssy said "Has it not lasted nineteen centuries, is it not still a living, a moving power in the individual soul and in the masses of people? It is still as strong and living even in the souls of atheists, who have destroyed everything! For even those who have renounced Christianity and attack it, in their inmost being still follow the Christian ideal, for hitherto neither their subtlety nor the ardour of their hearts has been able to create a higher ideal of man and of virtue than the ideal given by Christ of old" (Dostoyevsky 1933: 177).

morning hours. The obscurity in thinking and acting remains even in the light of day. As Heidegger remarks, "If God as the suprasensory ground and goal of all reality is dead, if the suprasensory world of the Ideas has suffered the loss of its obligatory and above all its vitalizing and upbuidling power, then nothing more remains to which man can cling and by which he can orient himself" (1977: 61). The problematization of God as an Archimedian point constitutes the waning of a mode of authority. But to problematize a mode of ethical governance, a deeply internalised way of being-in-the-world, is harder and more disquieting than altering a single judgment or set of judgments. Nietzsche postulates a perhaps unconscious resistance from the urbane atheists to think through, and to capture the significance of, the problematization of God's authority. To get through to his audience, Nietzsche's madman turns to a sequence of metaphors by which he seeks to illustrate the gravity of the act committed by his contemporaries and predecessors. We, according to the madman, have not only dried the sea of certainties and erased the horizon of meaning, but we have also "unchained this earth from its sun". The sun, as Heidegger reminds us, is both the stable orientation point *par excellence* (the Copernican Revolution) and the realm of truth and intelligibility (Plato's allegory) (*Ibid*: 106). Are we now moving away from all suns, asks the madman ? "Whither are we moving now ?" Are we moving towards an endless precipice ? We have entered, he believes, in an (ethically) empty, dark and cold space; a space in which our inherited notions of "backward", "sideward", "forward", "up" and "down" have lost of their unproblematic character as orientation-points. We have shifted, as Nietzsche puts it in the aphorism which precedes the parable, into the "horizon of the infinite". The bridges that used to safeguard our access to the land have been burned (GS 124).

Nietzsche's madman is astonished by the relative indifference demonstrated by the urbane atheists. Hence the rather hyperbolic character of his metaphors. Nietzsche is trying to unsettle, through the parable, the picture of modernity which have enthralled modern, secular

subjects. As Owen suggests, while the first wave of the European Enlightenment thinkers problematized God as a belief or a cluster of beliefs (thus raising the question in terms of truth), Nietzsche and the second wave of Enlightenment thinkers must convince their contemporaries of the need for re-orientation (thus raising the question in terms of ethics) (Owen unpublished).[10] Not unlike what happened to Yahve, the Christian God "*could* no longer do what he formerly could" (AC: 25). The dissolution of the Christian ethical landmarks or signposts demands the creation of new values and sources of meaning or, in Nietzsche's terms, calls for a process of re-evaluation. According to Nietzsche, God's orphans must pass through a kind of rite of passage and modify their relation to the world. The alteration and modification of the (Christian) system of judgments—and the prior recognition of the need for re-orientation—is the only way, for Nietzsche, to cope with the disorientation in thinking and acting he diagnosed and thematized in the parable of the madman.

5. The Craving for Surrogates

The urbane atheists are rather unmoved by the divine decomposition because their totality of judgments has remained more or less intact. Theism declines, Nietzsche observes, and yet "the religious instinct is in the process of growing powerfully" (BGE: 53). In a number of his books, Nietzsche shows us how the craving for certainty, for stable orientation points, has survived the decline of theism. God has, for many, lost its obligatory status, but the role of fulfilling God's function has been assigned to alternative values or "sacred games". God's place might be vacant, but the place *per se* remains (hence the persistence of the Christian form of life).[11] In Heidegger's words:

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[10]Many commentators who refers to Nietzsche as an anti-Enlightenment thinker (Vattimo 1988) will resist this interpretation of Nietzsche's critical project as a form of enlightenment. For evidence that Nietzsche saw his own project along a similar line, see *Daybreak* (197). See also Owen (forthcoming) and Ridley (1998).

[11] Nietzsche underscores that nihilism understood as the *belief in unbelief* is itself underpinned by a need for "a faith, a support, backbone, something to fall back on" (GS 347).

> Something else can still be attempted in face of the tottering of the dominion of prior values. That is, if God in the sense of the Christian god has disappeared from his authoritative position in the suprasensory world, then this authoritative place itself is always preserved, even though as that which has become empty. The now-empty authoritative realm of the suprasensory and the ideal world can still be adhered to. What is more, the empty place demands to be occupied anew and to have the god now vanished from it replaced by something else. New ideals are set up (1977: 69).

According to Nietzsche, new ideals are constantly set up because the *horror vacui*, and the correlative need for stable horizons of meaning, are immanent to selfhood (GM 3: 1). Moreover, animals who have developed consciousness must necessarily account for, and assign meaning to, suffering. Indeed, the force of the "ascetic ideal"—the affirmation of a transcendental realm through the negation and trivialisation of worldly existence—lies in providing a response to the *horror vacui* and in the need to attribute meaning to suffering (GM 3: 1, 28).[12] This incapacity to bear emptiness and meaninglessness accounts both for the resilience of metaphysics and for the "impetuous *demand for certainty* that today discharges itself among a large number of people in a scientific-positivistic form" (GS 347). As it was also argued later by Max Weber, science, understood as the faith in Truth and as the corresponding belief in the capacity to subject nature to human purposes, erected itself as one of the dominant palliative meaning-giving horizons. The urbane atheist, "seeking stability and control in this life, perhaps to compensate for the loss of eternal life, inflates truth as he deflates God. But this inflation signifies a failure to explore the implications of the death he seeks to celebrate. The secularist retains faith in truth" (Connolly 1993: 11).

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[12] As Owen suggests, "the goal of the ascetic ideal is the denial of the tragic character of life, the refusal of chance and necessity—and this hatred of fate, Nietzsche contends, is a denial of life itself" (Owen 1999: 170). Science, as we will see, is not the antithesis of the ascetic ideal, but its most "recent and aristocratic form" (GM 3: 23).

Nietzsche also seeks to submit the sanctification of alternative values to critical reflection. For Nietzsche believes that the death of God not only implies the disenchantment of the world (the rationalisation of religious/mystical beliefs), but also the more general process of the dissolution of transcendental markers of certainty.[13] Nietzsche's point is not simply to reiterate the first wave Enlightenment thinkers' diagnosis according to which the progress of reason was co-extensive with the demise of enchanting beliefs. His aim is rather that to argue that it is no longer possible to provide ultimate foundation and justification for any markers of certainty; be these markers rational or scientific. Ersatz such as "Reason", "Science" and "Progress" all suffer, according to Nietzsche, from the same deficit: the impossibility to secure beyond reasonable doubt the validity of their own authority; the same impossibility that first struck down God's authority. The value of truth and science is not, for Nietzsche, unproblematic. Science alone is not capable of solving the ethical problem of disorientation. We know that science can suppress and destroy illusions but, Nietzsche asks, can it provide motives for actions ? (GS: 7) Weber, one of Nietzsche's discrete disciples,[14] picked up and formulated in very similar terms the question of the value of science. Following Tolstoï, Weber emphasises that science is incapable of answering the questions "what shall we do and how shall we live ?" (1946: 143). Science led not to "true" God, being, nature, art or happiness (*Ibid.*), but only to more science. As he underlines, sciences can provide specific answers to how to achieve certain goals, such as how to master various elements of our environment, but remains mute when confronted with the question of the value and meaning of science: "natural science gives us an answer to the question of what we must do if we wish to master life technically. It leaves quite aside, or assumes for its purposes, whether we should and do wish to master life technically and whether it makes sense to do so" (*Ibid.* 144).

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[13] See the section on Claude Lefort in Chapter 2.
[14] For the "traces" of Nietzsche in Weber, see Hennis (1988: 146-162) and Owen (1995: 84-140).

The scientific ethos, conclude Nietzsche and Weber, cannot account for its own value and foundation. A grammar, such as science, lays out the rules that ought to be followed if one wants to attain given results. It can provide internal reasons for pursuing a specific scientific enquiry—reasons immanent to the chosen system of purposes—but it cannot come up with external reasons for getting on with that enquiry.[15] The prior question of the value and meaning of science cannot be answered scientifically. There is a leap of faith, according to Weber, lying behind our civilisation's devotion to science. We can see, Nietzsche observes,

> that science also rests on faith; there simply is no science 'without presuppositions.' The question whether *truth* is needed must not only have been affirmed in advance, but affirmed to such a degree that the principle, the faith, the conviction finds expression : '*Nothing*' is needed *more* than truth, and in relation to it everything else has only second-rate value (GS 344; see also GM 3: 24; Weber 1946: 147).

Science is in need of a justification (GM 3: 24). It requires "in every respect an ideal of value, a value-creating power, in the *service* of which it could *believe* in itself—it never creates values" (GM 3: 25).

This explains why Nietzsche was also interested in deconstructing the positivist conception of truth—the conception according to which the value of truth is seen as "inestimable" and not subject to critical examination (GM 3: 25). The extension of the task of enlightenment, to which both Nietzsche and Weber were committed, demands that the prior and unjustified commitment to the value of truth and science be called into question. The will to truth, as the most fundamental value, must put itself into question (GM 3: 27; BGE: 1). As was anticipated earlier, the question of the value of truth and, ultimately, of all values is immanent to the erosion of the divine reference. In the absence of meta-social sources of

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[15]In a slightly different way, Wittgenstein observes that grammar "only describes and in no way explain [and justify] the use of signs" (1967: 496)

justification, any value is bound to be unable to provide external justifications for its own value. Nietzsche was consequently also sceptical of a number of moral and political surrogates of God: the foundation of the moral law (BGE: 186), the greatest happiness for the greatest number, socialism, political sovereignty, and so on.[16] When Nietzsche talks about the erosion of the divine reference, he refers to the contestable nature of any mode of authority. It is this problem of authority that will preoccupy me in the following chapters.

Conclusion: Disenchantment, Pluralism and Political Philosophy

A disenchanted form of life is one in which there is no guarantee of meaning. The "great flood"—the move away from transcendentalism—washed several themes and problems ashore. Nihilism, not only as the process of devaluation of the highest values, but also as an experience of decay and decadence, is one of such theme (Conway 1992: 14).[17] As this is arguably an aspect of Nietzsche's thought that has stood the test of time less successfully, I will leave it aside.[18] Orientation, as I have pointed out, is also a pressing issue in a disenchanted age. As Bernard Williams stresses, "the demands of the modern world on ethical thought are unprecedented" (1985: V). Since the death of God means not only the

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[16] As Stephen Toulmin reminds us, the elevation of sovereignty as an indisputable form of political authority after the Peace of Westphalia, together with the establishment of official religions and the domination of deductive logic in its Cartesian form, was supposed to bring peace and stability to a continent wounded by the Thirty Years' War (2001: 155-174; 205-209). Hence Nietzsche's belief that the State has become a new idol (Z: "On the new Idol").

[17] This Nietzschean theme must surely be related to the "cultural pessimism" ambient at the turn of the Twentieth Century and best embodied in Oswald Spengler's *Decline of the West*, but also present later in Wittgenstein's and Heidegger's thought. Yet, according to Conway, this experience of decay was described by Nietzsche in naturalistic terms (erethism, exhaustion, dissipation of the will, neurasthenia) rather than in cultural terms (1992: 14).

[18] Questions about the internal coherence of Nietzsche's thought on this specific issue can be raised. It is indeed unclear how the depressive symptomalogy he describes, apparently due to the transitory and destabilising character of his age, can be reconciled with the indifferent urbane atheists who go on steadily with their lives without noticing that the relinquishing of God as a source of authority implies a shift in form of life. Nietzsche abandoned the project of writing a "History of European Nihilism" around 1888 and most of his thought on nihilism appears in the posthumous *Will to Power*, which is an assemblage of disparate notes published as a book by Nietzsche's sister. It is also important to note that Nietzsche, unlike Dostoyevsky's Ivan Karamazov, does not believe that the death of god logically and necessarily leads to the bankruptcy of any moral principles. Nietzsche's aim, as Conant puts it, "is to try to keep his reader from lapsing, out of a disappointment with the loss of the God of Christianity, into a refusal to countenance anything less than a surrogate deity as a possible source of value" (1995: 259).

rationalisation of religious/metaphysical beliefs, but also the erosion of the transcendental markers of certainty, the status and function of the faculty of judgement is a crucial issue for practical philosophy. Practical reason, as an *ad hoc* form of reasoning which seeks to establish that one orientation is superior to another in a given spatio-temporal context (and not in the absolute), is no longer secured by a more fundamental religious framework or theoretical reason serving as a backdrop. The expansion of reason *qua* will to truth, as we have seen, has undermined the stable and action-guiding forms of authority. And this process appears to be irredeemable. As Williams points out, "there is no route back from reflectiveness. I do not mean that nothing can lead to its reduction; both personally and socially, many things can. But there is no *route* back, no way in which we can consciously take ourselves back from it" (*Ibid.*: 163-164). The demands of modern times on ethical thought increase, as the validity of the traditional orientation-points is problematized,[19] but the modern critical attitude hinders the various attempts to erect and found new ethical markers. The problem thus becomes how to gain sufficient "ethical confidence" to go on under conditions of uncertainty. This is the burden of judgement which pertains to practical reason in a postmetaphysical context.

If perspectivism is the epistemic working out of the death of God, axiological pluralism is its ethical consequence. According to Nietzsche's reading of modernity, no form of authority can fall back on an alleged perfect correspondence with the order of things to ground itself. The proliferation of, and competition between, conflicting visions of the Good and axiological orientations is implicit in the impossibility of permanently occupying the space of authority. In the holistic societies organised around the word of God, cognitive, moral/normative and expressive/aesthetic elements of life were internally related to each other. These enmeshed dimensions constituted the core of the dense, complex yet unified pre-modern form of life. The rationalisation of worldviews, which turned an intrinsically

[19]In that sense, as William argues, reason does destroy (ethical) knowledge (1985: 148)

meaningful order into a series of causal mechanisms, initiated the differentiation and autonomisation of these three value-spheres (Habermas 1984: 163-164).

The dissolution of Archimedian standpoints leads to the unending competition between the autonomous value spheres. "So long as life remains immanent and is interpreted in its own terms", Weber stresses, "it knows only of an unceasing struggle of these gods with one another. Or speaking directly, the ultimate possible attitudes toward life are irreconcilable, and hence their struggle can never be brought to a final conclusion. It is thus necessary to make a decisive choice" (1946: 152). The most the modern subject can do, according to Weber, is to gain clarity about the rifts inherent in the modern polytheism of values. Science and philosophy can, Weber adds, tell you which God you serve and which God you offend when you adhere to this or that position (*Ibid.*: 151). In so doing, science and philosophy can give to the modern subject "*an account of the ultimate meaning*" of her own conduct (*Ibid.*).

I do not wish to over-emphasise this Weberian analysis (and narrative) of "traditional" societies and "modern" life here. My intention, in this introductory chapter, is to investigate why pluralism is such an unavoidable issue in contemporary political philosophy and to explore the scope and depth of the pluralist challenge. Whilst is it now widely assumed by political philosophers that the issue of pluralism cannot be wished away, I will argue that the dominant conceptions of democracy and social integration have not yet incorporated the full implications of pluralism (notwithstanding serious efforts to do so). My intuition is that the elision of the preliminary step which consists in giving an account of the origins of modern pluralism might prevent political philosophers from seeing the full breadth of its correlative challenge. I hope that these developments on the death of God and on the erosion of the transcendental markers of certainty will provide some grounds for the approach to democracy and disagreement sketched out in Chapter Four. The death of God refers to the impossibility of subsuming political authority under a single notion of the good life imported from above or

below the realm of immanence. Forms of social co-existence must therefore be worked out through the exchange of reasons in a public space. Endorsing democracy is the embodiment of our political *amor fati*. Although it may be argued that, prima facie, the main trends in contemporary political philosophy have satisfactorily confronted the problem of pluralism, I will try to show that some of the dominant conceptions of democracy and social integration fail to draw all the implications of the death of God. In order to do so, I will address, in Chapter Three and Four, John Rawls' political liberalism and Jürgen Habermas' discourse ethics. But I will first turn to a trajectory of French thinkers which explicitly made of the death of God its starting point for thinking modern democracy.

Chapter 2

Disenchantment and the Democratic Ethos:

Inroads into Contemporary French Political Philosophy

The discussion of Nietzsche's interpretation of the death of God in Chapter One provided access to the modern problem of authority. The death of God, as we saw, does not only allude to the decline of Christianity as a marker of certainty and orientation, but more fundamentally to the controversial character of any form of (epistemological, ethical and political) authority. Figures of certainty and authority, as we saw with Wittgenstein, can still be ripped from practice. Yet these figures, depleted of their transcendental aura, are not sheltered against a potential grasp by the modern attitude of critique. The validity of any form of authority is predicated upon its capacity to stand to the test of the ethics of truthfulness folded into Christianity's confessional ethos. If it is plausible to argue that perspectivism and axiological pluralism are respectively the epistemological and ethical working out of this process of de-transcendentalization of authority, one can argue that democracy is its political counterpart.

That meaning and authority cannot be read off a cosmology and/or a teleology—that is, a script explaining the intricacies of the world seen as a purposive natural order in which all have a role to play—in an uncontroversial way does not necessarily and straightforwardly leads to democracy. Democracy is one way of re-establishing authority in the political sphere, not the only one. Thomas Hobbes, tormented by uncertainties similar to René Descartes' *doute radical* and confronted with the clash of religious legitimacies in Europe, thought that the instantiation of an undisputable form of worldly authority (sovereignty) was the only way to ensure security and stability within pre-determined borders. Even later thinkers who saw Reason as the ultimate authority thought that, until people cast off the chains of their "self-imposed immaturity", enlightened despotism was the most appropriate form of political authority. History is neither linear nor ended, but undemocratic resolutions of the problem of authority are now generally afflicted by a legitimacy deficit.

John Rawls and Jürgen Habermas, as we will see in the following chapters, recognise in their own ways that, given the fact of reasonable pluralism and the rationalisation of the religious and metaphysical worldviews, what counts as a legitimate form of authority must be sorted out democratically. Yet they both attempt to extract, from the background culture of a given polity or from the universal validity claims inherent to communicative action, a normative framework in which the game of democracy should be played. Before addressing the details of their theories, I will sketch the parameters of an alternative articulation of the link between disenchantment and democracy. In this brief and transitory chapter, I will explore the work of a trajectory of French political philosophers, namely Claude Lefort, Jacques Rancière and Cornelius Castoriadis, who explicitly ground their understanding of democracy in the death of God. More than providing an alternative language of description, this inroad into contemporary French political philosophy will also serve as a backdrop for the approach to democracy delineated in Chapter Four. Although there has not been much of a dialogue going on between these French thinkers and the Anglo-Saxon counterparts that I will discuss in the Chapter Four, clear family resemblances between the two lines of interpretation will come into view.

1. Claude Lefort

For Lefort, democracy is not primarily a system of institutions or a set of procedures, but a form of society.[20] Democracy is a form of society because it has its own grammar and involves a distinct way of imagining people's relation to human existence, social cooperation and to the foundation and exercise of authority. Democracy put into motion a new symbolic order according to which the moorings of human co-existence could become objects of thematisation and contestation by subjects/citizens themselves. Lefort, practising a form of

[20] I am indebted to Simard (2000) for his reading of Lefort. For a good commentary on Castoriadis and Rancière, see Labelle (2001).

phenomenology firmly anchored in history, proceeds by contrast and comparison in order to bring out the democratic form of society's singularity. For instance, the power of the Prince, he likes to recall, came from above: as the flesh and blood embodiment of God's will, the Prince was the site of enunciation of an uncontroversial authority. "Being at once subject to the law and placed above the laws", Lefort observes, "he [the Prince] condensed within its body, which was at once mortal and immortal, the principle that generated the order of the kingdom" (1988: 17). In a more immanent but related fashion, political life in a totalitarian regime is confined to the limits of a single regime of truth alone. Differently put, totalitarianism is the denial, and active suppression, of perspectivism. In both cases, authority is singular and unambiguous. In sharp contrast, democracy is the form of society which harbours and nurtures indeterminacy. The revolutionary dimension of the democratic turn is the secularisation, in the broadest sense of the term, of the exercise of political authority (what Lefort refers to as "power"). The sources of political authority, in a democratic context, cannot be immediately imported from a meta-social order.[21] To take an example drawn from the history of political thought, modern political thinkers such as Rousseau and Kant could not, like Bodin, inscribe political sovereignty within an ordained structure of references in which the exercise of authority could found extramundane forms of justification. In Lefort's terms, power in a democratic context becomes an "empty space":

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[21] As we saw in Chapter One, the "world" (or, more accurately, the "West") is not disenchanted in such a way that religious, cosmological or metaphysical worldviews simply vanished. Fundamentalist (in the literal and non-pejorative understanding of the term) Christians, Jews and Muslims, but also citizens holding cosmological or holistic outlooks such as some indigenous persons and environmentalists consider the radical separation between the public and the transcendental as an unbearable dissonance and as a threat to their moral integrity. Yet, these sources of meaning must be taken on and articulated by situated subjects who must convince their fellow citizens of the superiority of their world-picture. Political authority is thus channelled through intersubjective practical reasoning in condition of plurality (Arendt 1998: 7). As Richard Vernon puts it, "whatever the truth of claims about *general* secularization (or 'death-of-God' claims), the *public* place of religion has been wholly transformed, and, with it, the conduct of political theory itself. It is no longer possible to appeal, simply, to what is authoritatively right (because, for example, it is scriptural, or apostolic); argument has to appeal to considerations which can be communicated to others and which in principle can change their minds discursively" (2001: 18).

> The important is that this apparatus [of power] prevents governments from appropriating power for their own ends, from incorporating it into themselves. The exercise of power is submitted to the procedures of periodical debates and challenges. It represents the outcome of a controlled contest with permanently enabled by a set of rules. This phenomenon implies an institutionalization of conflict. The locus of power is an empty place, it cannot be occupied—it is such that no individual and no group can be consubstantial with it—and it is unrepresentable (*infigurable*) (1988: 17; translation altered).

The implementation of a given form authority cannot fall back, then, on an unconditional pole which could definitely secure its legitimacy. Whereas the modern attitude of critique opened up a zone of turbulence between a thing and its representation, modern democracy did likewise with regards to power and its exercise: while the representation of a thing rests on conventions that are more or less amenable to changes, the exercise of power is grounded on immanent and labile forms of authority. The foundations for the exercise of political authority are fugitive. Debates about the competence of any specific governments and, more generally, about the legitimacy of any forms of governmentality (the rationalities of government or the underlying principles called upon in the organisation and management of populations) can never be fully cast away. "Power becomes and remains democratic when it proves to belong to no one", writes Lefort (*Ibid.*: 27). The exercise of power is subject to a periodical bringing into play.

In the new symbolic order set in place by the democratic revolutions, power becomes a hostile place. The struggle for the temporary occupation of the place of authority is permanent. This struggle is permanent because, as we saw in Chapter One, the validity of the Christian system of judgement and of the secular divinities (the "auxiliary inventions" in Nietzsche's words) which tried to fill the gap has been eroded. Political authority cannot be exercised against the background of an unproblematic form of epistemological and moral

authority. Democracy, affirms Lefort, "is instituted and sustained by the *dissolution of the markers of certainty*" (*Ibid.*: 19).[22] This erosion of the meta-social sources of certainty unleashed an endless normative debate about the nature of human co-existence. In a way reminiscent of Heidegger's belief that God's authoritative place in the suprasensory world has now become empty, Lefort writes that "the legitimacy of the debate as to what is legitimate and what is illegitimate presupposes, I repeat, that no one can take the place of the supreme judge: 'no one' means no individual, not even an individual invested with a supreme authority, and no group, not even the majority. The negative is effective: it does away with the judge, but it also relates justice to the existence of a public space—a space which is so constituted that everyone is encouraged to speak and to listen without being subject to the authority of another, that everyone is urged to *will* the power he has been given" (*Ibid.*: 41). Conflicts and divisions are consubstantial with the democratic adventure. This consubstantiality renders the totalitarian dystopia of the reconciliation of society with itself all the more powerful and appealing. Totalitarianism must be thought, according to Lefort, as a reaction against democracy rooted in the democratic form of life itself.

In a disenchanted and democratic context, political legitimacy is intricately linked to the existence of a public space. Any given form of social cooperation must be worked out horizontally. Situated reasons, perspicuous descriptions and redescriptions, rhetoric and persuasions are the only legitimate means that the governors and contenders have to win public support.[23] Justifications for the exercise of power are always put up for grab. Power is both an empty space (*lieu vide*) and, as the competition for its appropriation is ongoing, a site

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[22] The point is not to say that "markers of certainty" *per se* have disappeared, but rather they do no longer enjoy a transcendental status. Markers of certainty are noting more, or less, that what is taken for granted in a given language-game.

[23] These means are of course always supplemented by more or less virulent relations of power. See Chapter 4, section 2.1.

of passage (*lieu de passage*). For Lefort, democracy is internally related to the disenchantment of the world and public reason is, at a very fundamental level, political, not metaphysical. The rules of public argumentation cannot be imported from anywhere else than public deliberation itself and, as a consequence of the erosion of the ultimate markers of certainty, disagreement over both substance and procedure is immanent to political life.

2. Jacques Rancière

In a way that parallels and complements Lefort's main gestures, Rancière starts from the premise that democracy operates in the space opened by the problematisation of first principles or Archimedian points (*arkhè*). For Rancière, the "Political", understood as the continuous debate on the terms of political discourse, is grounded in the "very impossibility of *arkhè*" (1998: 13). The absence of a set of principles that all could recognise as authoritative and, more importantly, that all would see as entailing the same consequences for the organisation of political life, provides dissenters and minorities with a touchstone for bringing public discussions back to the very terms of social cooperation. In the absence of a social hierarchy secured by an extramundane source of authority, the grounds of human co-existence cannot claim immunity. Furthermore, since the crumbling down of the Ancien Régime's hierarchies led to the affirmation of the principle of equality, the symbolic and material ordering of the political association can be put into question from any social position.[24] As Rancière sums up, the fundamentally indeterminate character of a democratic regime comes from the fact that

> at the people's assembly, any mere shoemaker or smithie can get up and have his say on how to steer the ships and how to build the fortifications, and, more to the point, on the just or unjust way to use these for the common good. The problem is not the *always more*

[24] For the relation between the disenchantment of the world, the collapse of aristocratism, the rise of the "passion for equality" and democracy, see Tocqueville (1981; 1988).

> but the *anyone at all*, the sudden revelation of the ultimate *anarchy* on which any hierarchy rests…The foundation of politics is not in fact more a matter of convention than of nature: it is the lack of foundation, the sheer contingency of any social order. Politics exists simply because no social order is based on nature, no divine law regulates human society…Our world goes round the "other way", and anyone who wants to cure politics of its ills has only one available solution: the lie that invents some kind of social nature in order to provide the community with an *arkhe* (*Ibid.*:16 ; see also Castoriadis A: 361-2).

Rancière is obviously not claiming that, in a democratic regime, all actually have an equal say over the configuration of the political association. On the contrary, the creation of a political space, which is a human creation, is a process of inclusion/exclusion, i.e. of line drawing between the legitimate and the illegitimate, the visible and the invisible, discourse and noise. Some types of interests, concerns, values, rationalities and modes of argumentation count as relevant and intelligible and others do not. Prior to the relation of dependency between the rich and the poor, there is, according to Rancière, "the symbolic distribution of bodies that divides them into two categories: those that one sees and those that one does not see, those who have a logos—memorial speech, an account to be kept up—and those who have no logos, those who really speak and those whose voice merely mimics the articulate voice to express pleasure and pain… Politics exists because the logos is never simply speech, because it is always indissolubly the *account* that is made of this speech" (*Ibid.*: 22-23) Those who fall outside the realm of logos must struggle and hope for a reconfiguration of the political imaginary. Accordingly, the aim of the Plebeians' fight, in the Ancient Greece, was to demonstrate to the Patricians that their speech was indeed intelligible, that the configuration of the social space was biased and that the principles of judgement against which the social space was designed needed to be amended. In a similar way, Rancière stresses that the 1830 general strikes in France were meant "to show that it [was] indeed as reasonable speaking beings that workers [went] on strike, that the act that cause[d] them to all stop working

together [was] not a *noise*, a violent reaction to a painful situation, but the expression of a logos, which not only [was] the inventory of a power struggle but constitute[d] a *demonstration* of their right, a *manifestation* of what [was] just that [could] be understood by the other party" (*Ibid.*: 53).[25]

The democratisation of a political space therefore begins with a speech act or, better, with a *prise de parole*. Democratic transformation "implies the affirmation of speech—be it individual or collective—which, whilst it is not guaranteed by existing laws or by a monarch's promise, can assert its authority in the expectation of public confirmation because it appeals to the conscience of the public" (Lefort 1988: 37). That *prise de parole* occurs within a context of "aspectival captivity", that is a situation in which a majority is being held captive by a particular way of seeing social co-existence and therefore blind to the contingent character of this particular perspective and incapable of seeing the exclusions and injustices fostered by its very definition.[26] As the Patricians refused to discuss public affairs with such "irrational" creatures, the Plebeians, Rancière tells us, had no choice but to simulate a political dialogue in which Plebeians played the part of Patricians. In so doing, they proved that they were reasonable human beings capable of stepping out their own their own condition and of seeing the polity from both perspectives (*Ibid.*: 24). In sum, the dissenters must thus first *disclose* the exclusions and injustices they are the victims of and *demonstrate* the partial character of the symbolic configuration of the social space. In so doing, they seek to enlarge and displace the boundaries of the community, to bring into a play a new mode of being-with-others which would recognise them in their humanity and equality. Politics is first and foremost for

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[25] This creates an obvious problem for the individuals or groups who want to demonstrate the partiality of the current structure of power and recognition: how to problematise a specific language through the use of the very same language. As Rancière notes, "une situation d'argumentation politique doit toujours se gagner sur le partage préexistant et constamment reproduit d'une langue des problèmes et d'une langue des ordres" (1995 : 73-74). Aboriginal peoples in America and Oceania, as I will address in Chapter 5, had to (and in some ways still) face this quasi-aporetic tension (see Tully 1995: 56).

[26] For an explicitation of the notion of aspectival captivity, see Owen (2002).

Rancière conflict over the existence of a common public scene and over the status of those who relates to it. "Politics exists", Rancière argues,

> because those who have no right to be counted as speaking beings make themselves of some account, setting up a community by the fact of placing in common a wrong that is nothing more than this very confrontation, the contradiction of two worlds in a single world: the world where they are and the world where they are not, the world where there is something "between" them and those who do not acknowledge them as speaking beings who count and the world where there is nothing (*Ibid.*: 27)

The non-availability of a natural order of things or of a divine law from which political authority could be naturally deducted legitimises the struggles of Plebeians, workers, women and so on for disclosing entrenched injustices and for redrawing the lines of the community. This absence of a secure and uncontroversial backdrop for power highlights its immanent and fallible character. Political communities are constructed by finite subjects and can therefore be deconstructed and reconstructed. Struggles for the reconfiguration of the political space are modes of political subjectivation by which Rancière means "the production through a series of actions of a body and a capacity for enunciation not previously identifiable within a given field of experience, whose identification is thus part of the reconfiguration of the field of experience" (*Ibid.*: 35). Political subjects ground their actions on their equality as human beings capable of speaking and acting and strive to disclose the gap between that formal equality and the current distribution of places and power. In doing so, marginalised people become citizens, i.e. political subjects who take on a political identity and "take the wrong upon themselves, give it a shape, invent new forms and names for it, and conduct its processing on a specific montage of *proofs*" (*Ibid.*: 40). A political subjectivation, for Rancière, is a capacity to produce polemical scenes. As any form of social regulation might

always run out of justifications, Rancière believes that "dissensus"—not only as conflicts of interests, values and traditions, but more fundamentally as a broad disagreement (*mésentente*) on the terms of political discourse—is the "essence" of the Political (2000: 61). Discussions over distributive justice and law- and policy-making are necessary but fall within the domain of the "police", while the Political is primarily concerned with the basic terms of social co-existence. A fully achieved consensus, for Rancière as well as for Lefort, is an interruption of politics.[27] "What indeed is consensus", Rancière asks, "if not the presupposition of inclusion of all parties and their problems that prohibits the political subjectification of a part of those who have no part, of a count of the uncounted?" (1998: 116).[28]

3. Cornelius Castoriadis

Looking back on the golden age of Ancient Greece, Castoriadis approaches the relation between disenchantment and democracy from a different, yet broadly congruent, angle. According to him, the "creation" of philosophy and democracy was only possible in a polytheist and partially "secularised" world such as Ancient Greece.[29] Philosophy and democracy emerged because the gods did not legislate on truth and justice. The Greeks' great insight, Castoriadis stresses, is the discovery of the arbitrariness of the *nomos*. Philosophy was possible—indeed necessary—because the Greek universe was not perfectly harmonious; had that been so, a dogmatic, rather than philosophical thinking, would have sufficed. On the

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[27] The Political, as Laclau and Mouffe argue, is thus best understood in terms of hegemony, rather than of consensual decision making (Laclau and Mouffe 1985).

[28] According to Rancière, "the so-called consensus system is the conjunction of a determined regime of *opinion* and a determined regime of *right*, both posited as regimes of the community's identification with itself, with nothing left over" (*Ibid.*: 102-3).

[29] The first phase of the Greek democratic (and philosophical) experience must be situated, according to Castoriadis, between the 8th century to Athens' defeat in the Peloponese war in 404 (BCE) (Castoriadis 1991: 160-1). As this experience yielded the first occurrence of a secular form of thought, folded of course in a larger mythical and theistic structure, reflecting on Greek democracy and philosophy can shed light on our current predicament. This embryo of a secular thought was later absorbed into the Christian metaphysics (Leroux 1997). In a related fashion, Foucault chose to zero in on Greek ethics in order to bypass the Christian morality code (1976, 1984a, 1984b). On the importance of polytheism and on the relationship between the Greeks and divine authority, see respectively paragraphs 143 and 135 of Nietzsche's *Gay Science*.

contrary, the Greeks created truth as the endless movement of thought on itself (reflexivity) or, in other words, as "democratic philosophy": "thinking ceases to be the business of rabbis, of priests, of mullahs, of courtiers, or of solitary monks, and becomes the business of citizens who want to discuss within a public space created by this very movement" (Castoriadis 1991: 160). The absence of ultimate foundations also conditioned the birth of democratic politics. As Castoriadis suggests, if human societies were perfectly ordered from the outside by divine laws or from within by the laws of History or by an invisible hand, it would be pointless to raise the question of the nature of justice and freedom and, as a consequence, there would be no space for democratic politics. Democracy is internally linked to the death of God because, "if a full and certain knowledge (*episteme*) of the human domain were possible, politics would immediately come to an end, and democracy would be both impossible and absurd : democracy implies that all citizen have the possibility of attaining a correct *doxa* and that nobody possesses an *episteme* of things political" (1997: 274).

The Greeks, at least before Plato, provided no definitive answers to Kant's first two questions, "What can I know ?" and "What ought I to do ?". In the period on which Castoriadis zeroes in on (8^{th}-404), the questions about the nature of truth and justice fell within the jurisdiction of practical and deliberative reasoning and remained open-ended. However, to Kant's third question, "What am I permitted to hope for ?", the Greeks offered a resounding (and tragic) "nothing", i.e. nothing more, or less, than what we can accomplish *hic an nunc*.[30] In the absence of a perfectly harmonious cosmos and of a benevolent God who could secure the match between intentions, actions and results and provide meaning for life and death, the Greeks could not evade the never ending responsibility of thinking and making their world (Castoriadis 1997: 273). The answers to Kant's three basic questions read in retrospect in the pre-Platonist Greek *ethos* are relevant for my purposes because they all point

[30] See Castoriadis' reading of Athenian tragedy and, more particularly, of *Antigona* in Castoriadis (1997).

towards the agonal aspect of Greek democracy. The *polis*, as we saw, could not be moulded on a divine city. No one was endowed with an absolute knowledge (*episteme*) of political life. As a result, public deliberations and contests provided the material for building the *polis*. The lack of absolute markers to build the political community imposed the creation of a public *space* wherein the game of politics had to be played. This explains, Castoriadis notes, why the laws adopted by the Assembly of Athenian citizens were not tied back to the gods but rather began with the statement: "it has pleased the Council and the People" (Labelle 2001: 81). Moreover, the ongoing character of the debate and competition also forced the creation of a new temporality, a public *time* in which the demos could investigate its own past (as the result of its own actions) and envisage the future as not already settled (and thus not totally opaque to its actions in the present). Agonism, which refers to the element of contest, competition, struggle and play in the Greek society (think of the Olympics), thus becomes a perfectionist device to create better citizens and to strengthen the *polis* in the absence of a benevolent God or of a historical telos always already at work.

Nietzsche, one of Jacob Burkhardt's colleagues and pupils in his years as a philology professor in Basel, saw the contemporary relevance of reflecting on the agonal aspect of the Greek society.[31] In "Homer on Competition", Nietzsche expatiates on the civic and personal value of contestation and competition between fellow citizens (1994: 187-194). Competition, "individual rivalry" and challenges were seen as means to channel or subsume envy in the acquisition of new virtues. This is how the cruelty of the Greek warrior ethics, for instance, could be sublimated in social, political, artistic and athletic contests. Man could in this way compete one against the other instead of massacring each other. Contest, according to Nietzsche, "elevated" the Greek soul (Safranski 2000: 60). And as Nietzsche repeatedly argues throughout his work, vitality is embodied in competition and contestation or, more

[31] On the relation between Nietzsche and Burkhardt, see Chamberlain (1996: 121).

precisely, in the activity of struggling for the overcoming of a debilitating state of affair and for the realization of a new one. The activity of "struggling for" is more fundamental, for Nietzsche, than the actual goal of the struggle.[32] In Nietzsche's account, as Owen stresses, "the public culture of Greek society cultivated human powers through an institutionalized ethos of contestation in which citizens strove to surpass each other and, ultimately, to set new standards of nobility" (Owen 1995: 139). Ostracism, in this context, is a way of maintaining the ongoing competition between citizens by removing a pre-eminent individual (the "genius") whose perspectives appear to be unassailable. For why, concludes Nietzsche, "should nobody be the best? Because with that, competition would dry up and the permanent basis of life in the Hellenic state would be endangered" (1994: 194).

The motive of Nietzsche's and Castoriadis' interest in the agonal aspect of Greek political life is obvious: the absence of transcendental landmarks to order the political community gave a special character to Greek democracy. The 'Right' and the 'Good' was nothing else than the outcome of the ongoing exchange of perspectival reasons in the *polis*. If the Greeks could create democracy and philosophy, Castoriadis sums up, it is because "they had neither sacred books nor prophets. They had poets, philosophers, legislators and *politai*—citizens" (1991: 159). Although differences are great between the Greek cosmological and polytheistic world and the modern world, the problem of ethical and political governance without external guarantees is also a modern problem.[33] Hence Nietzsche's and Castoriadis' belief that agonism is an immanent, although perhaps under-

[32] It is only through the overcoming of sufferance and danger, Nietzsche argues, that important achievements can be accomplished. An individual or a group would be better-off, he thinks, when its perspective is not wholly dominant, paradigmatic or hegemonic.

[33] The "Greek experience" in which Castoriadis is interested stops, in the realm of ideas, with Plato's attempt to erect philosophy as the authority which can and ought to harmonize the otherwise doxic life of the city. For the contemporary relevance of Greek thought, see Williams (1993b: 1-20).

thematized, feature of modernity. I will come back to the relevance of the agonisitic dimension for thinking democracy in the Chapter Four.

This short inroad in Lefort, Rancière and Castoriadis enabled us to picture somehow differently the character of modern democracy. My aim in this section was to sketch out a different language of description that can perhaps serve to decenter Rawls' and Habermas' theories (that I survey in Chapter Three) and provide us with an alternative vantage point for thinking about democracy and social integration. Each of these three authors believe like Rawls that, under present conditions, citizens do not agree "on any moral authority, whether a sacred text, or institution. Nor do they agree about the order of moral values, or the dictates of what some regard as natural law" (1993: 97). Nor do they do think, again like Rawls, that we should expect that in a foreseeable future any comprehensive doctrine "will be affirmed by all, or nearly all, citizens" (*Ibid.*: XVI). They finally concur with Habermas when he proposes that the corrosive process of secularisation and rationalisation calls for a post-metaphysical level of justification that the democratic procedure only can carry out. They have however restrained from reconstructing, from an allegedly shared background, general norms and procedures which can compensate for the lack of external guarantees. In other words, they resist the temptation of providing a set of basic principles for democratic politics. To anticipate on the following Chapter, let's note here that both Rawls and Habermas deem the (re)construction of such a normative framework necessary in virtue of late-modern societies' growing need for social cohesion and integration. This need is no doubt real and glaring. But does it forces us to draw upon the resources of ideal philosophy in order to reconstruct secular forms for authority capable of ensuring social coordination in complex societies ? I will argue in Chapter Four that the recourse to ideal and deontological theory not only obscures and eludes some aspects of democratic politics, but also, *contra* Rawls and Habermas, creates some problems for thinking social cohesion and inclusion. Very keen on stressing the strong

link between democracy and disenchantment, Lefort, Rancière and especially Castoriadis do not say much, however, on how we can think democratic citizenship in our current predicament. With the help of authors such as Jeremy Waldron, Stuart Hampshire and William Connolly who broadly share some of Lefort's, Rancière's and Castoriadis' views on democracy and dissensus, I will sketch out in Chapter Four what could a conception of democracy amended in light of the pluralist challenge look like. But let me first turn to Rawls' and Habermas' thoughts-provoking theories.

Chapter 3

Public Practical Reasoning and Postmetaphysical Thinking: Rawls, Habermas and the Bonds of Public Reason

We saw in the previous chapter that there is a strong link between the disenchantment of the world and the modern democractic turn. The death of God, understood as the impossibility to

found a form of authority which all would regard as regulative and ultimate, raises the ethical question of how are we going to govern ourselves in the absence of an unproblematic principle of judgement ? How are we going to decide between the multiplicity of axiological orientations, or visions of the Good, which freed themselves from the holistic and unified worldviews. From a political perspective, as we saw, the death of God presses the problem of social cooperation: how can diverse and sometimes incompatible axiological orientations co-exist and share the same political space ? I will review John Rawl's and Jürgen Habermas' answers to later question in this chapter and assessed them in Chapter Four.

I want to examine in the next two chapters whether the consequences of the death of God have been sufficiently fleshed out by the dominant approaches to contemporary political philosophy. One could think that the traditional ways of thinking political community—in terms of social contract, consensus over the rules of governance or illimited communicative interaction—stop short of a full recognition of the consequences of the erosion of the transcendental markers of certainty and authority. In order to show that mainstream political theories fail to acknowledge in a fully convincing manner late modernity's political predicament, I will first focus on Rawls' and Habermas' attempts to (re)construct a form of rational political authority capable of securing social integration and human cooperation without resorting to transcendental premises or to a substantive and teleological conception of morality. The problems with their deontological theories, and more specifically with their commitment to rational/consensual agreement, will then allow me to turn in Chapter Four to an alternative approach to democracy which invites us to see the role and status of disagreement and dissent in constitutional democracies under a different light. But let me first sketch out what I take to be Rawls' and Habermas' answers to the challenge of civic integration in a postmetaphysical context.

1. The Shift to Postmetaphysical Political Philosophy

Rawls' and Habermas' work in moral and political philosophy are widely known and discussed. One can hardly turn a blind eye to their contributions to the various discussions which dominate contemporary political theory. Moreover, a considerable portion of the contemporary research in political theory derives from their work. In the following section, I want to tackle their respective theory from the perspective of the death of God's relevance to political theory. As it was stated in Chapter One, the death of God reveals the depth and the scope of the challenge raised by pluralism to the human forms of cooperation and coordination. How do Rawls' and Habermas' theories cope with the dissolution of the transcendental markers of certainty and with the correlative challenge of pluralism ?

Several critiques of political liberalism and discourse ethics have the propensity to caricature Rawls' and Habermas' work and to present it as residues of the rationalist philosophies of the 18th century. Their positions are accordingly depicted as "universalistic" in a strong sense and insensitive to difference, to value- and identity-pluralism, to the possibility of tragic conflicts, to the ambivalence and polyphony of reason and so on. Although I will also argue that their commitment to a certain type of universalism leads them to defend conceptions of democracy and political community ill-adapted to the conditions of our time, I want to situate their thoughts in the broad field of post-Nietzschean thought, e.g. as two attempts to think politically with the death of God.[34] In the pathway from *A Theory of Justice* to *Political Liberalism*, Rawls acknowledged that no form of authority could any longer claim to be Reason's exact or perfect embodiment. His "political, not metaphysical" approach does indeed admit of a plurality or rational and reasonable worldviews. In a similar fashion, Habermas, in virtue of his critique of the paradigmatic philosophy of consciousness, dominant in German philosophy from Kant and Fichte to the early Habermas, and of his corollary turn

[34] To be more accurate, their theories are two *Kantian* attempts to deal with Nietzsche's challenge.

to dialogue, speech-act theory and postmetaphysical thinking, must also be considered as a participant in the discussion on the problem of authority in a disenchanted age.

My aim in this chapter will not be to assess Rawls' and Habermas' political philosophies in a comprehensive way. I will rather zero in on the forms of public reasoning that should, according to them, regulate and enframe the practice of citizenship in plural public spheres. In other words, I will focus on what citizens can say and do in order to publicize their claims and, in so doing, challenge the prevailing structures of governance and recognition. Since the death of God implies that such structures cannot fall back on an alleged perfect correspondence with the order of things or with a natural/divine law, the prevailing form of authority can only ground its hegemony 'horizontally' or 'immanently', e.g. from the support of those who will abide by it. The problematization of transcendental sources of authority therefore entails that the hegemonic modes of governance and languages of recognition are always open to contestation. I want to explore how Rawls and Habermas deal with this structural feature of late-modern politics. As it will become obvious in Chapter Four, I believe that Rawls and Habermas fall short of providing a fully compelling answer to the challenge of pluralism. I will not however enter into the details of my critique of their perspective right away. I will first lay out what I take to be their conception of public reason and then use them, in Chapter Four, as objects of comparison and contrast to an alternative approach.

2. Rawls on Public Reason

As I briefly suggested at the outset, the later Rawls acknowledges that taking the metaphysical route can no longer lead straight to the domain of universally accepted principles of justice and that no serious political theory concerned with justice can now elude the challenge of pluralism. His "justice as fairness" theory, confidently presented in *A Theory of Justice* as *the* liberal framework capable of securing justice and stability in apparently any democratic

society, stands in *Political Liberalism* as but one perspective on justice among various other rational and reasonable perspectives (Rawls 1993: 226, 1999: 141). To use a Nietzschean formulation, "justice as fairness" was turned into a perspectival, rather than comprehensive, doctrine. Moreover, and to Habermas' dissatisfaction, the later Rawls grounds the validity of the various elements of his version of political liberalism in "the shared fund of implicitly recognized basic ideas and principles" found in a particular "public political culture" (Rawls 1993: 8, 13, 14; Habermas 1998a: 82, 83). This shared fund is predominantly constituted by the ideas of society as a fair system of cooperation over time, of citizens as free and equal persons and of a well-ordered society as one regulated by a political conception of justice (*Ibid*: 14). According to Rawls, it is from these latent principles always already at work, rather than from controversial speculative assumptions, that a political conception of justice must be derived. Rawls has thus considerably tempered the universal validity claim made in *A Theory of Justice*. Although it can have relevance for any liberal-democratic political culture, Rawls' political, not metaphysical conception of justice is primarily reconstructed from, and designed for, the United States.

Rawls' willingness to face the problem posed by pluralism to political thought is striking. After having confessed that his idea of a well-ordered society in *A Theory of Justice* was "unrealistic", Rawls states in *Political Liberalism* that "the serious problem is this. A modern democratic society is characterized not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by a pluralism of incompatible yet reasonable doctrines" (1993: XVI). Reasonableness, for Rawls, can take various forms, and pure reason alone cannot, under our conditions, account for the superiority of a comprehensive doctrine over alternative reasonable conceptions. Given the "fact of reasonable pluralism", Rawls argues, "citizens cannot agree on any moral authority, whether a sacred text, or institution. Nor do they agree about the order of moral values, or the dictates of what

some regard as natural law" (*Ibid.*: 97; see also Cohen 1998: 188-9). Comprehensive doctrines should not be assessed in terms of truth but in terms of reasonableness. As it is impossible to ground in the absolute the objectivity of a worldview, his approach "does not criticize, then, religious, philosophical, or metaphysical accounts of the truth of moral judgements and of their validity. Reasonableness is its standard of correctness, and given its political aims, it need not go beyond that" (*Ibid.*: 127).[35] Moreover, he does not believe that we should see this feature of constitutional democracies as a flaw or a problem in need of a definitive resolution (*Ibid.*: XXIV, 37). No one should expect, says Rawls, "that in a foreseeable future one of them, or some other reasonable doctrine, will ever be affirmed by all, or nearly all, citizens. Political liberalism assumes that, for political purposes, a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime" *(Ibid.*: XVI). The fact of reasonable pluralism is an enduring feature of a liberal-democratic polity.

The scope of Rawls' pluralist turn should not be underestimated. One could surely wish that he heeds more attention to identity-related differences, and not only to diverging moral, philosophical and religious outlooks—as these two set of differences can hardly be dissociated—, but it would be relatively easy to extend Rawls' developments on axiological pluralism to the practical differences encountered in the lifeworld.[36] Yet, some problems remain in the later Rawls' answer to the problem of social unity and integration. Rawls' basic question in *Political Liberalism* is the following: "How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines ?" (*Ibid.*: XVIII). Differently put, Rawls wants to discover "what are the fair terms of social cooperation

[35] This aspect of Rawls' perspective was criticized by Habermas who, following Lawrence Kohlberg, wants to give a cognitive content to the moral point of view. See Habermas (1993; 1995, 1998a).
[36] See Laden (2001).

between citizens characterized as free and equal yet divided by profound doctrinal doctrine" (*Ibid.*: XXV). Not surprisingly, Rawls' failure to deal in a fully convincing manner with the problem of pluralism, according to the perspective presented here, is folded in his answer to his basic question. As we saw, rational and reasonable subjects are not expected to share the same comprehensive doctrine after a free exchange of pros and cons (*Ibid.*: 58). In a plural ontological and axiological landscape, reasonable disagreement over fundamental questions and orientations is endemic to the social world. Rawls nevertheless believes that the affirmation a common political conception of justice, channelled through a singular form of public reasoning, is the condition of possibility for unity and stability in late-modern societies. Rawls' assumption that the basis for social integration must lie in a singular political conception of justice is plain in the following re-articulation of his basic question: "how is it possible that deeply opposed though reasonable comprehensive doctrines may live together and *all affirm the political conception of a constitutional regime*" (*Ibid.*: XVIII, my emphasis). Divergences about distinct ethical and moral outlooks are not in themselves a threat to social integration insofar as citizens gather around a shared political vision of justice. The conditions spelled out by his theory "do not impose the unrealistic—indeed, the utopian—requirement that all citizens affirm the same comprehensive doctrine, but only, as in political liberalism, the same public conception of justice" (*Ibid.*: 39).[37]

2.1 Public Reason and the Generalisation Requirement

In light of what was just said, Rawls is forced to draw a sharp distinction between comprehensive ("nonpublic") doctrines and political conceptions of justice. Only the latter can, according to him, provides ground for public justification. A political conception

[37] In a more recent article, Rawls seems to acknowledge that the requirement that all citizens affirm the same public conception of justice was itself "unrealistic". According to his later formulation, it is sufficient that citizens consent to a "family of reasonable political conceptions of justice" (1999: 152). As we will see, this makes his theory more plausible, but does not alter its basic structure.

expresses citizen's "shared and public political reason. But to attain such a shared reason, the conception of justice should be, as far as possible, independent of the opposing and conflicting philosophical and religious doctrines that citizens affirm" (*Ibid.*: 9). Comprehensive doctrines are not private, as citizens can rely on them in their deliberations in the civil society and "background culture", but "nonpublic", since they cannot explicitly infiltrate the boundaries of public reason (for reasons that we will see in a moment). This distinction, which keeps the most divisive sources of justification out of the realm of public reasoning, allows him to argue that an "overlapping consensus" can be carved out of a public discussion. Citizens must find reasons, from the perspective of their comprehensive doctrine, to support the overlapping consensus, without however invoking ethical arguments about their particular vision of the Good (1993: 11,12; 1999: 145-146). It is left to citizens themselves to work out, in an introspective fashion, how the shared conception of justice is compatible with their comprehensive doctrine. In sum,

> political liberalism looks for a political conception of justice that we hope can gain the support of an overlapping consensus of reasonable religious, philosophical, and moral doctrines in a society regulated by it. [...] To this end, it is normally desirable that the comprehensive philosophical and moral views we are wont to use in debating fundamental political issues *should give way in public life*. Public reason—citizens' reasoning in the public forum about constitutional essentials and basic questions of justice—is now best guided by a political conception the principles and values of which all citizen can endorse (*Ibid.*: 10, my emphasis).

Deep disagreements about axiological orientations are tolerable insofar as a thinner agreement on the rules of the political association is reached. Accordingly, a "constitutional regime does not require an agreement on a comprehensive doctrine: the basis of its social unity lies elsewhere"; namely, in the shared political conception of justice (*Ibid.*: 63). The establishment

and preservation of a well-ordered society, in terms of social unity and stability, therefore hangs on the citizens' capacity to reach agreement over the terms of an overlapping consensus (*Ibid.*: 134).

An overlapping consensus is not out of reach in morally diverse societies because, as we saw at the outset of this section, it extracts its main "principles of justice from public and shard ideas of society as a fair system of cooperation and of citizens as free and equal by using the principles of their common practical reason" (1993 : 90). Rawls' confidence in the citizens' capacity to converge towards a mutually acceptable agreement is fed by a sharp-edged notion of public reason.[38] As we it was just touched upon, Rawls' conception of public reason brackets off and keeps out of the public realm the most controversial and divisive issues, e.g. those issues which could weaken the basis of social cooperation (*Ibid.*: 157).[39] Citizens' political speech-acts should be as detached as possible from their basic ontological worldview. In a public forum, a reply from within a comprehensive doctrine is "the kind of reply we should like avoid in political discussion" (*Ibid.*: 138). "Questions about constitutional essentials and matters of basic justice are so far as possible", Rawls adds, "to be settled by appeal to political values alone" (*Ibid.*: 137-8). In a more recent article in which he "revisits" the idea of public reason, Rawls, slightly revising his earlier position and trying to soften his dichotomy between public and nonpublic reasons, affirms that "reasonable comprehensive doctrines, religious or non religious, 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

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[38] Public reason is "characteristic of a democratic people : it is the reason of its citizens, of those sharing the status of equal citizenship" (1993: 213). Moreover, "the idea of public reason specifies at the deepest level the basic moral and political values that are to determine a constitutional democratic government's relation to its citizens and their relation to one another" (1999: 132).

[39] "Faced with the fact of reasonable pluralism, a liberal view removes from the political agenda the most divisive issues, serious contention about which must undermine the bases of social cooperation" (Rawls 1993: 157).

whatever the comprehensive doctrines introduced are said to support" (1999: 152). This surely increase the persuasiveness of Rawls' theory, as it creates some space for ethical reasons within the realm of public reason, but it doesn't fundamentally alter his position. It simply postpone the moment where ethical reasons ought to give way to political values. As Rawls himself acknowledges in the same article, "it is important [...] to observe that the introduction into public political culture of religious and secular doctrines, provided the proviso is met, does not change the nature and content of justification in public reason itself. This justification is still given in terms of a family of reasonable political conceptions of justice" (*Ibid.*: 153).

Rawls must consequently find a criteria for distinguishing legitimate from illegitimate political speech-acts. What are the criteria for deciding what counts as a proper *political* argument ? To answer this question Rawls turns to Kant. The operationalisation of his distinction between public and nonpublic reasons is grounded in a Kantian generalisation test. As this is also a device adopted by Habermas, it is useful to recall that Kant spelled out in the *Foundations of the Metaphysics of Morals* the condition of morality of an action or motive. As Kant puts is in one of his formulations of the categorical imperative, to act morally is to act in way that I can always wish that my action or maxim becomes a universal law. Translated into Rawls *political* theory, the test of universalization entails that a claim carried out in the realm of public reason must in principle be acceptable and endorsed by all the subjects involved. As Rawls stresses, "as reasonable and rational, and knowing that they [the citizens] affirm a diversity of reasonable religious and philosophical doctrines, they should be ready to explain the basis of their actions to one another in terms each could reasonably expect that others might endorse as consistent with their freedom and equality (*Ibid.*: 218, 241). The test of generalisation embeds what can be called a 'decontextualization

requirement', as it asks subjects to detach themselves from their ethical background (from their "comprehensive doctrine" in Rawls' case), and present positions that all can in principle endorse. This, as we saw, enables subjects to reach a mutually acceptable agreement (which is a not a "mere" *modus vivendi* based on the current share of power and resources) in spite of the deep divergences on fundamental issues. Since public discussions are limited to speech-acts that can be generalised, the burdens of judgement—the sources and causes of disagreement which preclude consensus on comprehensives doctrines (*Ibid.*: 55)—seem to vanish and an overlapping consensus on a political conception of justice can be agreed upon.

One could surely ask at this point whether Rawls is not being too presumptuous here. Do the background principles dug out by Rawls, despite their apparently uncontroversial character, really lead straightforwardly to the conception of public reason he deems necessary ? Is there anything built in these principles that force us to associate justice and stability so tightly with consensual agreement over the fundamentals of justice ? Can similar principles lead to different pictures of justice and stability ? As I said above, I am not going to enter into the details of my critique of Rawls' concepts of public reason, overlapping consensus and well-ordered society right away. I will do so when I sketch out the various elements of the alternative conception of constitutional democracy that I see as superior. Let me then turn to Habermas' discourse ethics and deliberative conception of democracy.

3. Habermas on Communicative Action

Habermas never shied away from his commitment to furthering the unfinished project of modernity. His at times virulent critiques of skepticism, relativism, genealogy, deconstruction and the multifaceted problematisation of a certain understanding of reason that he labels as "neo-structuralism" (1987) encouraged his readers to see him as the most prominent defender of the Enlightenment tradition. Although this characterisation contains a kernel of truth, it

needs to be qualified. On the one hand, Habermas own (mis)construction of alternative theoretical approaches, such as genealogy and deconstruction, as "irrationalistic" and anti-Enlightenment creates a categorical and principled opposition where differences in focus, intent and degree could be seen. Following Owen, I think—and I will try to exemplify throughout this thesis—that the Enlightenment project, in terms of critique, autonomy and self-government, can be forwarded in many different and related ways (1999a; forthcoming). Carrying out the task of Enlightenment requires different lights in different contexts. Accordingly, the "blackmail of the Enlightenment"—either you are for or against—should be replaced by a multi-layered analysis of the various obstacles to the task of self-government (Foucault 1994b: 572). Habermas' attempt to situate alternative approaches to critical thinking outside the realm of rational thinking lent weight to his own commitment to the Enlightenment project, but also obscured the similarities between critical theory, genealogy, deconstruction, perspicuous representation and so on.[40]

On the other hand, one must specify the conception of reason and of the Enlightenment project Habermas wishes to enhance. In order to do so, it might be useful to note that Habermas wants to move away from both self-refuting relativism and philosophical foundationalism. Although Karl-Otto Apel's turn to the philosophy of language had a deep impact on his thought, Habermas never endorsed Apel's willingness to provide his conception of rationality with an ultimate foundation. For Habermas, one can only arrive at an ultimate foundation through a process of transcendental deduction which belongs to metaphysical thinking. He therefore relies exclusively on a reconstructive approach which focus on the use of language; i.e. on what is already given to us (1998 [1976]: 28-29). Habermas thinks that the extraction of the implicit rules or generative grammar of any speech-acts reveals a structure of

[40] Which is not to say, of course, that there are no important differences between these modes of critical reflections.

rationality which can, in turn, provide us with a framework for solving moral disagreements (I will come back to this issue below). In virtue of this reconstructive approach, Habermas' conception of rationality his pragmatic (extricated from the telos of language) and intersubjective (embodied in communicative action). His concept of reason therefore springs from practical reason rather than from pure reason.

There is another way in which Habermas distinguishes himself from the first wave of *Aufklärer*. In a fashion that parallels the later Rawls' understanding of constitutional democracy under conditions of axiological pluralism, Habermas is aware that the rationalization of religious/mystical beliefs resulted in social differentiation and value-pluralism (1984). As he sums up, "with the transition to a pluralism of worldviews in modern society, religion and the ethos rooted in it disintegrate as a *public* basis of morality shared by all" (1998b: 10). Not unlike Nietzsche, Habermas knows that the will to truth eroded the validity of the transcendental markers of authority and certainty and also that the first wave of the Enlightenment's substantive conception of Reason failed to replace them. Metaphysics, in other words, could not fill the void left by the rationalization of the religious and cosmological images of the world.[41] As we saw in Chapter One, modernity's greatest problem, for Habermas as well as for Nietzsche, is a one of authority. Hence the necessity, for Habermas, to establish a "post-metaphysical level of justification" for grounding moral norms (*Ibid.*: 11). Parting way with Nietzsche, Habermas however considers that the disenchantment of the world burdened moral philosophy with the task of retrieving a source of universality capable of anchoring the norms of public regulation. Civic integration, in a context of social

[41] Accordingly, Habermas believes that four themes became nothing less than unavoidable for contemporary philosophy : postmetaphysical thinking, the linguistic turn, situating reason and the reversal of the priority of theory over practice (the overcoming of logocentrism). Confirming the point I made above about the similarities between the various approaches to critical thinking, he adds that these four themes "are among the most important motive forces of philosophizing in the twentieth century, in spite of boundaries between schools" (1992: 8).

differentiation and value-pluralism, depends on this post-metaphysical yet universal source of authority.

Habermas' main intuition is that the collapse of the transcendental forms of public validity needs to be palliated with norms and orientations immanently and dialogically worked out. As he put is, "without the backing of religious or metaphysical worldviews that are immune to criticism, practical orientations can in the final analysis be gained only from rational discourse, that is, from the reflexive forms of communicative action itself" (1996a: 98, 448). For Habermas, there is thus a strong link between disenchantment and democracy. This intuition, shared by various other political philosophers, is the cornerstone of the argument I want to put forward in this thesis. Despite this broad agreement with Habermas, I will argue that his conception of discourse ethics and deliberative democracy fails, in the end, to see the depth of the ongoing normative debate around what constitutes a legitimate form of authority. In other words, it underestimates the consequences of the death of God. As a result, discourse ethics does not stand up to the standards of justice and inclusiveness that it champions.

One of the consequences of the growing pluralization of lifeworlds and forms of life characteristic of late modernity is the impossibility to appeal to an ultimate authority in order to coordinate actions and to sort out moral disagreement. Habermas thus believes that the coordination of action-plans and the resolution of moral disagreement are the most urgent tasks faced by contemporary moral and political philosophy. As the pluralization of worldviews prevents philosophers from falling back on substantive values for grounding social cooperation, Habermas conventionally argues that philosophy can fulfil its role through the reconstruction of abstract principles shared by every human beings regardless of their cultural and axiological attachments. Value conflicts, regarding euthanasia or abortion for example, must be sorted out at a more abstract level of argumentation (1996b: 1489). As I

alluded to earlier, Habermas thinks that speech-act theory, or what he calls "communicative action", can provide him with such a neutral and common ground. According to him, there are two types of action: communicative action and strategic action.[42] Communicative action entails the collaborative and unlimited search for truth, while strategic action is turned towards the means for the realisation of one's interests. *Contra* Weber, Habermas grants priority to the former type of action. In order to be construed as valid by others is a situation of practical conflict, Habermas notes, strategic action must parade as communicative action. As Kant pointed out in his second *Critique*, a lie, for instance, must masquerade as truth to be persuasive. Strategic action is ultimately parasitic on communicative action.

Taking his cue from the later Wittgenstein, Habermas argues that mutual understanding is the ultimate *telos* of linguistic interaction. "The aim of reaching understanding (*Verständidung*)," he adds, "is to bring about an agreement (*Einverständnis*) that terminates in the intersubjective mutuality of reciprocal comprehension, shared knowledge, mutual trust, and accord with one another" (1998: 23).[43] Consensus can no longer find secure and unproblematic moorings in tradition, but can be achieved discursively (1984: 255). Habermas, departing from Wittgenstein, then derives from the *telos* of communicative action a set of norms which would always be at play in any linguistic exchange between competent speakers. More precisely, this set of quasi-transcendental norms entails three universal validity-claims. As Habermas elaborates,

> those claims are claims to truth, claims to rightness and claims to truthfulness [or sincerity], according to whether the speaker refers to something in the objective world (as the totality of existing states of affairs), to something in the shared social world (as the totality of the legitimately regulated interpersonal

[42] To be more precise, Habermas first distinguishes between communicative and teleological action and he then splits the latter into instrumental and strategic action. I decided to contrast communicative action with strategic action because that's the contrast Habermas really focuses on (1990 : 58).

[43] "'Understanding' refers to consensuses and justified decisions based on the rationally motivated recognition of facts, norms, or values and their corresponding validity claims" (Habermas 1996b: 1492).

> relationships of a social group), or to something on his own subjective world (as the totality of experiences to which one has privileged access) (1990: 58).[44]

These validity claims are thus seen as necessary presuppositions of argumentation with a normative content. Any speaker who enters into linguistic interaction has always already implicitly recognised the universal validity and the binding force of these claims. Communicative action is grounded on a "background consensus" on the norms of discourse (1998a: 24). As we will see, the respect of these norms, that cannot be transgressed without committing a "performative contradiction"[45], provides, for Habermas (and Apel), enough common ground for a the coordination of discrepant plans of action and for the resolution moral disagreement in a post-metaphysical time.

3.1 Discourse Ethics and Social Integration

The differentiation of societies in quasi-autonomous spheres of action, the pluralization of the visions of the Good and the intermingling of different cultural forms of life created a growing need for social integration. In *Between Facts and Norms*, Habermas starts his analysis

> from the modern situation of a predominantly secular society in which normative orders must be maintained without metasocial guarantees. Even lifeworld certainties, which in any case are pluralized and ever more differentiated, do not provide sufficient compensation for this deficit. As a result, the burden of social integration shifts more and more onto the communicative achievements of actors for whom validity and facticity—that is, the binding force of rationally motivated beliefs and the imposed force of external sanctions—have parted company as incompatible (1996a: 26).

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[44] As Habermas insists on the *cognitive* content of morality, normative rightness and truth raise similar validity-claims. Both validity claims must be redeem discursively, while claims to sincerity can only be redeemed through consistence and exemplarity.

[45] "A performative contradiction occurs when a constative speech act *k(p)* rests on noncontingent presuppositions whose propositional content contradicts the asserted proposition *p*" (1990: 80). In other words, a speaker performs a contradiction when his or her proposition contradicts or transgresses the conditions of its own enunciation.

This late-modern deficit of social integration, also diagnosed by Rawls, can be met, according to Habermas, with a form of communicative action that he calls "discourse ethics". Discourse ethics' main problem is the following: "how interpersonal relationships can be legitimately ordered and actions coordinated with one another through justified norms, how actions that conflict can be *consensually* resolved against the background of intersubjectively recognized normative principles and rules" (*Ibid.*: 106, my emphasis). Drawing its binding force from the universal presuppositions of argumentation discussed above, discourse ethics sets up the rules of argumentation that a participant can only break at the cost of interrupting communicative actions and, *eo ipso*, falling back on strategic action. The respect of these rules of argumentation, which stipulate among other things that the "force of the better argument" is the only legitimate coercive authority, leads, for Habermas, to the consensual resolution of practical conflicts. (A practical conflict occurs when the validity of a claim made by a speaker is put into question by another speaker). Discourse ethics, that I will explore in more details below, thus embodies the form of postmetaphysical authority capable of compensating for the social integration deficit diagnosed by Habermas.

Discourse ethics is primarily interested in moral disagreement. Moral argumentation erupts when a prevailing and (most of the times) implicit consensus on a norm is being contested and loses its unproblematic status. The aim of a moral discussion is to restore, at a reflexive level, the damaged normative consensus. Before addressing Habermas' moral philosophy, it is important to note at this point that Habermas thinks that three sets of considerations, all related to different types of problems human agents face in the course of their praxis, can emerge from practical reason: pragmatic, ethical and moral considerations (1993: 1-17; 1996a: 158-162). The pragmatic use of practical reason is restricted to the sphere of technical or strategic problems that arise in daily life. Pragmatic considerations have the specific function of overcoming practical problems which hinder the achievement of certain

goals. One could refer to this use of practical reason as instrumental reason or as purposive-rationality. When the scope of the questions and problems we face broaden and permeates the sphere of personal identity and axiological or existential decisions, we then move to the realm of the ethical. Ethical questions have to do with the type of person we are and the type of person we want to be. Habermas usually turns to Taylor's notion of "strong evaluation" to specify the range of questions touched upon by the ethical use of practical reason. By "strong evaluations", Taylor refers to "a background of distinctions between things which are recognized as of categoric or unconditioned or higher importance or worth, and things which lack this or are of lesser values" (1985: 3). This ongoing activity of self-interpretation enables one to handcraft meaning out of the past, to cope with the present, and to project oneself into the future. The ethical (and therapeutic) use of practical reason captures, for Habermas, the inescapably hermeneutical dimension of leading a human life. Furthermore, ethical questions do not only arise at the level of individual biographies, but also at the level of collective identity. Ethical discussions enable the members of a shared form of life to clarify aspects of their traditions and cultural identity (1996a: 96-97).

Finally, the moral use of practical reason comes about when one's actions conflict with another's interests or values. With the Kantian tradition in moral philosophy serving as a backdrop, a moral conflict, for Habermas, awaits an impartial resolution, that is, a resolution that all the parties involved can endorsed as the most rational decision[46]. In Habermas' framework, impartiality requires the application of a "principle of universalization" ("U"). The "U" principle states that any valid norm has to fulfil the following condition: "*All* affected can accept the consequences and the side effects its *general* observance can be anticipated to have for the satisfaction of *everyone's* interests (and these consequences are preferred to those

[46] To sum up, "the pragmatic, ethical, and moral employments of practical reason have as their respective goals technical and strategic directions for action, clinical advice, and moral judgments " (1993: 9).

of known alternative possibilities for regulation)" (1990: 65). This abstract principle is followed and complemented in Habermas' moral philosophy by the "principle of discourse" ("D") which stipulates that "only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity *as participants in a practical discourse*" (*Ibid.*: 66). The respect of these two principles ensures, Habermas suggests, a thoroughly intersubjective application of Kant's categorical imperative.

The articulation between these three froms of argumentation is complex. For Habermas, the superiority of his conception of practical reason lies in its comprehensive character. His distinctions enable him, he argues, to overcome the one-sidedness of the utilitarian/empiricist, Aristotelician and Kantian traditions which all tried to reduce the use of practical reason to one of its applications. His typology however begs the question of how to decide which dimension prevails in a given context of action. This interrogation is all the more difficult to answer that, in a postmetaphysical age, "the unity of practical reason can no longer be grounded in the unity of moral argumentation in accordance with the Kantian model of the unity of transcendental consciousness, for there is no metadiscourse on which we could fall back to justify the choice between different forms of argumentation" (1993: 16). Habermas nevertheless believes that the moral application of practical reason have precedence over the pragmatics and ethical applications. Ethical considerations are of paramount importance when questions about the good life and collective identity are raised,[47] but they must give way to moral argumentation when normative disputes are at stake. Drawing on ethical reasons for explaining to other(s) the importance of different visions of the good and identity-related differences is an important first step, but the participants, Habermas points out, soon realise from this reciprocal exchange of strong evaluations that they are confronted

[47] Since pragmatics considerations primarily deal with the most efficient ways to solve technical/strategical questions, I will leave them aside. Ethical and moral questions, which both deal with the social or intersubjective aspect of human life, are of more direct relevance for my purposes.

with diverging pictures of the world and that there is no overarching form of authority that they can invoke to settle the dispute without resorting to force. "In the absence of a substantive agreement on particular norms", Habermas continues, "the participants must now rely on the 'neutral' fact that each of them participates in *some* communicative form of life which is structured by linguistically mediated understanding" (1998b: 40; 1995: 125). As ethical reasons cannot solve disagreements, the participants to a practical discourse must turn to what they have in common: the universal presuppositions of language. These presuppositions have a normative content which can be invoked to settle conflicts of action and to coordinate discrepant practical orientations by consensual means (1990: 67). The conciliation of diverging points of view, values or interests, then, must be channelled trough moral argumentation. And moral argumentation has its own grammar.

In a way similar to Rawls' conception of public reason, discourse ethics has a test of univerzalisation built in its framework of public deliberation. As principles "U" and "D" stipulate, the uncoerced endorsement of a norm by all the subjects affected is what determine the validity of the norm in question. This consensual agreement can be reached, as it is now easy to anticipate, through the imposition of a requirement of decontextualisation resembling Rawls' generalisation test. A decontextualisation thought-experiment requires that speakers abstract away, obviously in a fallible manner, from the parameters of their concrete situation and transpose themselves into an ideal speech situation. Moral argumentation thus filters out reasons and arguments directly drawn from the resources of a particular form of life.[48] As Habermas succinctly puts it, "in contrast to ethical deliberations, which are oriented to the telos of my/our own good (or not misspent) life, moral deliberations require a perspective

[48] "The universalization principle acts like a knife that makes razor-sharp cuts between evaluative statements and strictly normative ones, between the good and the just" (Habermas 1990: 104). And he continues "(U) works like a rule that eliminates as nongeneralizable content all those concrete value orientations with which particular biographies or forms of life are permeated. Of the evaluative issues of the good life is thus retains only issues of justice, which are normative in the strict sense" (1990: 121).

freed of all egocentrism or ethnocentrism" (1996a: 97). Habermas thus makes the bench mark very high: "moral-practical discourses require a *break with all* of the unquestioned truths of an established, concrete ethical life, in addition to distancing oneself from the contexts of life with which one's identity is inextricably interwoven ... Valid norms owe their abstract universality to the fact that they withstand the universalization test only in a decontextualized form" (1993: 12-13; my emphasis). And Habermas continues, "the moral point of view ... requires that maxims and contested interests be generalized, which compels the participants to *transcend* the social and historical context of their particular form of life and particular community and adopt the perspective of *all* those possibly affected" (*Ibid.* : 24, see also 50-51).

Here again, the most divisive forms of public justification are kept out of the crucial sphere of social coordination and dispute resolution. For Kantians, both justice (the moral point of view) and stability (social integration) in an age of diversity demands this constraining notion of public reason. Habermas is however aware that a model of public deliberation which would ask speakers to fully abstract from their ethical substance would be utterly idealistic. This requirement could even foster domination and injustice, as it would disable citizens to cast off the shackles of false universalisms (1993: 15). As Habermas affirms, it would be pointless "to engage in a practical discourse without a horizon provided by the life-world of a specific social group and without real conflicts in a concrete situation in which actors consider it incumbent upon them to reach a consensual means of regulating some controversial social matter" (1990: 103). The facticity everyday life does not simply vanish through the practice of moral argumentation. Similarly to Rawls, who tried to establish some kind of links between political values and reasonable comprehensive doctrines, Habermas must account for the ultimately fluid character of practical reasoning. It might be true that practical reason has different applications, but, as we saw in Chapter One, it is also a mode of

thinking in transition. Only a craving for boundaries could lead Habermas to hypostasize the differences between the pragmatics, ethical and moral uses of practical reason. Yet the way he works out this grey area for any Kantian approach to morality is somewhat ambiguous.

While on a number of occasions Habermas simply states that a conflict over the norms of social cooperation calls for a consensual settlement and, therefore, sets into motion the requirement of decontextualisation, he at times also offers some qualifications to this apparently straightforward principle of universalization. Habermas occasionally suggests that the different types of argumentation form a continuum. For example, ethical discussions strive to elucidate aspects of a shared form of life and aim at providing its members with some "clinical advice" for the reconstruction of the community's ethical life. These processes of self-interpretation are most likely to impede on moral, legislative and judiciary considerations. "In ethical-political discourses," Habermas writes, "we reassure ourselves of a configuration of values under the presupposition that we do not yet know what we *really* want. In this kind of discourse, we can justify programs insofar as they are expedient and, taken as a whole, good for us. An adequate justification of policies and laws must, however, consider yet a further aspect, that of justice. Whether we should want and accept a program also depends on whether the corresponding practice is *equally* good *for all*" (1996a: 161). When an ethical discussion spills over its hermeneutical dimension[49], it must give way to moral argumentation.[50] And moral rules, as we saw, are valid only "if they are stated in a general, decontextualized form" (*Ibid.*: 162). In a way again reminiscent of Rawls' connection

[49] Which is bound to be the rule in plural and complex societies.

[50] As Habermas summarises, "the manner in which discourse theory introduces the distinction between moral and ethical questions and maintains the priority of justice over the good means that the logic of justice questions becomes dynamic. This demands the progressive expansion of horizons: against the horizon of their respective self-interpretations and worldviews, the different parties refer to a presumptively shared moral point of view that, under the symmetrical conditions of discourse (and mutual learning), requires an ever broader decentering of the different perspectives (1996b: 1485). And he continues: "In cases of collision, moral reasons 'trump' ethical reasons and ethical reasons 'trump' pragmatic ones because once the respective mode of questioning becomes problematic in its *own* presuppositions, it points out where it is rational to cross its boundaries" (*Ibid.*: 1534).

between reasonable comprehensive doctrine and disembodied political values, Habermas affirms the priority of moral argumentation over ethical considerations, but also indicates that these level of discussion should be seen as communicating vessels.

It is important to note here that on contrary to what the last citation might lead us to believe, Habermas does not equate law and morality. Although they are intimately related at the level of justification, law is a functional system which grows out of the differentiation of society into quasi-autonomous spheres. What is more, moral reasons, Habermas realistically points out, have a weak motivational force. We cannot expect finite human beings to be exclusively driven by the moral point of view. Moral reasons cannot by themselves represent the postmetaphysical form of authority Habermas deems necessary. Well-founded moral arguments must thus be supported by (1) forms of life and socialisation processes conducive to moral behaviours and (2) complemented by legal institutionalisation (1993: 33-4, 1996: 164). In virtue of the motivational deficit inscribed in moral norms, legal norms, supported by the coercive apparatus of the state, are seemingly taking for Habermas the leading role in terms of social coordination and conflict resolution. This raises of the question of what constitutes a valid legal norm. Do legal norms have to respect the requirement of impartiality that moral norms have to respect ? For Habermas, legal norms must indeed be congruent with moral norms, because "from *its inception* law shares with morality the task of solving interpersonal conflicts" (1996b: 1530), but they must also draw on pragmatics and ethico-political reasons. This complicates Habermas' conception of public reason, as it becomes unclear which form of argumentation must prevail or have priority in the establishment of legitimate legal norms. For Habermas,

> legal norms are valid, although they can be justified not only with moral but also with pragmatic and ethical-political reason; if necessary, they must represent the outcome of a fair compromise as well. In justifying legal norms, we must use the

> entire breadth of practical reason [...] Valid legal norms indeed harmonize with moral norms, but they are 'legitimate' in the sense that they additionally express an authentic self-understanding of the legal community, the fair consideration of the values and interests distributed in it, and the purposive-rational choice of strategies and means in the pursuit of policies (1996a: 155-6).[51]

Should we assume here that legal norms are fed by the three level of argumentation but that, in the end, moral arguments once again trump pragmatic and ethical considerations ? Or that Habermas conceives legal norms as more pragmatic then moral norms; which would mean that they could spring from compromises rather than exclusively from rational consensus ? The latter answer, as we will see in Chapter Four, would be more appropriate in societies in which what counts as a valid public reason must itself be worked out democratically. Moreover, attributing distinct grammars to legal and moral norms could have the effect of situating discourse ethics within the limits of moral philosophy alone. The vibrant political and juridical debates over the rules of governance which keep most contemporary societies on their toes would in this case fall outside of discourse ethics' jurisdiction. This is one way to read Habermas' frequent proposition that discourse ethics deals primarily with moral issues.

This interpretation, mainly based on some passages of *Between Facts and Norms*, doesn't seem however to capture the spirit of Habermas' argument. In a symposium of the *Cardozo Law Review* devoted to his work, Habermas clearly states that, although legal norms must be channelled through the legal system, "law and morality obey the same discourse principle and follow the same discursive logics in application and justification" (1996b: 1538). Moreover, in *The Inclusion of the Other*, published after *Between Facts and Norms*, Habermas reiterates that "moral utterances serve to coordinate the actions of different actors in a binding or obligatory fashion ... The morality of a community not only lays down how its

[51] In William Rehg's terms, "laws regulate interpersonal relations in a manner similar to moral norms, but they do so only within a concrete community having a particular history and, pluralization notwithstanding, probably at least some shared understanding of the common good" (in Habermas 1996a: XXVI).

members should act; it also provides grounds for the consensual resolution of relevant conflicts" (1998b: 3-4). Moral argumentation is once again presented as the form of postmetaphysical authority capable of coping with the challenge of pluralism. Moreover, although Habermas has been keen on noting that discourse ethics was primarily concerned with moral/normative disagreement, he sometimes alludes to the possibility that discourse ethics has a broader application than what he initially thought. "It has become clear to me in retrospect", evokes Habermas, "that (U) only operationalized a more comprehensive principle of discourse with reference to a particular subject matter, namely, morality. The principle of discourse can also be operationalized for other kinds of questions, for example, for deliberations of political legislators or for legal discourses (1998b: 46).

If this is the case, discourse ethics is then not only concerned with moral (non-political and non-legal) issues and Habermas' conception of public reason and its correlative requirement of decontextualisation, are open to the same type of criticism as Rawls'. As we saw, both authors make the erosion of the transcendental markers of certainty and the related challenge of pluralism the steppingstones of their theories. According to them, public reason cannot, in virtue of this problem of authority, be grounded in any particular forms of life or visions of the good. Valid public reasons must thus first succeed to a test of generalisation which guarantees that the principles and values underpinning the political association are shared by all its members. Although Rawls and Habermas are at pains to provide their theories with a credible relationship between moral arguments and reasonable comprehensive doctrines, valid political speech-acts must ultimately be context-transcending. To be sure, these elements of universality, which are normatively binding, are not deducted from a metaphysical vision of the world, but reconstructed from the shared background culture of a constitutional democracy (Rawls) or from the validity claims built in any speech-act oriented towards mutual understanding (Habermas). Grounded in these elements of universality, Rawls

and Habermas present political liberalism and discourse ethics as the most rational answers to the problem of social integration in a disenchanted age .[52]

Rawls' and Habermas' critics must therefore be careful in their assessments of their respective theory. Their postmetaphysical perspectives situate them into the trajectory of post-Nietzschean thoughts concerned with the problems of authority and pluralism. Yet, their constraining vision of public reason appears to me to obliterate some aspects of the critical or democratic ethos that one can extract from the erosion of the transcendental markers of certainty. The reasons I think that these Kantian resolutions of the problem of authority fall short of a full acknowledgement of the death of God will become explicit as I sketch out what I take to be a more adequate approach to democracy and public reason under the fact of pluralism.

[52] One could reasonably point out here that the divergences between Rawls' and Habermas' perspectives are unduly downplayed. This is a valid objection. As we saw, Habermas' reconstructive approach, founded in speech-act theory, is more universalistic in scope than Rawls' attempts to extirpate shared principles from a common political culture. Another important difference lies in the ways they operationalize the moral point of view. As it well known, the first Rawls imagines the deliberating citizens into an abstract original position in which a veil of ignorance prevent them from knowing their concrete ways of being-in-the-world (in terms of capacities, values and interests). Citizens are thus forced to ground the rules of the association in principles acceptable to all. This representative device was actively criticised by Habermas who thinks that it is precisely in the context of the emergence of decentered forms of subjectivity and post-conventional stages of morality that subjects can free themselves from their parochial commitments and act according to the moral point of view (1990 : 116-194). It is thus fundamental for Habermas to take citizens *as they are* today. This is just two of the most important divergences in their respective theories. Plunging into the Rawls-Habermas debate would require a separate chapter. See Habermas (1995; 1998a) and Rawls (1995).

Chapter 4

Political Philosophy and the 'Rough Ground' of Democratic Politics

1. Establishing the Common Ground: Democracy, Deliberation and Constitutionalism

1.1 Popular Sovereignty and Public Deliberation

The idea that political authority must be reconstructed from the will of citizens, clearly stated in Rousseau but also in Kant, is the object of a widespread consensus. As we saw with Rawls, Habermas, Lefort, Rancière and Castoriadis, the erosion of meta-social norms for organising the political community re-ignited and gave a new importance to the principle of popular sovereignty. Habermas' "D" principle, for example, which stipulates that "just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses" encompasses the principle of popular sovereignty (1996a: 107).[53] For Habermas and a number of other theorists, the principle of popular sovereignty finds its proper home in a *deliberative* conception and practice of democracy. The will of people expresses itself through

[53] Principle ("D") is a reformulation of the ancient principle *quod omnes tangit ab omnibus comprebetur* ("what touches all should be agreed to by all") adapted to discourse ethics.

public deliberation. Public deliberation must however respect a number of norms in order to be fully inclusive and to generate legitimate political or legislative decisions. According to Habermas' framework, no citizen concerned by the issue at stake, capable of communicative action and willing to publicise his or her claims can be excluded from a practical discourse and no topics can be *a priori* removed from the agenda (granted that principles "U" and "D" are respected). Moreover, no form of internal or external coercion, apart from the "force of the better argument", can alter one's right to speak publicly and constrain one to consent to a proposed settlement (1990: 89). Deliberative processes oriented towards collective decision-making must be inclusive and secure the participants' equality; they must, in other words, respect the norms of mutual recognition and reciprocity.[54] Although his normative framework differs from Habermas', Rawls also accepted a redescription of his conception of political liberalism as a form of deliberative democracy (1999: 136-140).

One however need not be a 'deliberative' democrat in order to recognise the fundamental character of the principle of popular sovereignty. For instance, the aggregative and libertarian model of democracy, seen as a logical consequence of the rise of mass society, capitalism and social apathy, pretty much eschewed the idea of public deliberation. Rather than coming together as a people and exchange reasons and arguments in a political forum in order to reach a *collective* decision, consumers channel their preferences through elected representatives and hope that a sufficient number of fellow consumers will have expressed the same preferences. According to the interest-based model of democracy, revived nowadays by

[54] For complementary discussions of the norms of public deliberation, see Seyla Benhabib's and Joshua Cohen's chapters in Benhabib (1996).

social choice theorists, public decisions and orientations emerge from the sum of the interests and preferences of individuals.[55]

In opposition to this model of democracy, deliberative democrats underscore the transformative aspect of public deliberation. Deliberative democracy revolves around the exchange of reasons between free and equal citizens. Public reasoning includes a transformative dimension because articulating a view in public imposes a certain degree of reflexivity on one's basic assumptions and preferred courses of action. To engage in public speech forces one to take a step back, to reflect on the relevance and validity of one's reasons, to find a media to get through to and, possibly, convince others. Public deliberation, then, enables one to become more intelligible to oneself in the very activity of trying to become intelligible to others. As Seyla Benhabib summarises this train of thought, "it is the deliberative process itself that is likely to produce such an outcome [self-knowledge] by leading an individual to further critical reflection on his already held views and opinions; [...] the very procedure of articulating a view in public imposes a certain reflexivity on individual preferences and opinions" (1996: 71).

Furthermore, listening to the other participants' public reasons helps one to "desanctify" one's position, to move closer to the alternative perspectives, to see different aspects of the observed picture and perhaps to alter one's initial premises and to change one mind. As Arendt underscores in her discussion of Kant, public deliberation, in disclosing contrastive moral, ethical and political landscapes, reveals the perspectival, rather than comprehensive, character of our worldview and contribute to the "enlargement of mentalities". It is only through dialogical reasoning that one can attempt to "think from the standpoint of everyone else". Deliberation, in other words, facilitates the process of role

[55]A fully actualised aggregative model of democracy would confirm Tocqueville's fear that democratic politics could become nothing more than the sum of the "vulgar and small pleasures" of individuals folded back on themselves. For a critique of social choice theory from a deliberative perspective, see Miller (1993).

taking necessary to the fostering of the decentered understanding of the world discussed by Mead and Habermas. This capacity to see "aspectively", as we saw in Chapter One, overlaps with Nietzsche's concept of "objectivity": "the *more* affects we allow to speak of one thing, the *more* eyes, different eyes, we can use to observe one thing, the more complete will our 'concept' of this thing, our 'objectivity,', be" (GM 3: 12). In turn, as I will see in Chapter Five, this ability to change perspective is a civic virtue in an age of diversity. Public practical reasoning, as Kant anticipated, is directly related to enlightenment.

Could we however think that the limited attention paid by citizens to public affairs conjugated with the growing power of private bodies and the declining influence of duly elected representatives disqualify the very idea of public deliberation ? Is public deliberation a relic of history preserved by nostalgic political theorists ? Only our being held captive by certain pictures of what participation should be (the strong republican conception of citizenship) and of where deliberation should take place (the *agora*, the legislative Assembly, the court room, etc.) can make us believe so. The development of mass democracy did hinder the possibility of pure direct democracy, and the exponential power of the market, corporations, experts, technocrats, judges and the media does transform and alter the meaning of representative democracy. As Habermas recognizes in his developments on "social complexity", there are several structural features built into the fabric of late-modern societies that rule out the possibility of fully communicative forms of social cooperation (1996a). Popular sovereignty is constrained in a significant numbers of ways. The portion of public expenditures that is really put up for grab in public debates has been shown to be quite thin (Dryzek 2000). Several processes and instances, such as the market and its institutions, are efficient in their attempts to operate in the shadow of the public sphere. That admitted, these attempts to veil fundamental aspects of collective life are nonetheless faced with correlative ventures to repatriate issues discussed behind closed doors back into the public square.

The severe constraints exercised on citizens right to self-government are confronted with a multiplication and dissemination of deliberative practices and discursive terrains. Debates over the dispersed and differentiated systems of rules that govern modern life spread throughout and across societies. Public discussions travel from books, reports, newspapers, radio/television shows and on-line communication to national and international court rooms, through expert appraisals and academic debates, demonstrations, on-site resistance, town-hall and city-council meetings, public hearings, national commissions, mediation sessions, legislative debates, supra-national bodies and so on. Public deliberations are also 'diachronic', i.e. continuous and not fully contained in a spatio-temporal context. A decision often gives a new spin to, rather than terminates, a debate. Deliberation generates public opinion and favours will-formation within, across and beyond the Nation-State. Popular sovereignty—participating in the generation of the forms of government we impose on ourselves—has a life outside of the *agora* or of the institutions of representative democracy; it has adapted, so to speak, to globalisation and to the "network society". Practices of governance *and* of democratic freedom are multiple and dispersed (Tully 2002c). The forums of deliberation, as Gutmann and Thompson remarks, "embrace virtually any setting in which citizens come together on a regular basis to reach collective decisions about public issues—governmental as well as nongovernmental institutions" (1996: 12).

It is true however that deliberative democracy must work with a realistic picture of participation. The practice of evaluating, weighting and ranking one's values, interests and commitments is increasingly difficult. An always shifting balance must be struck between one's competing and sometimes incommensurable claims on oneself. Even for publicly-spirited people, civic participation competes with several other goods. This doesn't need to be exaggeratedly lamented. The important issue for deliberative democrats is that people who

feel concerned by a given problem have a real chance to partake in the discussions over its resolution and under conditions that are not biased against them. People take up their identity as citizens—provided they have the resources and capacities to do so—mostly when they feel concerned or threatened by a given state of affairs; and when they don't, they tacitly accept to live with the consequences of their inaction. This is not so different from the normal, most common relation we have to the world. As Heidegger's phenomenology of everyday life shows, human beings generally reflect on and thematise an object or, by extension, an issue when they respectively become defective and problematic (1985: par. 13). The same can be said about political activity. Political participation, in its multiplicity of forms, imposes itself when the flux of everyday life is interrupted by a disruptive phenomena. It is through the experience of anguish, Heidegger argues, that *Dasein* breaks with the evidence and certainties of the "They", acknowledges its own finitude and experiment with a more authentic way of being-in-the-world (*Ibid.*: par. 40).

For my purposes, it is enough to note that disruptions in the economy of everyday life, rather than pure public spiritedness, are the sources of political action for most of late-modern societies' citizens. "Political contests emerge", Mark Warren aptly writes, "when individuals judge that discomforts and hardships are important enough to risk (and the risks can be substantial) moving into an arena of social groundlessness (1996a: 245).[56] Just as Heidegger notes that the experience of anguish is not the most common way of being-in-the-world, we should not be surprised that political participation—the activity of citizenship—is, for most of us, an occasional way of acting-in-the-world. One can surely wish that some issues will come to move an increasing number people (the state of ecosystems, massive inequalities of income, etc.), but political theorists reflecting on deliberative practices can work with the

[56] As Warren adds in a complementary paper, "while we may not wish to participate most of the time, we want procedures that allow us to do so when authority becomes questionable, and this occurs when authorities make decisions no longer functionally specific to the goods they serve." (1996b: 49).

numerous citizens and groups who fell concerned enough by various issues to invest the public space and present claims for reforms.[57] Our time can be described as a period of "political apathy" only if we are bewitched by the picture of the Greek agora. Public deliberation, then, in all its new configurations, does not reach the breadth and intensity wished by some strong republicans or civic humanists, but remains a significant sphere of activity and must therefore receive continuous attention from political theorists.

1.2 Democracy in Human all too Human Circumstances

Another common criticism directed at deliberative democracy is its alleged lack of moorings in actually existing practices of democratic deliberation (Dryzek 2000). The norms and virtues described by theorists of deliberative democracy (mutual respect and recognition, the *audi alteram partem* convention [listen to the other side], the process of ideal role taking and the decentered view of the world, the capacity to alter one's view in light of alternative positions, the force of the better argument as the ultimate authority, etc.) sound very good in principle and would probably rule intersubjective relationships in a community of noumenal subjects, but are of little relevance for human, all too human forms of social cooperation. Time-space constraints, power and self-interest are what real democratic politics is about. Although this type of criticism sometimes hits the target, most deliberative democrats are well aware of the non-ideal conditions of political life. They know that the 'ought' does not perfectly mesh with the 'is'.

Practical discourses, as Habermas himself notes, take place in particular contexts and cannot transcend time and space limitations (1990: 92). He realises that in the selection and application of norms for the settlement of divisive issues, citizens do not have an "infinite

[57] This point is meant to provide a more persuasive account of the sources and meaning of civic participation, not to suggest that (1) we should not be preoccupied by those who do not have the resources (in terms of wealth or of civic literacy) to participate, and (2) that nothing should be attempted to increase the number of people concerned by some specific political issues. See also note 9.

time" on their hands. A deliberation must take place at a given time and place and only a limited numbers of participants can deliberate for a limited period of time. This prior decision about who will deliberate, where and for how long, based for the most part on contingent and arbitrary factors, inevitably fosters exclusion. Institutional measures are needed, according to Habermas, to attenuate this arbitrariness and the idealised norms always already presupposed by the participants in argumentation can accordingly be at best "adequately approximated" in practice (*Ibid*). It is not clear how the realist aspect of Habermas' theory dovetails with the idealised community of conversation from which he extracts procedural norms of regulation, but we can build on this aspect to establish that an appropriate conception of deliberative democracy must take up on board, rather than ignore, these unavoidable time-space limitations. These constraints are responsible for the fact that not all concerned by a given issue will sit at the table of negotiation and that others will argue that the round of discussion was shut to a close precipitately. A decision, as we will see below, is always taken in a less than perfect conjuncture (Tully 2000c: 476). If the real time factor does not prove public deliberation to be obsolete and futile, it will be important to keep the limits it imposes on public deliberation in mind when the question of disagreement and dissent will be addressed (section 2.2).

A conception of democracy which purports to start from the rough ground of democratic politics must also reflect on the inevitable friction between public deliberation and existing power relations. Deliberative democrats have been keen to point out that insofar as public deliberation is founded on the possibility and capacity for citizens to have an *equal* say over the structure of rules and procedures they impose on themselves regardless of their social position and practical identities, asymmetrical relations of power ruin the very idea of public deliberation. The unequal capability to use power over others restricts the admission to the deliberative forum and reduces the capacity of some participants to influence the deliberators

by giving weight to their view. To put it more bluntly, some do not have access to the agora in the first place and some others see their voices marginalised, distorted or ignored because of a lack of capacity to conduct the conduct of others. Most deliberative democrats have consequently suggested that serious efforts must be made, through redistribution, education, affirmative action, recognition, amendments to the procedures of deliberation and other such devices, to remove the forms of inequalities and domination that obstruct deliberative democracy (Bohman 1996: 107-150; Gutmann and Thompson 1996: 273-306; Laden 2001: 131-158; Dryzek: 2000; Young 2000: 31-35).

This is indeed necessary. Yet unequal power relations are often pervasive and well entrenched and the most well intentioned measures often foster new inequalities. Political theory must therefore think deliberative practices in conditions of asymmetrical and sedimented relations of power. In order to do so, it might be useful to note here that power exists only in a relational form. Against the representations of power which tend to reify it, Michel Foucault argued that "power" is a mode of action which does not apply directly or immediately over others, but rather on their actions or on their range of possible actions.[58] The exercise of power, Foucault argues,

> is a total structure of actions brought to bear upon possible actions; it incites, it induces, it seduces, it makes easier or more difficult; in the extreme it constrains or forbids absolutely; it is nevertheless always a way of acting upon an acting subject or acting subjects by virtue of their acting or being capable of action. [...] To govern, in this sense, is to structure the possible field of action of others (1983: 220-1).

Power, if we follow that line of argument, (1) is thus not necessarily negative or conducive to domination (as it can lead to enlightenment or empowerment for instance), and (2) must be thought of as immanent to social life: to live in society is to live in such a way that I can act

[58] For the origin of that thought, see Nietzsche (BGE: 36).

upon the actions of others and vice-versa. A society free of power relations can only be an abstraction (*Ibid.* : 223).

Insofar as human beings live with one another, the idea is not to eliminate power as such. Power relations can be symmetrical or asymmetrical, and it is only disabling asymmetrical relations of power that obstruct meaningful public deliberation.[59] Starting from practice rather than from ideal conditions, we are forced to see such asymmetrical relations of power as omnipresent. Yet the fact that asymmetrical power relations are pervasive and enduring does not devalue the importance of public deliberation. Power is a mode of action on conducts; it is exercised "at a distance". Any attempt at governing one's actions opens a range of possible re-actions. The socially widespread games of power are played by equal and unequal "partners". Power, understood as the government of people by other people, does not appear where freedom evanesces. On the contrary, "power is exercised only over free subjects, and only insofar as they are free. By this we mean individual or collective subjects who are faced with a field of possibilities in which several ways of behaving, several reactions and diverse comportments may be realized" (*Ibid.*: 221). Revising his earlier quasi-structuralist positions, Foucault writes that

> There is not a face to face confrontation of power and freedom as mutually exclusive, but a much more complicated interplay. In this game freedom may well appear as the condition for the exercise of power (at the same time its precondition, since freedom must exist for power to be exerted, and also its permanent support, since without the possibility of recalcitrance, power would be equivalent to a physical determination) (*Ibid.*: 221).

[59] Asymmetrical forms of power ranges from the unequal exchange of illocutionary acts to more severe forms of psychological and physical violence. Although as Foucault noted, at a certain point, when the other's field of possible actions and reactions vanishes—because power is wielded directly over his/her brain or body—, relations of power give way to relation of violence. A relationship of violence, writes Foucault, "acts upon a body or upon things; it forces, it bends, it breaks on the wheel, it destroys, or it closes the door on all possibilities. Its opposite pole can only be passivity, and if it comes up against any resistance it has no other option but to try to minimize it" (1983: 220). Where "the determining factors saturate the whole there is no relationship of power" (*Ibid.*: 221). The exercise of power involves the capacity to react. I will come back to this point below.

Public deliberations, glanced from that perspective, cannot be seen as pure masquerades that conceal the reproduction of inequalities. Although public deliberations do reproduce and sometimes reinforce injustices, one's (limited) capacity to conduct one's thought in variety of ways, to experience with a range of possible actions, alludes to and underscores the importance of speaking for oneself, of having a political voice. Staying alert to the persistence of asymmetrical power relations discloses the thoroughly *fallible* character of a public discussion but does not disentitle it as a source of political legitimacy (Gutmann and Thompson 1996: 17). Speaking for oneself, either directly or via entrusted representatives, is the imperfect yet most efficient way to disclose alleged injustices, to initiate symbolic and political transformation and to break the cycle of exclusion.[60] More generally, and this connects to what was said in Chapter Two, the co-extensive character of public deliberations and power relations calls attention to the agonistic dimension of democracy. For Foucault, as long as we are in the realm of relations of power (and the *polis* is an intersubjective realm laden with power relations), it is more appropriate to speak of an "agonism"—a "permanent provocation" made of reciprocal incitation and struggle—instead of an essential freedom or of a radical antagonism (*Ibid.*: 222). Agonistic struggles over the conduct of oneself and others is a permanent and structural feature of public reasoning. Public deliberation, power relations and agonistic struggles are inextricably linked and must be thought together. Once again, the omnipresence of forms domination will have to be kept in

[60] Yet it is true that democratic inclusion faces a quasi-aporetic difficulty when excluded subjects do not possess the minimal capacity to initiate public challenges: inclusion presupposes democratic participation which itself demands certain conditions contradicted by exclusion. In *La misère du monde*, Pierre Bourdieu and his collaborators have shown how severely deprived persons could hardly make their claims public and fight for the improvement of their conditions. We could also think of people living with heavy handicaps, severe and persistent mental health problems, homeless people and "sans-papiers". As Foucault and Deleuze realised, the struggle against such a form of exclusion seems to involve collaborative work between excluded subjects and people having access to the public sphere.

view when the co-extensive character of democracy and disagreement will be discussed and the boundaries of public reason examined (sections 2.2 to 2.4).

1.3 Democracy and Constitutionalism

A wide variety of democrats, including theorists whose pedigree goes back to Aristotle, Kant, Hegel and Nietzsche, concur with the idea that the vitality and legitimacy of a democratic regime depend, at least partially, on the multiplication and institutionalisation of deliberative mechanisms. Before zooming in on what I take to be deliberative democracy's silences, evasions and shortcomings, I want to delineate another zone of contact between the various trends of democrats under scrutiny in this thesis. Although the emphasis has been put so far on the passage from disenchantment to democracy, the dissolution of ultimate markers of authority for organising worldly existence also directs our attention to another equally fundamental principle of legitimacy: constitutionalism or the rule of law. The rule of law checks the form of authority that has come to temporarily fill the space of power. Democracy and the rule of law, as Habermas as been keen to point out, must be seen as co-originary and equiprimordial principles of political legitimacy. Public and private autonomy stand in a dialectical relationship and mutually presuppose each other because "there can be no law at all without actionable subjective liberties that guarantee the private autonomy of individual legal subjects; and no legitimate law without democratic law making by citizens in common who, as free and equal, are entitled to participate in this process" (1995: 130; 1998b: 253-264). In order to be free, citizens must be both authors and subjects of law. Some rights and procedures, which create room for citizens to pursue their own ends, are the conditions of possibility of public participation. Indeed, we cannot participate effectively if our life is endangered, if we cannot associate or if the media is unable to relay any relevant

information.[61] Conversely, citizens can only repulse the threats to their public autonomy by imposing on themselves, via democratic participation, the system of rules they must abide by. Whereas individual rights and constitutional principles act as a safeguard against the tyranny of the majority, the practice of citizenship unsettles unfair laws and spurs the creation new rights. On the one hand, the stability of the constitutional order wards off republican excesses. On the other hand, democratic entropy keeps the conversation of justice going and, in so doing, prevents the congealing of historical injuries. This does not mean that all rights and freedoms are equally put of for grabs in the democratic process, as some of these rights and freedoms render democratic participation possible. Yet the possibility of launching democratic contests over the meaning and implications of basic rights such as freedom of speech and of association always remains open.[62] This explains why Habermas, rather than radically opposing the freedom of the Moderns and the freedom of the Ancients, suggests that the concrete actualisation of freedom lies in the perpetual tension between democracy and the rule of law.[63] In sum, citizenship is an activity of both rule-following and rule-modifying. James Tully systematises and further develops the argument in the following way:

> The principle of constitutionalism (or the rule of law) requires that the exercise of political power in the whole and in every part of any *constitutionally* legitimate system of political, social and economic cooperation should be exercised in accordance with and through a general system of principles, rules and procedures,

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[61] This is not meant to suggest that all rights and procedures enshrined in a charter or in a constitution can be justified as preconditions for the possibility of public participation. Some of these rights, such as freedom of speech, of association and of the press, and some procedures, such as an amending formula for modifying the constitution, can be justified in such a way, while others are more strictly meant to safeguard private autonomy. Moreover, as the rule of law does not trump the democratic principle, the interpretation, application and weighting of these rights can always be debated. The equiprimordiality thesis does not imply that we need agreement over which set of principles and rules acts as a precondition for participation, but only that freedom requires a balance between the rule of law and popular sovereignty. The details of that balance is continuously being negotiated publicly.

[62] Think for instance about the heated debates around the limits that can legitimately constrain the right to associate in the context of the post-9/11/01 "war" against terrorism. The debates are not so much on the freedom to associate in itself as they are on its implementation in particular contexts.

[63] As Bentley and Owen note, citizenship is thus both a status characterised by rights and duties *and* a practice or "a political mode of being, a way of conducting our common concerns with free and equal others" (2001: 229).

> including procedures for amending any principle, rule or procedure. The 'constitution' in the narrow sense is the cluster of supreme or 'essential' principles, rules and procedures to which other laws, institutions and governing authorities within the association are subject. In the broader sense 'constitution' includes 'the rule of law'- the system of laws, rules, norms, conventions and procedures which govern the actions of all those subject to it.
>
> The principle of democracy (or popular sovereignty) requires that, although the people or peoples who comprise a political association are subject to the constitutional system, they, or their entrusted representatives, must also impose the general system on themselves in order to be sovereign and free, and thus for the association to be *democratically* legitimate. The sovereign people or peoples 'impose' the constitutional system on themselves by means of having a say over the principles, rules and procedures through the exchange public reasons in democratic practices of deliberation, either directly or indirectly through their representatives (insofar as they are trustworthy, accountable and revocable and the deliberations are public), usually in a piecemeal fashion by taking up some subset of the principles, rules and procedures of the system. These democratic practices of deliberation are themselves rule governed (to be constitutionally legitimate), but the rules must also be open to democratic amendment (to be democratically legitimate) (2002b: 205).

A political association is thus legitimate, Tully underscores, if it is a combination of constitutional democracy and democratic constitutionalism. The two guiding norms are, according to him, critical and abstract principles of judgement that "*orient* participants in their critical discussion and contestation of the legitimacy or illegitimacy of a practice of governance" (*Ibid.*: 206). To be sure, citizens carrying out contrastive frameworks of meaning and value will disagree over the interpretation, weighting and institutionalisation of these background principles, but they nevertheless anchor their claims in at least one of the mentioned principles. There would thus be a sort of agreement in a political form of life that

grounds social cooperation and enables citizens to challenge prevalent rules of governance and modes of social regulation. Differently put, citizens of a constitutional and democratic regime share "a mode of problematization of their political identity" (*Ibid.*: 207). Of course, it is perhaps possible to contest the validity of this system of judgement from an altogether different vantage point, but, as Hegel, Apel and Habermas noted, this can seemingly hardly be done without using democracy or constitutionalism as a *substratum* (*Ibid.*: 207, note 5). Hence the broad and loose agreement on the irreducible character of the tension between code and ethos, being and becoming, amongst various political theorists.[64] Political legitimacy rests on the shifting and precarious balance stroke between popular sovereignty and the rule of law. However, I will argue that while some theorists, such as Tully and Jeremy Waldron, steadfastly hold on to this tension, others, such as Rawls and Habermas, constrain the democratic principle in a problematic way.

From the perspective sketched out here, the "equiprimordiality" thesis and the necessary role of public deliberation are two building blocks on which a conception of democracy in a disenchanted and pluralist age must rest on. However, as I alluded to, the dominant conceptions of deliberative democracy and political liberalism suffer from a number of problems that appear to be due to their ideal character. I want to examine in the following sections what could be gained from starting our investigation of democracy not from the conter-factual situation wherein citizens abstract from the particular forms of life in which they are embedded (the "decontextualisation requirement" discussed in Chapter Three), but

[64] In his reply to Habermas, Rawls demurs from the claim that he granted priority to the rule of law over popular sovereignty and endorses the "equiprimordiality" thesis (1995: 163-170). Although Connolly wants to grant a certain priority to the democratic principle, he also stresses that the "maintenance of [a] dissonant interdependence between the practice of justice and the ethos of critical responsiveness is crucial to justice itself... The ethos and the code coexist in an asymmetrical relation of strife and interdependence" (1995: 187). Mouffe, for her part, does not believe like Habermas that both principles spring out of the same root, but that despite their antithetical nature they nevertheless stand in a relation of perpetual tension and mutual contamination (2000: 5, 10). Hence the "paradox" of liberal democracy. Taylor has also been keen on pointing out that the culture of rights needs to be counter-balanced by democratic participation.

from the actual practice of democratic citizenship. I want, in other words, to think democracy in human, all too human circumstances.

2. Making Deliberative Democracy more Agonistic: Democracy, Disagreement and Social Integration

2.1 Democracy and Disagreement

The death of God, as we saw, is best understood as the erosion of the figures of authority that all would regard as ultimate and regulative. No overriding principle can unproblematicaly organise the pluralism of worldviews and axiological orientations immanent to the process of disenchantment. More specifically, as Lefort, Rancière and Casotriadis argue, the political community cannot exercise its authority against the sheltered background of a divine law or natural order of things. Public reasoning has consequently been charged with the responsibility of generating legitimate collective norms and of securing social integration. However, as a form of practical reason, public reasoning always operates in non-ideal, less than perfect conditions. Not only is a view from nowhere that could decide when a particular discussion should be fairly drawn to a close lacking, but time-space constraints and power-laden relationships damage the procedure and activity of deliberating in public. A public deliberation does not lead straight to the safe shore of justice. This, I will contend, should induce us to see disagreement and dissensus differently: disagreement runs deep and dissensus is not a failure of (public) reason.

Disagreement and dissensus are intuitively associated with thinkers such as Nietzsche and Foucault who insisted on the value of contest and struggle and on the elements on non-consensuality inherent in any collective orientation. Yet this emphasis is not the prerogative of thinkers writing outside the liberal tradition. Liberal and analytic political philosophers like Jeremy Waldron, Stuart Hampshire and Donald Moon argue that liberal thinkers have generally been blind to the endemic and pervasive character of disagreement. Waldron

wonders for instance why Rawls does not extend his ideas about the reasonable pluralism of comprehensive doctrines and the burdens of judgement to the debates around the basic terms and principles of the political association.[65] Whilst no agreement on fundamental ontological and ethical orientations is to be expected under free liberal institutions, because, among other things, of the burdens of judgement, no such hitches block the way to the emergence of overlapping consensus over the fundamentals of justice. After a cautious analysis, Waldron concludes that "Rawls says that the idea of public reason is incompatible at most with the existence of reasonable disagreement about the fundamentals of justice" (1999: 153).[66] The requirements of a well-ordered society oblige free and equal citizens to reach agreement on principles of justice common to all reasonable comprehensive doctrines. There would thus be a sphere, the tip of the iceberg, immune from disagreement.[67]

However, "in the world we know", Waldron observes, "people definitely disagree—and disagree radically—about justice. Moreover their disagreement is not just about details but about fundamentals" (*Ibid.*: 153). "Full-blooded" disagreement about justice is according to him "the most striking condition of our own politics" (*Ibid.*: 163). Political and legal theory should consequently tune in with the "circumstances of politics". The circumstances of politics result form the conjunction of two conflicting forces: (1) democratic politics is about creating a political space wherein collective decisions can be reached, (2) but this process is continuously thwarted by divergences on the preferred course of action. Collective action would be unproblematic without the persistence of disagreement and disagreement in itself would not be an issue in the absence of the felt need for action-in-

[65] See Chapter Three and Section 2.2 of this Chapter.
[66] Bhikhu Parekh also concludes that "while Rawls is all too willing to acknowledge a plurality of the conceptions of the good, he does not think that it might also extend to principles of justice" (2000: 85).
[67] In fact, for Rawls, both the tip of the iceberg (overlapping consensus) and its basis drawn into water (the stock of shared background principles) are immune from enduring disagreement.

concert (*Ibid.*: 102). A theory that either ignores, bypasses or downplays the circumstances of politics succumbs, according to Waldron, to the sirens of ideal theory.

Hampshire makes a even stronger case for the endemic character of disagreement. Whereas Waldron's position does not seek to go deeper than the factuality of political life as we know it, Hampshire defends a metaphysics or what Rawls would call a comprehensive doctrine on the nature of justice. He wants to present a thesis "stronger" than Berlinian value-pluralism. Against a picture of justice as the harmony of the parts that runs from Plato and Aristotle to Christianism and the Enlightenment, but which also pervades Marxism and classical liberalism, Hampshire vindicates a Heracleitean picture of justice according to which "every soul is always the scene of conflicting tendencies and of divided aims and ambivalences, and correspondingly, our political enmities in the city or state will never come to an end while we have diverse life stories and diverse imaginations" (2000: 5). Justice is conflict, not harmony. A state of conflict is not a vice, a defect or a malfunctioning, but the normal course of individual and collective life (*Ibid.*: 33).

Accordingly, the essence of the "liberal morality" Hampshire champions "is the rejection of any final and exclusive authority" (*Ibid.*: 35). In line with the other perspectives surveyed in Chapter Two, Hampshire suggests that the absence of extramundane sources of authority can only be compensated by dialogic encounters. Rationality in politics and procedural justice, he argues, require, as "a condition of existence, the convergence of several minds working together in shared practices. The just procedures have to be collaborative practices, although the collaborators allot themselves different, and often adversary, roles in the process" (*Ibid.*: 71). In the soul and in the city, he thereby notes, interpersonal adversarial thinking, rather than transcendental deduction and solitary meditation, is the "paradigmatic setting and circumstance of intellectual thought" (*Ibid.*: 11-12). There is, according to Hampshire, an agonistic dimension inbuilt into the structure of practical reason: "everyone has

adversaries within his own soul and is in this way prepared to step out onto the political or legal stage and to argue his case" (*Ibid.*: 93-94).[68] Practical and public reasoning operates in "conditions of uncertainty" and therefore requires the "gathering of knowledge", the "weighing of evidence" and, most important of all, the scrupulous respect of the *audi alteram partem* convention. Hampshire takes legal or prudential judgements, rather than mathematical or logical deductions, as the exemplary form of reasoning.[69] Institutions and procedures vary from one context to the other and are amended from time to time, but the duty to hear and acknowledge contrary arguments nevertheless appears to be a general rule of both democracy and justice (Hampshire 2000: 8, 9, 17; Tully 1995).[70]

The lack of meta-social standards of judgement burdens the procedures of deliberation and decision with the task of arbitrating conflicts and securing justice. Every society must come up with its rule-governed procedures of public argumentation. Fair procedures are the "cement that holds a state together" (Hampshire 2000: 79). No procedure, however, is perfectly neutral, unbiased or value-free. The definition of the framework of dispute resolution itself contains residual substantive values or cultural artefacts and consequently tends to disfavour minorities. When this is the case, "the second-order and procedural questions have to be made the subject of political conflict and negotiation" (*Ibid.*: 29). Political debate thus continuously shift from substantive problems to dispute over the way to go to discuss and settle divisive issues and vice-versa. Consensus or harmony is not the normal outcome of the game of politics. A fair public deliberation will at best soften the edges of the rival positions and pave the way to a "shabby compromise". "Disputes about the just and fair political procedures and institutions", Hampshire sums up, "will continue indefinitely,

[68] The priority of adversarial argumentation acts as a transcendental argument for Hampshire (2000: 42).
[69] See also Toulmin (2001: 14-28).
[70] "Particular institutions, each with its specific procedures for deciding between rival conceptions of what is substantially just and fair, come an go in history. Only the one most general feature of the processes of decision is preserved as the necessary condition that qualifies a process, whatever it happens to be, to be accounted as an essentially just and fair one: that contrary claims are heard" (Hampshire 2000: 16-17).

punctuated by occasional compromises. No finality or conclusiveness in this historical process is to be expected" (*Ibid.*: 97).[71]

One can accept, I believe, Hampshire's phenomenology of practical life without endorsing his metaphysics. A political, not metaphysical, position is sufficient for my purposes. As no external source of authority can grant absolute validity to the claims made by rational, reasonable and finite subjects, dissensus is a permanent feature of the democratic form of life (Lefort 1988; Rancière 1998). Disagreements over what count as authoritative reasons are doomed to arise from the democratic exchange of immanent or situated reasons. Moreover, 'real time' considerations and the persistence of unequal relations of power highlight the fallible character of public deliberations. In the world we know, to paraphrase Waldron, disagreement ranges from comprehensive moral, religious and philosophical doctrines to principles of justice (or their interpretation and application) and also includes the frameworks of reflection on justice and social cooperation. Disagreement, in other words, goes all the way up and down in theory and practice. Deliberative practices of action co-ordination and conflict settlement include an irreducible agonistic dimension. These practices are rule-governed but these rules or, more accurately, a subset of these rules can always come up for deliberation and amendment in the course of the game of public deliberation (Tully 1999a: 170). That no rule, procedure or substantive agreement is *a priori* and permanently

[71] Hampshire does not however always hold on to his argument. At one point, Hampshire writes that there is "harmony within the liberal stockade" and that the major conflict of our time is between secular, liberal-democratic outlooks and monotheist and theocratic worldviews (*Ibid.*: 23). This is a serious mischaracterization. Not only could this be interpreted as some variant of the "clash of civilisation" thesis, but it occludes the disagreements at play within liberal-democratic societies. With Rawls, we must recognise that a family of reasonable yet divergent comprehensive doctrines will always be affirmed by free and equal citizens and, with Waldron and Tully, we must also note that disagreement is all the way up and down: it ranges from axiological orientations to fundamentals of justice and also includes the frameworks of reflection on justice ("theories" of justice). This is, I believe, more congruent with Hampshire's general argument: "all modern societies are, to a greater or lesser degree, morally mixed, with rival conceptions of justice, conservative and radical, flaring into open conflict and needing arbitration" (2000: 31).

immune form the possibility of contest and review is, as we saw, a requirement of *democratic* constitutionalism.

2.2 Disagreement, Decision and Social Integration

How is it legitimately possible to draw a public deliberation to a close in the face of enduring disagreement ? A common argument lodged against deliberative democracy is its alleged "failure" to deal with the moment of "decision" (Dryzek 2000: 38). A legitimate decision must, for deliberative democrats, result from the rational consent of "all affected in their capacity as participants in a practical discourse" (Habermas 1990: 66). Critics have been quick to point out that awaiting the consent of all the deliberators equates to the endless deferral of the moment of decision. Consensus is not the normal outcome of public reasoning under conditions of uncertainty and it is not clear why it should stand as a guiding ideal for context-bound deliberations. For a number of reasons—ethical pluralism, divergent schemes of interpretation and the lack of uncontroversial principles of judgement, asymmetrical power relationships, time-space constraints, etc.—any given dispute resolution or collective decision is always open to reasonable disagreement and dissent. Consensus-based theories, coming from the social contract tradition or from the universal pragmatics perspective, tend to evade or downplay the idea that any judgement entails its share of injustice and exclusion.[72] The establishment of an action co-ordination plan or the settlement of a conflict can always be interpreted as a majoritarian form of domination for those who were not convinced by the valid but non-decisive reasons presented to them. As I have pointed out repeatedly thus far, the erosion of the ultimate markers of certainty refers to the lack of the type of arguments that all would regard as authoritative. Yet, at one point or the other, the deliberators must turn their

[72] See Derrida (1992a: 24-26, 1996: 87) and Mouffe (2000: 45). Interrogated about the political implications of deconstruction, Derrida specifies that "all that a deconstructive point of view tries to show, is that since convention, institutions and consensus are stabilizations (sometimes stabilizations of great duration, sometimes micro-stabilizations), this means that they are stabilizations of something essentially unstable and chaotic" (1996: 83).

spade and wait for the verdict. As the circumstances of politics impose, a partially or reasonably unfair or incompletely justified decision ought to be taken at some point in the deliberative process. This decision "is taken in the face of disagreement and dissent, and the dissenters may turn out to be correct in the long run" (Tully 2000c: 476, Waldron 1999: 93; Mansbridge 1996: 55).

This does not however lead to a legitimacy crisis. An imperfect decision can still be legitimate if it respects at least four requirements. First, a majority of the participants to the practical discourse must have come down in favour of the settlement or collective orientation. Majority-decision is the lest imperfect procedure because it does not ask us to posit the existence of a consensus where there is none; it, by definition, acknowledges the existence of a dissenting minority.[73] Yet majority-decision recognises that the persistence of disagreement does not cancel the need for collective action (Waldron 1999: 111, 117). Second, this decision-procedure must always be counter-balanced by the rule of law (see section 1.2). Public autonomy (the exercise of democratic citizenship) is meaningless where private autonomy (the protection of fundamental rights) is jeopardised, although the meaning of public autonomy must on some occasions be the object of a democratic dialogue. Third, the decision must proceed from an inclusive public deliberation since, as we saw, the give and take of reasons contains an epistemic dimension: it gives more circumspection and depth to the justification of political decisions (Bohman 1996: 26). In order to meet this requirement of inclusiveness, as I contend in section 2.4, the bounds of public reason must be both expanded and perforated. Finally, political or legal decisions can be legitimate, while remaining unfair to some degree, only if the possibility for eventual review, invalidation and reversal does not get lost in the institutionalisation, bureaucratisation or codification of the decision. There is a

[73] Majority-decision commands our respect, Waldron suggests, because "it is the one decision-procedure that does not, by some philosophical subterfuge, try to wish the facts of plurality and disagreement away" (1999: 99).

"self-correcting" capacity built into the fabric of deliberative democracy (Gutmann and Thompson 1996). A decision which fosters elements of injustice is reasonable if the dissenters were heard in their own terms (requirement three) and will be in a position to submit the agreement to further challenges in the future (Tully 2000c: 477). The legitimate closure of a conversation on justice triggers the responsibility to engage further discussions on the injustices prompted by the settlement. The constant re-iteration of the decision, as Derrida suggests, keeps the possibility of justice alive. From the dissenters' point of view, the legitimacy of the regime lies in the degree of fluidity it allows between the various moments of the serious game of politics (deliberation, decision, institutionalisation and implementation).[74] A decision is nothing more, or less, than a caesura in a discursive activity halted and delayed by the need to resume with *praxis* (Habermas 1996b: 1494). The possibility of "provoking" political or normative collective orientation must be "permanent". This democratic ethos is thus not so much about creating improbable consensus as about alleviating as much as possible the level of domination intrinsic to human coexistence (Foucalt 1994a: 727).[75]

The insistence on the moment of decision and on the non-consensual character of most political settlement does not amount to what Habermas would perhaps call arbitrary "decisionism" (1996a: 38). The majority rule, as we saw, must be checked by the rule of a law, an ethics of dialogue and the ongoing possibility of patriating the decision back to the moment of deliberation. As a conception of deliberative democracy attuned to the circumstances of politics refuses to infer its main features from the idealised presuppositions

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[74] These "moments" of politics are necessarily reified here for the sake of argumentation. I discuss in Chapter Six how the Supreme Court of Canada adapted the requirements sketched out here to the Canadian context in its insightful *Reference re the Secession of Quebec.*

[75] Authority, then, does "not disappear in a radical democracy; rather, it would become specific, limited, pluralized, and contestable, and would be continually renewed and energized just because of its contestable status. In contrast, where possibilities for democratic contestation are weak, authority is fragile, as the recent fates of authoritarian and totalitarian regimes have shown" (Warren 1996a: 260; 1996b).

of communicative action or from the shared background principles common to a particular political culture, there is no guarantee that a given resolution will not produce or reproduce injustices, i.e., that it will be a rational or overlapping *consensus* that all the participants can see as just. Decisions stemming out of a political multilogue are better described as "stable irresolutions" (partial and provisional agreements, compromises, modus vivendi, agreements to disagree, expression of dissent) rather than as consensus (Tully 1999a: 171; Bellamy 1999: 93-140; Weinstock 2001: 85-87; Hampshire 2000: 32; Dryzek 2000: 48, 170).[76]

2.3 Back to Rawls and Habermas: A Critique

Rawls and Habermas believe that societies unable to resolve disagreement over basic collective orientations impartially and consensually display a legitimacy and stability deficit. If we first look at Rawls' line of thought, the sketch of a conception of democracy more attuned to the circumstances of politics presented here is the description of a disordered and unstable society. "Social unity", he writes, "is based on a consensus on [a] political conception [of justice]" or, as he qualified later, on a "family of reasonable political conceptions of justice" (1993: 134; 1999: 153). As I underscored in Chapter Three, Rawls deems enduring reasonable pluralism compatible with stability in so far as citizens converge towards an overlapping agreement over the basic terms of the political association. The assertion of a common political conception of justice, channelled through a singular form of public reasoning, is the condition of possibility for unity and stability in plural societies. "How is it possible", to reiterate Rawl's basic question, "that deeply opposed though reasonable comprehensive doctrines may live together and all affirm the political conception of a constitutional regime ?" (1993: XVIII). This is a typical case where the answer is already

[76] Given the account of power canvassed in section 1.2, political settlements are always varieties of *modus vivendi*, as any form of human interaction involves shifting relations of power. However, *contra* Rawls, not all *modus vivendi* are Hobbsian in nature. As Duncan Ivison suggests, a more relational or dynamic *modus vivendi* involves that the "parties are motivated to comply with political norms where it is in their interest to do so, but (a) these interests include moral interests, and (b) *over time* the demands and practices of social cooperation may come to be seen as not only mutually advantageous but fair and reasonable" (2000: 124).

contained in the question. Rawls wants to investigate how citizens divided by reasonable though rival worldviews can cooperate and live together harmoniously. This state of affairs can only be attained, Rawls leads us to believe, through an agreement over the terms of an overlapping consensus. A plural society can be well-ordered so long as "citizens who affirm reasonable but opposing comprehensive doctrines belong to an overlapping consensus" (*Ibid.*: 39).

The *a priori* judgement in Rawls is that disagreement must at some point give way to agreement if we are to think at all about stability. Rawls does not ask whether a free society can be functionally united and stable, thus self-reproducing, in the absence of an overlapping consensus—i.e. when its members disagree over both visions of the good *and* fundamentals of justice. Rawls acknowledges that agreement in judgement between "conscientious persons" is not to be expected, for a variety of reasons, even after free discussions (*Ibid.*: 58), but he still assumes that the burdens of judgement become lighter when deliberation moves to the basic principles of justice. This is so, as we saw, because the basics of justice are derived from principles latent in the political culture and not from controversial metaphysical assumptions. Yet, one can endorse a conception of citizens as free and equal and of society as (ideally) a fair system of social cooperation and still contest that this background agreement in a political form of life unambiguously leads to Rawls' political liberalism (and nowhere else). If we take the fact of pluralism seriously, we must contemplate the possibility that these principles will be interpreted and weighted differently by the diverse members of a political association and will consequently pave the way to discrepant political conceptions of justice. As Daniel Weinstock observes, "it seems hopelessly optimistic to expect that the public political cultures of long-standing liberal democracies can satisfactorily be accounted for in terms of a set of principles sufficiently coherent to yield a determinate theory of justice. Such cultures are

much messier than that, and can probably be interpreted in quite different ways. These differences in interpretation, moreover, will most likely mirror the society's ethical-political differences quite closely" (2001: 81; McCarthy unpublished 2001). As this chapter tries to exemplify, building on the work of several political philosophers, it is reasonable to think that the freedom and equality of citizens conjugated with the fact of deep pluralism lead to a conception of justice and stability which does not entail the eradication of disagreement over basics of justice and demand a less constraining notion of public reason.

For Rawls, in any case, the failure to reach agreement over the terms of an overlapping consensus seems to be a breach of reason, and not the possible outcome of a reasonable and free discussion: "an overlapping consensus of reasonable doctrines may not be possible under many historical conditions, as the efforts to achieve it may be overwhelmed by unreasonable and even irrational (and sometimes mad) comprehensive doctrines" (1993: 126). Why does Rawls deliberately choose to talk about unreasonableness and irrationality here rather than saying that the possibility of achieving an overlapping consensus may be overwhelmed by the ambivalence of reason, indeterminacy, reasonable disagreement and tragic conflicts ?[77] Aren't we forced to conclude, as Waldron does, that Rawls admits the possibility of a family of reasonable conceptions of justice insofar as they all converge towards a thinner conception composed exclusively of the basics of justice ? Yet, reasonable citizens disagree about the interpretation, weighting and implementation of the principles of justice (Warnke 1995: 130),

[77] Daniel Weinstock notes that the early Rawls "believed that though citizens might very well differ on fundamental issues of political morality, these differences were symptoms of distortion and unreason rather than of some fundamental ambivalence written into reason itself [...] The governing idea is that reason unfettered speaks with one voice on moral and political issue." (2001: 79-80). The later Rawls clearly recognises that there can be reasonable disagreement about "political morality". Is it however possible that residues of that early thought on the origin of disagreement remain in *Political Liberalism* ? This seems to be a plausible interpretation, as the burdens of judgement now explain disagreement about visions of the good life and axiological orientations, while unreasonableness and irrationality re-appear in order to explain the failure to achieve an overlapping consensus. If that were the case, Rawls would endorse a soft variant of what Andrew Mason calls the "imperfection conception" of political disagreement, i.e. the conception which assumes "that when political disagreement arises at least one party to the dispute is mistaken; and that with sufficient time, patience, impartiality and logical skills, political disputes could be settled to the satisfaction of any reasonable person who is sincerely engaged with them" (1993: 2; see p.10-11 for his reading of Rawls).

and sometimes about the principles themselves. That the burdens of judgement dissolve as the discussion targets the fundamentals of justice is true only if we stay within the limits of abstract and ideal theory alone. A consistent and integral application of the burdens of judgement idea would solve Rawls' problem here. It is important to note that Rawls, in his section on the burdens of judgement, never mentions disagreements over political conceptions of justice, but exclusively refers to disagreements over religious and philosophical doctrines. There again he does not seem to consider the possibility that "conscientious persons", encumbered by the burdens of judgement, might reasonably disagree over the basic terms of the political association (1993: 58). Yet, it is very hard to see why the six sources of the burdens of judgement he aptly describes would not apply to judgement over the fundamentals of justice (*Ibid.* : 56-7). Had he stated that the burdens of judgement are inherent in *any* form of reasoning-together, we would be left with the plausible proposition that an overlapping consensus is the possible yet very unlikely outcome of public deliberation. But Rawls refrained from exploiting all the resources of the burdens of judgement argument. The failure to reach overlapping consensus entails, according to him, social instability and disunity. Some liberals, often inspired by value-pluralism, have argued that this particularly controversial aspect of Rawls' theory is not woven into the fabric of political liberalism. According to Moon, political liberalism can eschew its claim to neutrality and acknowledges the inevitability of tragic conflicts in pluralistic societies over both comprehensive doctrines and political conceptions of justice. Political liberalism, he writes,

> explicitly recognizes the inherently tragic nature of political life: the fact that, in a morally pluralist world, there may be no framework of justice that all can accept to regulate their interactions. On some issues, we may face tragic conflicts, conflicts in which all parties justify their positions in terms of what they regard as fundamental moral considerations, which are opposed in ways that do not permit reconciliation. Under such circumstances, political community must give way to

> imposition: whatever decision is taken, some will experience the outcome as unjust but will be constrained to abide by its terms. Moreover, and more significantly, the institutions and practices that political liberalism supports or even requires may unfairly burden some citizens, leading them to experience those norms as impositions (1993: 98; see also van den Brink 2000: 160).

What are we to make of this *a priori* in Rawls ? Is it true that a society which fails to secure the terms of an overlapping consensus is doomed to be unstable and disordered ? Democratic citizenship is an ongoing activity of going-with and challenging the rules of the association. As consensus around norms, laws and policies are scarce in differentiated societies[78], any collective orientation almost systematically brings forth some degree of (legitimate and illegitimate) exclusion. Yet dissenters can identify with their political community as long as they feel they can participate, make their voice heard and eventually contribute to the transformation of the contested mode of governance. Particular defeats can and obviously do raise feelings of disappointment, outrage and humiliation, but the stability of an association is most severely threatened when its members retreat from the public space, abandon projects of social transformation and imagine ways of destabilising and seceding from the larger society. As I obliquely suggested above, in the end, the identification with and, *a fortiori*, the stability of, a political association hinge on the practice of democratic citizenship itself, i.e. on the ongoing possibility of contesting public norms, laws and policies. Removing the possibility of dissent is more damaging for the stability and unity of a political association than the persistent expression of disagreement.[79] Forced incorporation into an

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[78] I'm referring here to the variety of social positions (gender, ethnicity, sexual orientation, religious beliefs, age, social class, etc.) and of traditions of interpretation (progressivism, conservatism, libertarianism, feminism, environmentalism, etc.) from which one can assess a given collective orientation.

[79] Needless to say, it is difficult and painful to maintain allegiance to a regime which passes undesired laws and policies and endorses contentious or even contemptible norms. When this occurs, the development of specific civic virtues can enable citizens to maintain their identification with the regime in the face of disagreement and conflict. For example, a considerable degree of "civic endurance" is necessary for defeated or marginalised citizens to cope with the rebuff of the majority (van den Brink: unpublished). Conversely, minorities will deem

alleged consensus and the sedimentation of a given decision—which both amount to the interruption of the game of politics—are the real threats to the stability of a regime. A well-ordered society will allow some movement between the different moments of democratic politics. The persistence of disagreement is not a failure of public reason. It is the activity of citizenship itself, and in the diffused form of belonging it fosters, that we must look for the source of political stability in complex and divided societies. As Tully appositely sums up this argument,

> Citizens develop a sense of identification with the principles and the association to which they are applied not because a consensus is reached, or is on the horizon, but precisely because they become aware that, in despite its current imperfections and injustices, the association is nonetheless not closed but open to this form of democratic freedom. It is a free association. This legitimacy-conferring aspect of citizen participation generates the unique kind of solidarity characteristic of constitutional democracies in the face of disagreement, diversity and negotiation (2002b: 211; 1999a: 171).[80]

Rawls undertook *Political Liberalism* with the noble intention of correcting the "unrealistic idea of a well-ordered society" detailed in *A Theory of Justice*. Although he did move in the right direction, he ultimately fails to provide a fully realistic and plausible account of a well-ordered society. In Chapter Five, I will confront the thesis on stability adumbrated here with particular cases related to struggles for recognition.

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participation pertinent only in so far as the majority exhibits some degree "civic responsiveness" (Bentley and Owen 2001, Connolly 1995: XVI)

[80] See also Laden (2001: 126-7) and Chambers (2001: 66). In a related way, Mason suggests that the sense of belonging to a political community hangs more on the identification with a set of institutions than on a shared substantive conception of national identity (1999). In a revision of an earlier article, Cohen recognises that decisions need not be consensual in order to be legitimate (1998: 197). Political legitimacy and, by extension, political stability require "that all who are governed by collective decisions, who are expected to govern their own conduct by those decisions, must find the *bases* of those decisions—the political values that support them—acceptable, even when they disagree with the details of the decision" (*Ibid.*: 222). I partially agree with Cohen but, as conflicts often originate from disagreements over the interpretation and application of political values rather than over values themselves, I want to suggest that political legitimacy and stability, giving the fact of reasonable pluralism that Cohen so adequately describes, rest more fundamentally on the form of thin belonging fostered by the continuous activity of exchanging public reasons.

How does Habermas deal with what I have called, following Waldron, the circumstances of politics ? No one is more aware than Habermas that contemporary constitutional democracies stand at the crossroads of facts and norms. The reality principle never completely disappears from his field of view. Accordingly, most of the elements of the amended conception of deliberative democracy sketched out thus far could rightly be seen as extensions of points and arguments made by Habermas himself. Not only does he recognise that participants to a practical discussion do not have an infinite time on their hands to reach a collective decision, but he is also aware of the fact that the game of politics is fraught with unequal power relations and that "compromises make up the bulk of political decision-making processes" (1996a: 287, 282; 1996b: 1491). Practical discourses, he notes, "cannot be relieved of the burden of social conflicts to the degree that theoretical and explicative discourses can" (1990: 106). Practical discourses, to use Habermas' telling metaphor, "resemble islands threatened with inundation in a sea of practice where the pattern of consensual conflict resolution is by no means the dominant one" (*Ibid.*). Yet one should not, according to Habermas, conflate the island with the sea, "validity claims" with "power claims". Argumentative speech raises counterfactual presuppositions that approximate the conditions of an "ideal speech situation". Participants in argumentation, Habermas writes, "cannot avoid the presupposition that, owing to certain characteristics that require formal description, the structure of their communication rules out all external or internal coercion other than the force of the better argument and thereby also neutralizes all motives other than that of the cooperative search for truth" (1990: 89). This ideal speech situation opens for the discussants a consensual horizon in which a damaged agreement on a contested validity claim can be restored. This consensual horizon is both implicit in the structure of argumentation and a regulative idea against which concrete discussions can be assessed. This is sufficient,

Habermas thinks, to ground his deontological approach to morality and justice (discourse ethics).

Although one could say that the passage from the structure of communicative action to empirical discussions is arguably the weakest link of his theory, Habermas argues that the telos and the idealised presuppositions of argumentative speech contain the embryo of the post-metaphysical authority capable of resolving moral conflicts. As we saw in Chapter Three, insofar as the moral employment of practical reason has prerogative—that is, when an impartial decision must settle a practical conflict or coordinate discrepant action-plans—, conflicts must be settled consensually. To be sure, Habermas guards against the reification of the ideal speech situation into an ideal future condition. A regulative idea never finds rest in an actual form of life. Moreover, a consensus reached in moral discussions is always fallible and can potentially fall apart in the next round of problematisation. But it is not clear, then, what we gain from starting our investigation of the conditions of social integration after the death of God from the counterfactual presuppositions of linguistic interaction. Insofar as Habermas claims that discourse ethics can compensate for the loss of metaphysical/religious guarantees and for the pluralisation of the lifeworlds certainties in terms of social integration, it *de facto* situates discourse ethics in the turbulent sea of practical conflicts, enduring disagreement and unequal power relations, not in the insulated island of the "foundation" and "validation" of norms. Is it useful to thinking of the power- and disagreement-laden sphere of human co-ordination against the background of a frictionless community of disengaged subjects, i.e. of an ideal speech situation ? Why binding justice to consensual agreement if we acknowledge that compromise, agreement to disagree and dissent, and to start all over again, "make up the bulk" of the democratic form of life ?[81] The irreducible character of reasonable

[81] Habermas' commitment to the counter-factual ideal of the consensus disturbs the balance between facts and norms that he is trying to strike in his on work on constitutional democracy. There would not be any problem if

disagreement over what counts as a binding reason, together with the unequal capacity to conduct conducts, suggest that attempts to think public reason from a decontextualised perspective risk not only to dig a new ditch between the noumenal and the phenomenal worlds, but also to impair the integration-sustaining role of public practical reasoning.

2.4 Public Reason Revisited

Before concluding this chapter, I would like to suggest that the dominant conceptions of deliberative democracy should be amended in one more way. I stressed in Chapter Three how reworked formulations of Kant's categorical imperative play a pivotal role in Rawls' and Habermas' conceptions of public reason. As we saw, they respectively draw normative resources from shared principles latent in political culture and from the idealised presuppositions of linguistic interaction to establish a stock of values and procedures presupposed by citizens across, above or beneath their wide-ranging differences and disagreements. In turn, these normative resources provide the foundation for modes of public reasoning which stipulates that valid political speech act must be generalisable. The application of the moral point of view to public deliberation filters the more controversial types of arguments and forms of speech out of the realm of public reason. The generalisation requirement is embedded in the structure of public reason for Rawls and in the principle of universalisation for Habermas.[82] While for Rawls "public reason requires us to justify our proposal in terms of proper political values" (1999: 146), Habermas suggests in one of his most strongly idealised formulations that "entry into moral discourse demands that one steps back from all contingently existing normative contexts" (1996a: 163). For deliberative

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consensus was seen only as a regulative idea that is rarely actualised in practice. But for him, consensus appears to be more than a vanishing horizon, as resolutions that fall short from consensus seem to suffer from a lack of legitimacy. As Bohman suggests however, it is enough to think that "deliberation succeeds to the extent that participants in the joint activity recognize that they have contributed to and influence the outcome, even when they disagree with it" (1996: 33, 34).

[82] For the Rawls of *A Theory of Justice*, the generalisation requirement was assured by the original position and the veil of ignorance devices. As a particular aspect of a particular theory of justice ("justice as fairness"), it seems that Rawls' thought-experiment lost its central function in *Political Liberalism*.

democrats and political liberals alike, public debates must accept the "discipline of public reason" (Weinstock 2001: 82). This is not only true for Rawls and Habermas, but also, in different and often softer forms, for Amy Gutmann and Dennis Thompson (1996: 52-3, 57, 81), Joshua Cohen (1996: 100) and Anthony Laden (2001: 99-105, 116-118).[83]

As I tried to make clear in Chapter Three, Rawls and Habermas, hounded by communitarian, feminist, post-modernist and even some liberal critics, went to great pains to work out a credible relationship between the public and the private (political values and comprehensive doctrines on one side, ethical and moral reasons on the other). Yet we saw that there comes a point for both where certain types of argument and speech must be left at the threshold of public reason. This has lead many critics coming from different horizons to argue that deliberative democracy and political liberalism fail to pass the test of pluralism. "By limiting citizens and their representatives to reasons that could in principle be shared by others", Weinstock writes, "[deliberative democrats] defuse the threat of moral pluralism. Those aspects of our moral and philosophical beliefs that are unlikely to be shared by others are left conveniently in the antechambers of democratic deliberation, and our debates are structured according to terms that make it more likely that consensus will arise" (2001: 83). In place of the "secularised" outlook proposed by Kantian thinkers, William Connolly submits, along more agonistic lines, that, "the need today is to cultivate a public ethos of *engagement* in which a wider variety of perspectives than heretofore acknowledged inform and restrain one another" (1999: 5).[84] The bounds of public reasons, as I alluded to, must be expanded and perforated.

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[83] While Bohman seems at time to endorse such a vision of public reason (1996: 5, 6), his position is close to the one sketched here when he argues that "not all interests need to be generalizable to be appropriate topic of public deliberation" (255) and that "expressive communication can be publicly convincing without being impartial in the strict sense; my needs remain mine even if they are publicly comprehensible" (45).

[84] Connolly wants to substitute the ideal of the "*ethically sensitive, negotiated settlements* between chastened partisans who proceed from contending and overlapping presumptions while *jointly* coming to appreciate the

There are several reasons that plead for adapting public reasoning to a "wider variety" of perspectives, arguments, genres of speech and modes of reasoning-with-others. As Foucault (1975) and Taylor (1989) have concluded, via different routes, collective norms are never fully neutral and context-transcending; they are always more or less informed and underwritten by the majority's values, principles, orientations and practices. Political rules stem out of particular forms of life and can never be fully detached from them.[85] Residues of the origin soil the universal validity claim raised by public reason. Caught between facts and norms, an adequate conception of public reason must consequently, in a double gesture, cling to impartiality while keeping its own history in sight. This explains, I want to suggest, why the realm of public reason cannot be restricted to the exchange of shared reasons—i.e. reasons common to all citizens across their specific values, commitments, interests, cultural attachments and practical identities.[86] The framework proposed by Rawls and Habermas (the restriction to shared reasons) would be acceptable in world in which impartiality itself would not be the object of an ongoing normative debate. But a form of authority capable of founding impartiality is lacking. The very definition of what counts as shared, "public" reasons (in the restricted sense) relies to varying degrees on context-bound orientations. Certain types of claims and argument can be deemed as non-generalisable simply because they do not constitute intelligible signs in the code or idiom of the dominant political culture (Bentley and Owen 2001: 231-232, van den Brink 2001).[87] Admitting reasons' internal to one's identity, set of values or framework of interpretation into the realm of public reason is a way of countering

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unlikelihood of reaching agreement on several basic issues" to the ideal of rational consensus championed by "secularists" (1999: 35).

[85] For how political liberalism always retain some substantive values, see Moon (1993) and Van den Brink (2000).

[86] Shared reasons comprise political or public reasons in Rawls' vocabulary and moral reasons in Habermas'. The following development draws upon and modify Tully's own distinction between "internal" and "shared" reasons (2000a).

[87] This poses a serious problem for Rawls who write that citizens should only appeal "to presently accepted general beliefs and forms of reasoning found in common sense" and to the "plain truths now widely accepted, or available, to citizens generally" (1993: 224, 225).

the propensity to eject minority values and motives out of the realm of the reasonable. Internal reasons include explanations and arguments drawn from particular forms of life, or (non-generalisable) claims related to particular forms of life, proffered by individuals and groups for challenging existing norms, laws, policies or patterns of recognition, as well as for proposing alternative ones. Internal reasons can be channelled through genres of speech, such as rhetoric, testimony, humour and narratives, that can both overlap with and depart from the logic of rational argumentation (Young 2000: 52-80).[88]

"Reasons of one's own", to use van den Brink's expression (*Ibid.*), fulfil various roles. First, in societies characterised by the co-presence of, and interaction between, diverse moral and axiological orientations, explaining to fellow citizens the rationale and ethical importance of values and practices foreign to their way of life enhances mutual understanding—and some degree of mutual understanding is a necessary ingredient of a well-functioning deliberative democracy. As Iris Young points out, the public expression of the situated reasons and personal motives explaining why a given issue matters for an individual or a group, through narratives or testimonies for instance, might be a necessary step towards the establishment of a common ground when there is not enough pre-agreement in a form of political life (2000: 70-77). Internal reasons, as a form of social knowledge, help us to understand why such and such practice is fundamental to the identity and moral integrity of a particular segment of the citizenry. The majority can in turn provides internal reasons of its own to express why such and such a claim is or is not compatible with its own values and practices.

The exchange of internal reasons is intimately linked to the struggle against misunderstandings, distorting generalities, stereotypes, prejudices and diversity-blindness. It discloses the perspectival character of arguments displayed in a public forum and it can foster

[88] Toulmin suggests that logic and rhetoric should be seen as complementary rather then rivals, and points out that there were no sharp distinction, for the Greeks, between both kinds of speech (2001: 26-7).

the limited yet fundamental capacity to move to the others' positions and to see the picture of the political association through different eyes. The exchange of internal reasons participates in the processes of ideal role-taking and mentality enlargement discussed in section 1.1. The utterance of internal reasons *within* the limits of public reason can have the salutary effect of foregrounding the historicity of principles and procedures self-evidently taken to be universal by the majority. Internal reasons can act as reminders of the origins of the norms and rules of public reason taken to be context-transcendent and, by extension, as crevices in the structures of false universalisms. As it was underlined in section 1.1, public deliberation, seen as an activity of mutual critique, generates a body of perspectives, arguments and evidence which constitute the building material for the reconstruction of societies (Vernon 2001: 68-9; Putnam 1992: 180). The exclusion of internal reasons would greatly impoverish this body of perspectives and arguments which keeps democracy alive. Rawls and Habermas both came to see the importance of understanding the internal logic of claims made by citizens sharing identity-markers or moral and political orientations different from the majority, but they nevertheless hold on to their basic intuition: these exercises of mutual clarification, crucial as they are, must be confined to civil society debates or ethical discussions.

Second, the refusal to count internal reasons as public reasons can also yield alienation and social fragmentation. Consider, for example, a group of deep ecologists and the members of an aboriginal nation coalescing in order to challenge the conception of property and of the environment which depicts the world, to borrow Heidegger's word, as a "standing reserve". The critique they launch at the widespread commodification of the environment is based on a holistic outlook according to which humans, animals and natural resources stand in a circular, well integrated and mutually dependant relationship. Their most fundamental values and orientation to the world thereby prevent them from contesting the prevailing relationship to the environment with arguments more likely to be accepted by others such as "in the long run,

economic growth hangs on the preservation of the environment".[89] Their reasons for entering public deliberation and challenging the dominant relationship to the environment, as well as the corollary norms and policies they champion, can hardly be detached from their basic worldview. Preventing dissenting citizens, deep ecologists and aboriginal persons in that case, from drawing explicitly upon reasons of their owns to challenge the rules of the political association alienates them from their capacity to participate and to impose on themselves the rules they must abide by. The refusal to consider some reasons as "public" potentially deprives specific subjects of their political voice.[90]

According to Bhikhu Parekh, this is precisely what happened to Muslims in Britain during the "Rushdie Affair". Because the public debate over *The Satanic Verses* was set up in liberal terms, Muslim spokespersons felt both ill-versed in the language of deliberation and deprived of their most fundamental motivations for considering Rushdie's novel as blasphemous. The controversy could have been resolved, Parekh hypothesises, had both parties engage with each other's reasons and justifications. As this real process of reciprocal evaluation did not take place, "Muslims felt bitter and much misunderstood and stopped talking; a large body of liberals agonized about the continuing threat of 'illiberal' and 'fundamentalist' Muslims in their midst and saw no point in continuing discussions with them; and British society as a whole lost the opportunity to develop a self-understanding adequate to its multicultural character" (2000: 305).

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[89] Formulating this example made me realise that the moral core of Kant's test of universalisation has somehow been lost in Rawls' (but also in Cohen's and Laden's) conception of public reason. Whilst for Kant moral action presupposes that all could accept the *motives* or the *maxims* of my action, a claim counts as a public reason argument for Rawls insofar as it can potentially be accepted by the other participants to the discussion. An argument or a plan of action ("exploiting the environment in order to bolster economic growth and capitalistic accumulation") can in theory be accepted by all without being particularly moral. Habermas' principle of universalisation, which included an element of consequentialism, seems to retain more of the moral core of Kant's practical philosophy.

[90] See Owen (1999c) for a reflection on Cavell, the expression consent and the issue of political voice. Anthony Laden would most probably reply that what counts as a *public* reason must itself be worked out publicly but, from within his framework, a majority could right from the start invoke the generalisation constrain and dismiss the claim made by the minority. The minority would then be left without recourse to challenge what they see as a blatant injustice.

Brushing internal reasons aside, then, can prevent disagreeing citizens from pledging allegiance to the political community. Seen from that perspective, limiting public reasoning to the exchange of external reasons is a powerful device for preserving the status quo and producing fragmentation.[91] *Contra* Rawls' and Habermas' basic assumption, it is then by no means clear that restricting public reason to reasons that all can potentially share enhances social cohesion and civic integration.

However, public reason theorists are right to say that internal reasons are not susceptible of moving many participants not already gained to the cause. Internal reasons, as I suggested, surely play an elucidatory role—the importance of which is invaluable in the context of diverse societies—, but they can also hinge on nothing more than pure self-interest. Note however that the fact that some set of internal reasons can rest exclusively on selfishness is not enough to exclude them from the sphere of public reason (Dryzek 2000: 169). Egoistic reasons, for one thing, do not necessarily threaten other citizens' equal right to speak publicly—and they should be excluded only when they do. In addition, the frontier between egoistic and generalisable reasons and motives is often at the very core of the disagreement. That being said, internal reasons are rarely sufficient in themselves. Only those whose threshold of civic responsiveness is very high might find others' internal reasons decisive. Think, for instance, of those Israelis, like Nurit Peled-Elhanan who, in spite of the loss her only daughter in a suicidal attack in Jerusalem in 1997 and of the launch of the second Intifada in 2000, went on steadfastly with her struggle for peace, dialogue and autonomy for the Palestinian people.[92] The point is therefore not to claim that the exchange of internal reasons is sufficient.

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[91] Note here that even Gutmann and Thompson recognises that "even extreme nondeliberative methods [the use of argumentative device which transgress the discipline of public reason] may be justified" when moral consensus are thick to the point of becoming dogmas (1996: 135-6).

[92] The European Parliament awarded the Sakharov Prize for freedom of thought to Peled-Elhanan in 2001.

Reasons more likely to rally others must supplement internal reasons. In societies in which it is not to be expected that all share common principles of judgement, it would be unrealistic to burden the aforementioned exercises in reciprocal elucidation with the task of settling disputes over rival plans of action. Citizens willing to gain public assent must consequently strive to translate, as far as possible, their claims into languages of description and evaluation shared by others and to present arguments likely to succeed to a generalisation test. To return to my example, deep ecologists and aboriginal persons could also add, in contiguity with their internal justification (the holistic outlook), that the prevailing relationship to the environment (the world as a standing reserve) will prevent us from meeting our responsibility towards upcoming generations (to bequeath a healthy world to our children). Their internal reasons would help the other participants to understand where they are coming from and perhaps awaken them to the fact that the hegemonic relationship to the environment is by no means necessary and obligatory, while their external reason—which is interestingly a part of their comprehensive doctrine—would possibly gain some public support. In the reworked framework sketched out here, public reason thus stands at the intersection of internal and shared reasons. Perhaps even more accurately, public reason should eschew the very public/nonpublic distinction and rely solely on the exchange of reasons—provided that the democratic principle at play in the exchange of reasons always remain in tension with the rule of law principle, as the equiprimordiality thesis imposes (section 1.2). In real time discussions, citizens draw reasons from this dual source of justification (internal and shared reasons) and shift from one mode to the other without always being aware of it. It would accordingly be more productive to see internal and external reasons as different positions on a "context-dependence" continuum; "context-bound" and

"context-transcending" claims constituting the two poles of the continuum. This would attenuate the craving for boundaries that theorists are always susceptible to fall pray to.

It is indeed not clear what we gain from isolating, through idealised presuppositions, an immaculate sphere of "morality" when it is doubtful, as Habermas sometimes recognises, that the structure of practical reason can be split into neatly distinguishable categories. Did Habermas succumb to a craving for boundaries ? In any case, distinctions and boundaries set out by political philosophers can be useful but, in the end, citizens ought to be able to decide *during* the activity of deliberation itself what are the boundaries of public reason and what counts as authoritative reasons.[93]

To avoid any misunderstanding, it is probably useful to pause here and note that challenging the public/nonpublic or moral/ethical reasons dichotomy does not amount to removing every possible constraint on public reason. As just recalled, seeing democracy and constitutionalism in a countrapuntal relationships implies that the right to speak in one's own terms does not override or trump others' freedom and equality. The norm of reciprocity and the *audi alteram partem* convention are necessary constraints placed on public reason.[94] The implication of this is that anything that is not adjudicated as a threat to the others' capacity to participate (think of threats to physical integrity, hate-speech, psychological violence) can

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[93] See Bohman (1996: 240) and Dryzek (2000: 47). Laden, who is well aware of the various problems that confront public reason theorists, also reaches that sort of conclusion in his book *Reasonably Radical*. It can be said however that his willingness to distinguish between the more encompassing sphere of "public deliberation" and the narrower one of "political deliberation", which only admit public, generalisable reasons, prevents him from fully espousing that conclusion. Citizens are here again free to work out democratically what will count as decisive reasons *within* the formalistic framework sketched out by the philosopher. "Deliberative liberalism", Laden specifies, "aims to set out the framework in which political deliberation can fruitfully and justly take place, rather than to argue for one or another set of specific policy proposal" (2001: 17). To be sure, Laden's framework is flexible and leaves much room for politics, but he seems to be saying at times that the kind of reasons we can offer in the narrower realm of political deliberation is settled theoretically and is consequently not put up for grab in the course of democratic citizenship. This would be, I think, an unnecessary constraint placed on democratic activity. In other places, Laden writes that a reason counts as public insofar as the speaker thought in good faith that this reason could be made good for citizens generally (*Ibid.*: 197). This less demanding criteria seems to be compatible with the thin understanding of the generalisation test that I will discuss next.

[94] Note that it is very well possible to offer reasons drawn from the resources of a particular vision of the good while simultaneously being committed to freedom and equality.

count as public reason. To take an example, Jean-Marie Le Pen's and Umberto Bossi's xenophobic arguments against immigration, as long as they remain below the threshold of hate-speech, count, *as they do in France and Italy*, as public reason arguments—which of course is very different from saying that the National Front's and Northern League's arguments should orient the French and Italian states' immigration and integration policies.[95]

Rawls' conception of public reason and Habermas' discourse ethics both include, as we saw, a reworked version of Kant's universalisation test in order to meet the requirements of the moral point of view. This raises the following question: does admitting non generalisable reasons into the realm of public reason imply that the sphere of conflict resolution and action co-ordination is hermetic to the moral point of view ? Obviously not. Participants in a public deliberation are always free to present arguments that they think could pass a generalisation test and it is reasonable to think that such claims are more likely to gain public assent. Moreover, there are at least two ways of interpreting the application of the generalisation requirement to public deliberation. A reason, for public reason theorists, counts as public insofar as it can be seen as acceptable by others. This can be understood to mean that all could potentially accept and endorse (1) the *specific* claim made publicly or, more abstractly, (2) the values or principles underpinning the claim made publicly. The second interpretation appears to be better suited for contemporary diverse societies. In its more abstract form, the moral point of view requires that all could *in principle* endorse the reasons and justifications carried out publicly by a participant in a practical discussion. Now one can plausibly argue that most claims made by citizens or groups in the public space are justified on the basis of widely

[95] This is the crux I believe of Connolly's ethos of engagement and critical responsiveness (1995; 1999). As I will argue in the following chapter, admitting such claims into the realm of public reason help to prevent the conversion of frustration or dissatisfaction into private bellicosity. Note here that many French men and women voted for the Front National in the first round of the 2002 presidential election not so much because they supported the FN's program, but rather because they felt incapable of getting through to the Parisian political elite and thus felt politically voiceless. Hence the importance of thinking a more dynamic public sphere. This political conjuncture enabled Le Pen to pass ahead of the left and make it to second round of the presidential.

shared principles such as freedom, autonomy, equality or equity. The struggles of women, gays and lesbians, immigrants, environmentalists, people living with physical or intellectual handicaps or mental health problems, linguistic minorities, minority nations and aboriginal peoples target specific, non-generalisable treatments (in terms of recognition, redistribution or policy-making) but are all carried out in the name of values and principles that they could wish to see universalised. The actualisation of principles such as freedom and equality demands, they argue, that the state distributes collective rights or specific resources to subsets of citizens and, *eo ipso*, recognises the normative rightness of ethical considerations or of reasons drawn from comprehensive doctrines.[96]

In Rawls' and Habermas' deontological frameworks, according to which the "Right" always has priority over the "Good", this would be illegitimate. The bounds of public reason they set out is not compatible with the abstract interpretation of the moral point of view.[97] In contrast, Will Kymlicka's defence of a culturally-sensitive form of liberalism seems to espouse such a general application of the moral point of view to deliberative politics. In his defence of minority rights, he argues that the principle of autonomy championed by liberals remains empty for minorities if their "societal culture" is not secure and flourishing. A member of a minority needs a rich cultural "context of choice" in order to choose and revise

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[96] Another way to put it is to say that the abstract *interpretation* of the moral point of view makes context-sensitive *applications* of the test of generalisation possible. A claim could be said to respect the bonds of public reason if it could be endorsed by all not *in abstracto*, but put under identical or similar conditions. Habermas' decontextualisation requirement precludes such a context-sensitive interpretation of impartiality (Langlois 2000), while Gutmann's and Thompson's principal of reciprocity seems to acknowledge the irreducibly particular character of any context (1996: 13). However, a problem with the abstract interpretation is precisely its abstractness. People can share principles because they are abstract, but their abstractness normally creates disagreements over the interpretation and application of the agreed-upon principle. As Wittgenstein puts it, "if, however, one wanted to give something like a rule here, then it would contain the expression 'in normal circumstances'. And we recognize normal circumstances but cannot precisely describe them. At most, we can describe a range of abnormal ones" (1969: par. 27).

[97] However, it should be noted that the more restrictive understanding of the generalisation requirement, as formulated by Rawls, opens the possibility that citizens converge on the same specific claim despite starting from different values or principles. Citizens can agree on a specific resolution while rejecting the justification presented by an opposite party. This is an interesting feature of Rawls' theory, as people often support a given position for different, and sometimes contradictory, reasons.

her ends. As minorities must often struggle to keep their societal cultures alive and burgeoning, the allocation of specific rights and resources might be necessary to secure their members' context of choice. In some situations, Kymlicka argues, liberal autonomy requires minority rights. His understanding of impartiality thus allows for specific treatments and his implicit understanding of public reason is open to what is generally taken seen as non-generalisable reasons by liberals (1989; 1995). While the thinner understanding of the generalisation test is compatible with the conception of public reason sketched out here, the thicker one places unnecessary constraints on the democratic principle: the right to speak for oneself in one's own terms.

According to the argument sketched out in this section, the more abstract interpretation and context-sensitive application of impartiality is better adapted to plural societies. Yet, public reasons should not be restricted to utterances that necessarily conform to one of the two interpretations of the moral point of view. Internal reasons play a crucial role in the process of deliberation and there is no meta-perspective available for decanting with precision moral reasons from ethical and pragmatic considerations. In an age in which neither master narratives nor lifeworld certainties can ground social cooperation, public reason becomes this crucial web or relational space in which conflicts can be settled and action-plans coordinated in a peaceful, yet rarely consensual, way. In order to fulfil this role, public reason theories must be open to a wide variety of arguments, perspectives, considerations and forms of speech and its own boundaries, requirements, norms and rules must be worked out by citizens themselves within the limits of constitutional democracy.[98] The give and take of reasons of one's own, expressed in various modes of speech, does not necessarily lead to agreement, but it is likely to sharpen our capacity to listen to alternative reasons, to denaturalise our

[98] Van den Brink's conception of public reason seems to overlap with the one sketched out here (See 2000: 57; 2001).

perspectives, to overcome prejudices and too understand the underlying rationale which underwrites a given decision (even if we disagree with the decision in question). In so doing, citizens, granted that they do not end up on the losing side on every single issue, develop a diffused sense of identification to the polity, to its institutions and to the game of democratic citizenship itself.

Summary

As announced in Chapter Three, I used Rawls' and Habermas' attempts to think human forms of social cooperation in a post-metaphysical context as objects of comparison and contrast in order to lay down an alternative approach to democracy and civic integration. Habermas and Rawls, I implicitly suggested, infer too much, both philosophically and politically, from the pre-discursive realms of linguistic interaction and shared background principles. These spheres, reconstructed from human practice rather than transcendentally deducted, would be insulated from pluralism and disagreement and could therefore serve for the regulation of social interaction. These reconstructive approaches contain two basic assumptions. First, universal or generalisable norms and principles can be reconstructed from these pre-discursive spheres of human life. Although I did not formally attempt to invalidate these arguments, I remained sceptic concerning their validity. Could it be possible that liberal-democratic political cultures contain different, even perhaps contradictory, norms and principles? Does linguistic interaction really is the spring of normativity Habermas thinks it is? Is there room for reasonable disagreement about these norms and principles extracted from these sources? As I remained sceptical, my argument did not hinge on the validity of the assumption common to Rawls and Habermas. I have been more strictly preoccupied with their corollary assumption: these norms and principles can cut through the messy circumstances of politics (such as reasonable disagreement and the persistence of asymmetrical power relations) and secure justice and integration in diverse societies. My contention is that there is a gap, a

missing link in the passage from their theoretical reconstruction to political community under conditions of diversity. As a result, their position fails both descriptively and normatively. First, a proper description of democracy must address and incorporate the omnipresence of reasonable disagreement, unequal power relations and 'real time' factors.[99] Second, their constraining conception of public reason and the consensual orientation embedded in their theory debilitate dissenting citizens' and minorities' capacity to challenge the prevailing structures of recognition and governance. The importation of a stable background, not itself put up for grabs, limit their engagement with pluralism and the democratic ethos. Rawls and Habermas would thus somehow occupy the position of the urban atheists discussed in Chapter One. In virtue of their commitment to post-metaphysical political philosophy, both accept the death of God (via their commitment to pluralism), but yet fail to recognise the depth of the challenge posed by this event. Their failure lies in their attempt to erect some post-metaphysical principles of authority immune from reasonable disagreement and in their incapacity to dissociate social integration and political stability from the consensualist horizon of social harmony. What we need, I have argued, is a processual understanding of democratic citizenship according to which citizens engage in political contests within and over the terms of political association and, in so doing, simultaneously actualise and increase their political freedom.

[99] This a more serious problem for Habermas than Rawls. While Habermas claims that his theory stands at the junction of facts and norms, Rawls seems to operate more strictly within the realm of ideal philosophy.

Conclusion to Section One

Breaking with the Social Harmony Tradition:

Social Integration under Conditions of Disagreement

The central question of political philosophy has been, and continues to be, the question of political community. From Plato to the present, political philosophers have reflected on the conditions of the possibility of human co-existence and social cooperation. Many have explored how societies composed of citizens upholding diverging interests and values could nevertheless be stable and self-reproducing. The canon in political philosophy offers a variety of answers to this question and, for the most part, these answers can be gathered under the master-category of *social harmony* (Hampshire 2000: 22; van den Brink: unpublished-b). Although it would necessitate a full thesis to detail this bold assertion, a few examples suffice to demonstrate its plausibility. In Plato's idea of a "united" republic, every member fulfils the role that best matches his or her natural abilities and each consents not to impede the functions and prerogatives of others. For Augustine, the terms of human co-existence were not controversial insofar as they were imported from the heavens above rather than drawn from worldly debates.

The same logic of harmony informs social contract theory. For Hobbes, the chaotic state of nature induced by human beings' natural inclination towards self-preservation and egoism could only be overcome by granting absolute authority to the Sovereign, while for Rousseau, in a more republican fashion, the individual will must conform to the general will. In the wake of the Thirty Years' War, Leibniz thought that Reason could extract shared

beliefs from opposite bodies of doctrine and lay the foundations for a universal religious language that would unite Europeans across their theological divergences. This politics of concord, or consensual logic, also pervades Hegel's philosophy of right and Marx's historical materialism. Hegel's conception of ethical life (*Sittlichkeit*) and Marx's revolutionary socialism were both meant to lead to the reconciliation of society with itself. Finally, for the early Rawls, his comprehensive "justice as fairness" theory could in principle secure justice and, *a fortiori*, stability in all liberal societies.

The civic humanist tradition presents a more robust vision of politics, according to which rhetorical confrontations and vigorous debates were the necessary ingredients of a vibrant and virtuous political culture. This tradition, associated with the Greek agora and the Roman and Renaissance praise for civic participation, spread the seeds of a deliberative and agonistic conception of democracy. The insights that we draw from that perspective are nonetheless limited, as a power politics along Machiavellian lines can hardly be considered, under contemporary conditions, as a legitimate means to foster cooperation; moreover, most republican thinkers in the canon are attached to strong notions of the common good. It is perhaps to Nietzsche, better known for his thoughts on truth and morality, to whom we should turn for both a critique of the social harmony tradition and for a new way of conceiving political community. As suggested in Chapter Two, Nietzsche's reflections on the value of argumentation, struggle, contest, competition and disagreement are useful for a non-consensual approach to democratic politics.[100] Affirming an agonistic mode of being with others should be the form, I want to propose, of our political *amor fati*.

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[100] Despite the fact that Nietzsche never missed an occasion to express his scorn for democratic politics, Connolly (1993a; 1997), Owen (1995) and Hatab (1995) have all argued that his thought contains useful insights for thinking about democratic politics. In GM 2: 12, Nietzsche writes that a sovereign juridical order should be seen as a field of struggles rather than as a means to eradicate conflicts.

For reasons that I will try to systematise in this conclusion, belonging and social integration must now be disentangled from the expectation of social harmony. Several contemporary political philosophers continue to operate within the social harmony tradition. As argued in Chapter Three and Four, Habermas and Rawls, despite their engagement with postmetaphysical thinking and pluralism, remain captivated by the social harmony picture. For communitarian thinkers, the shared background of a rather homogenous community is a precondition for leading a meaningful individual and collective life. In a distinct but related manner, liberal nationalists believe that a stable political community must be grounded in a shared national identity. This thesis, defended by John Stuart Mill (who thought that the institutions of representative government could not endure in a country made of different nationalities) and recently rearticulated by David Miller (1995), Yael Tamir (1993) and Will Kymlicka (1995), stipulates that a shared sense of belonging in a national identity is a precondition for trust, solidarity, civic participation and lasting liberal institutions.[101] For liberal nationalists, the participation in a national form of life that constitutes the necessary background against which democratic citizenship can be exercised and social justice sustained.

I have argued in Chapter 4 that agreement over both the basic terms of political association and the boundaries of public reason are not to be expected. Democratic politics occurs in conditions of "groundlessness;" that is, when the validity of a norm or the validity of a subset of norms concerning social regulation are put into question (Warren 1996a: 244). Arguments for reestablishing a form of authority, drawn from either an external point of view or from the realm of human practice, are controversial and debatable. For a variety of reasons—such as the essential contestability of some political terms, reasonable pluralism of worldviews and of schemes of interpretation, the faculty of judgment's limited and fallible

[101] See Mason's critical assessment of the liberal nationalists' chain of arguments (1999).

character, the persistence of unequal power relationships and real-time constraints—consensual agreement over procedures and substance are scarce and, at best, provisional. Moreover, as I address in Chapter 5, agreements over the substance and contours of national identity are equally scarce and cannot be seen as the conditions of stability and social cooperation in multicultural and multinational societies.

This is not to say that citizens systematically disagree with each other and that there is no possibility of tacit or explicit agreement. On the contrary, it is useful to extend Wittgenstein and Heidegger's similar point about the forms of pre-reflexive agreement that make explicit understanding possible to the reflexive dialogues over the terms of social cooperation. Both argued that our capacity to live with others, to grasp new signs and to cope with the contingencies of everyday life are predicated upon a set of interconnected judgements that are internalised by virtue of being-in-the-world in the presence of others. An enabling background or a background agreement in a form of life would thus set the stage for social cooperation.[102] From that perspective, more specific political discussions on the terms of togetherness would be projected against the shadow of implicit agreements stemming from the experience of living with others. For instance, most citizens tacitly agree that disagreements and conflicts ought to be resolved politically—that is, peacefully and according to variable understandings of civility—rather than violently. The idea that disagreement goes all the way down does not mean that disagreement is integral or that there is no common ground on which political discussion can be staged. Rather, disagreement goes all the way down because the consensual resolution of a disagreement between conscientious persons over a politically relevant issue is not to be expected. The fact of reasonable pluralism and the

[102] See Mulhall (1990) and Taylor (1995) for the parallel between Heidegger and Wittgenstein, and Dreyfus (1991) for an effective explicitation of this aspect of Heidegger's thought. This variety of knowledge could also be tied back to what the Greeks called *metis*, i.e. a pre-linguistic form of knowledge close to what we call "knack" or "wit" and which stands in the background of more explicit forms of knowledge such as *phronesis*, *techne* and *episteme* (Toulmin 2001: 178-184).

burdens of judgement corrode citizens' capacity to reach agreement, regardless of the fact that a political discussion targets the background principles that are latent in political culture, action-coordination plans, moral conflicts, rules and procedures of public deliberation or constitutional essentials.

In some circumstances, lifeworld consensus can lose its unproblematic and action-guiding character and instead become a source of political disagreement. Shared background norms and conventions can engender disagreement as soon as they are invoked as principles of legitimacy and authority. To go back to the example of civility just mentioned, when public deliberation goes around in circles and certain participants are dragging their feet, the terms and requirements of civility can be foregrounded and, in circumstances of deep disagreement and deadlock, the requirement of civility itself can even be dropped. It is not the case, however, that prevailing conventions can be challenged all at once. Any particular dispute has a foothold in unquestioned conventions. As Tully indicates, political discussions over the legitimacy and appropriateness of a subset of principles, rules and procedures must proceed (upon the pain of infinite regress) in accordance with some principles, rules and procedures that are not themselves problematized in the course of the discussion (2002b: 208).

This deflationary understanding specifies what the "all the way down" argument entails; we are nonetheless still left with the problem of retrieving the sources of social integration given conditions of non-harmony. Cooperation and stability, I argued, do not depend upon a rational or overlapping consensus that comes from a form of public rationality, nor do cooperation and stability stem from a uniform (or even a differentiated) set of rights and duties. Nor do they rest on a common interpretation of national identity, nor on the affirmation of shared values, and nor on a politics of the common good. As the specific case of aboriginal politics in Chapter 7 shows, debates on these matters are ongoing and rarely consensually resolved. What citizens share and identify with, as I suggested in Chapter 4, is

the very activity of debating both the rules and the substance of their association and the character of their identity.

Before going into more detail on this point, I want to introduce a basic phenomenological remark on the source of social cooperation. In virtue of the contingencies of history, people and peoples inhabit territories with those whom they must, as Kant put it, "unavoidably live side by side". Finding modes of co-existence with others is not an option, but a practical necessity. As a result of this practical necessity, embedded citizens interact with diverse others—diverse in terms of ethnicity, language, religion, generation, sexuality, class, life-style and so on—and develop, in doing so, the practical skills and implicit understanding necessary to live with difference. Daily life is filled with random contacts in the street, at work, in the bus or at the café, and is regulated by informal codes and patterns of interaction that can only be decrypted through practice. As we will see in Chapter 5, these moments of contact and mediation are greatly smoothed by those individuals who, being both women and immigrant, Muslim and working-class, young and gay, or bilingual in multilingual settings, can make the junction between communities. The fact that we are rarely dealing with well-bounded and hermetic communities facilitates mutual understanding and toleration. The praxis of everyday life fabricates a culture of interaction and a certain degree of mutual understanding and toleration, and it should consequently be seen as an important source of stability and cooperation in complex societies; a source often neglected by political philosophers who are naturally more concerned with specifically political matters.

This is not to say that daily co-existence is always smooth and harmonious. Quite the opposite. Benign avoidance, misunderstanding and conflict are also part of these everyday life encounters.[103] Since intercultural dialogue is often difficult and only partially successful, it

[103] And as Pierre Bourdieu has shown, social deprivation and the ensuing promiscuity produce and nurture everyday tensions and conflicts (1993: 19-49).

should not be assessed against the backdrop of an ideal speech situation. The point I wish to make is that the culture and praxis of living together fosters practical skills and dispositions, which must be situated below the level of tacit discursive agreements, but that can nevertheless be used and further developed in hard political discussions.

I argued in Chapter 4 that is it doubtful that one cannot derive from the presuppositions of communicative action and from a given political culture an authoritative procedure that can resolve moral disagreement and secure social integration. Accordingly, I am not suggesting that we can infer schemes of social cooperation that are capable of ensuring stability in divided societies solely from a phenomenology of everyday life. Rather, a self-reproducing society needs a political space in which disagreements can be dealt with and plans of action coordinated. Daily interactions can at best provide over time a (solid or fragile) background for public deliberation but they are not self-sufficient sources of stability and cooperation. Social integration does not depend on consensual agreement over controversial political issues, but more fundamentally on the continuous activity of reworking the political community (Tully 1999a: 171). Agreement over basic rights, constitutional essentials, conflict resolution procedures, conceptions of the common good and over the substance of a shared identity can facilitate and consolidate social cooperation and stability, but it cannot be considered as sine qua non preconditions.

The process of exchanging reasons and visions with others not only spurs the capacity to develop a reflexive stance towards our own judgements and likewise to see the association from a plurality of perspectives but, as a by-product, the process also cultivates a thin or second-order form of belonging that can withstand periodic disagreements on substantive or procedural matters.[104] It is a "thin" and "second-order" sentiment of belonging because it is

[104] In addition, the ongoing democratic renovation of the political space can contribute to the making of a collective civic memory—a memory of the things done together—among citizens (Bouchard 2001: 35). In

engendered by means of and as a result of participation (*en passant*, so to speak). While more substantial forms of identification with either a shared national identity or with the founding principles of the political community tend to be reflexively articulated and publicly affirmed, this thinner allegiance stays in the background and discloses itself through unnoticed actions and decisions, i.e., the public, as opposed to violent, expression of discontent; the willingness, in spite of frustration and enduring disagreement, to persist with the game of argumentation; and when compromises are in reach, the acquiescence to water down one's wine. The bonds created through participation are also "thin" because they can be severed by repeated setbacks or by permanent bias in the procedure of public deliberation. When minorities and dissenters cannot effectively partake in the game or when the rules of the game are biased against them, they regroup in other loci of opinion- and will-formation and imagine ways of either transforming or destabilizing the wider political community.

Social integration under circumstances of pluralism and disagreement, as the argument goes, would thus lie in the ongoing possibility of challenging prevailing decisions and political stabilizations. Citizens who disagree with each other or with public officials can still identify with the community insofar as they can voice their dissent and initiate new rounds of public deliberation. Civic bonds are weakened most severely when dissenting citizens' capacity to contest controversial resolutions is blocked and when they feel it is no longer worthwhile to struggle for the reform of the polity's institutions, norms, laws and public policies. Being on the losing side of a particularly intense battle obviously undermines one's allegiance to the community, but the overall stability of the regime is preserved when the game goes on. Social integration, understood as the threshold of stability and cooperation

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contradistinction to nationalist historiographies, this process does not depend on the destruction of distinct histories and competing interpretations of the same history.

required for ensuring peaceful co-existence and social efficiency, rests on the processual and game-like character of democratic politics.

Decision-making is an unavoidable moment of politics, but a moment that almost always produces exclusion and injustice. Dissenters can still confer legitimacy on the political process if they are able to express their internal and generalizable reasons, if they have listened to the reasons and stories of others, if they are in a position to initiate a second-order discussion on the procedures of public reason when needed, and finally, if they have good reasons to believe that they will be able to repatriate the resolution back to the moment of deliberation when new evidence proves that their position is correct. When these demanding conditions are respected, the broader political or civic identity of dissenters can withstand the shock of outrage and disappointment caused by periodic defeats. It is precisely on the basis of that identity that they will get to initiate new public challenges (Tully 2000a). In short, the legitimacy of, and identification with, a regime of citizenship depends upon a complex and non-ideal framework of agonistic public deliberation.

In a partly related way, Daniel Weinstock criticizes republican, (liberal) nationalist and constitutional patriotic visions of social unity on the basis that they all entail agreement between citizens over either the common good, national identity or abstract values and principles. He argues that "trust," as a default attitude between citizens who do not share "thick" bonds, is what can potentially hold divided societies together when disagreement is pervasive and wide-ranging. As he puts it, "whereas these latter [positions] require that values, ends and/or identities be shared by citizens, trust does not. It is thus perhaps more useful as an account of what holds already existing societies together when crises occur which imperil these "thicker" components of social cement" (1999: 297). I agree with Weinstock, but want to add that (1) the generation, maintenance and expansion of relations of trust need

to be more closely tied to the activity of citizenship—i.e. to the practice of debating and reworking the terms of togetherness—, and (2) that relations of thrust themselves might fray under the pressure of massive disagreement. When that happens, the openness of the political process alone can potentially regenerates, through time, relations of trust between opposed citizens.

If we look at democratic citizenship itself to locate the sources of civic integration, what hinders or unduly constrains the possibility of challenging prevailing norms, rules and policies must also be seen as endangering stability and social cooperation. We saw in Chapters 3 and 4 that one of Rawls and Habermas' moves in the justification of their conception of public reason consists in tying stability to consensual agreement over constitutional essentials and moral-legal problems. As I have argued, however, stability depends more fundamentally on the activity (participation) than on the results (agreements), and the fixation on consensus, which can always be seen by some as domination and exclusion, blocks participation and prevents the development of a second-order sense of belonging. Postmetaphysical conceptions of social integration, as defended by Rawls, Habermas and the other theorists who belong to the social harmony tradition, lack an "activity-oriented" dimension and contain propositions that hinder the emergence of a thin form of belonging. It is, however, precisely these thin civic bonds that are the last safety nets we have when agreements over rules, goods and identity snap. Furthermore, if we are to think about those cosmopolitan modes of governance that are to deal with the transnational character of our most serious contemporary problems, we have to explore sources of identification, trust and solidarity that can potentially cut across different cultural, national, political and constitutional traditions.[105]

[105] The argument on the sources of social cement canvassed here primarily applies to political communities characterised by cultural and ethical pluralism, and consequently demands a specific treatment in the context of

To be sure, the point being made here is not that civic participation and public deliberation can secure stability in every context. As the examples of Northern Ireland and Israel testify, political dialogue is fragile and often unsuccessful in the absence of a historical background of daily interaction and cooperation. Furthermore, political discussions repeatedly blocked by stalemates and failures can backfire and generate frustration and violence. Speech, in other words, does not always engender peace and cooperation. As Locke argued, stability can rarely be sustained, in the long run, through the denial of freedom. Nonetheless, this does not invalidate my point.[106] Violence erupts where public deliberation is either absent or fake or biased in favour of the status quo, while stability can only slowly re-emerge as political talk gets back on track.[107] On the route back to peace and stability, political settlements are no doubt of paramount importance, but (1) they tend stem from hard compromises rather than consensus and (2) they cannot by themselves establish or re-establish cooperation (think of the Oslo and Belfast Agreements). Disagreements over the interpretation of some elements of the agreement will undoubtedly emerge, while the implementation of other elements will produce unforeseen consequences that call for further deliberations (O'Neill 2001: 223). In the long run, then, the stability of a community torn apart by violence hinges on an ethics of

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multinational frameworks of governance in which different regimes of citizenship—which need not be thought as nation-states—interact. Political deliberation in such contexts is for the most part channelled through the elected governments of each political community. The case of Belgium seems to indicate that the weakening of country-wide channels of democratic deliberation, accompanying the devolution of power to the communities, watered down the civic ties between people from Flanders, Wallonie and Brussels. Commenting on the lack of intergovernmental institutions that afflict the Belgian federation, Dimitrios Karmis and Alain-G. Gagnon write that "the Belgian political space has been gradually replaced by a multiplicity of increasingly fragmented federate spaces. In such a case, there is not only a decrease in the number of opportunities to act together. The capacity and the very will to act together are also damaged, and this affects intercultural solidarity in the first place" (2001: 169-170). Their point is not that the successive constitutional reforms that consolidated the autonomy of the communities were in themselves bad, but rather that this process should have been paralleled by a strengthening of the democratic dialogue between the parts of the whole.

[106] The type of situation just introduced is much more demanding for political philosophy. The bulk of contemporary political philosophy is concerned with the possibility of collective action and social coordination in conditions of civility and reasonable disagreement. The continuation of politics through other means—the recourse to violence—does not seem to invalidate my argument, but does necessitate a distinct analysis.

[107] This explains why extremists have frequently recourse to terrorist actions at the very moment where the parties resume with negotiation and where the possibility of peace reappears on the horizon.

dialogue which enables citizens to *talk* about disagreements and to resolve them peacefully. In Northern Ireland for instance, peace depends more on the political process ensuing from the Belfast Agreement than on the Agreement itself. Hence, the exemplary importance of the civic forum that must display and perform peace on a daily basis (Bell, forthcoming).[108]

[108] The civic forum is composed of course of Catholics and Protestants, but also of dissenters on both sides who are still contesting the legitimacy of the Belfast Agreement.

Section 2

Democracy and Cultural Diversity

Chapter 5

Cultural Diversity in Political Philosophy

1. The Respect of Cultural Diversity: a New Norm of Legitimacy

I argued in Chapter Four that democracy and constitutionalism should be seen as the two basic and equiprimordial principles of modern politics. In a constitutional-democratic regime, people must impose on themselves the rules they choose to abide by, but this act of collective self-determination is itself made possible by the safeguard of those basic individual rights that enable public participation. Political legitimacy thus rests on the difficult maintenance of a creative tension between democracy and constitutionalism. However, something has changed since modern political philosophers conceptualised these basic principles. From Rousseau to Rawls, the demos owning the power of self-determination was thought to be culturally homogenous. The nation, the locus of sovereignty, was seen as a unifying identity space. The modern state provided the disciplinary apparatus for carrying out this process of homogenisation. If Marx observed that class divisions were challenging modern political theory's picture of "the people," he nonetheless considered cultural differences to be largely irrelevant or secondary. The equation modern political theorists were working with thus included culturally homogenous and self-governing peoples on the one hand and individuals entitled to fundamental rights on the other.

The contemporary awareness and affirmation of cultural diversity troubles this equation. The recognition of cultural diversity highlights the lines and shades of differences within "the people" and therefore puts into question the very possibility of achieving a truly "general will." Political theory thus had, and still has, to learn how to think with a culturally differentiated conception of the demos. This concern for cultural diversity also alters the way we think about the rule of law. The rule of law, which became tied up with the safeguard of individual rights, is often powerless in situations where a cultural minority suffers the abuses of a democratic majority. If minorities can on some occasions invoke individualistic arguments for receiving legal protection (as when, for example, the members a religious minority receive protection on the basis of the freedom of conscience), the rule of law can also debunk claims for special collective rights made by minorities. By definition, collective rights target specific subgroups within "the people," challenge the symmetric conception of equality and therefore potentially encroach on state neutrality. Moreover, devolving political autonomy and collective rights can be opposed on the basis of the rule of law, as devolution can potentially lead to the infringement of individual rights. The rule of law, then, in its entrenched liberal understanding, is in many contexts incapable of counter-powering the tyranny of the majority in relation to minority groups and can even contribute to their exclusion or domination.

Minorities thus have to struggle for the re-interpretation, rather than the dismissal, of the democracy and rule of law principles. These struggles are by no means new. The women's movement, which can be seen as an early instance of what is now called "identity politics," dates back to the 19th century. The European nationalities movement, epitomized by the 1848 "Springs of Peoples", and the multifold anticolonial movement of the 1960s in Africa also have some points in common with contemporary struggles for the respect of cultural diversity (Kiss 1999: 193). The resistance against assimilation of minority nations such as Quebec,

Scotland, the Basque Countries and Catalonia, and of aboriginal peoples, went on steadfastly, with more or less success, during the 19th and 20th centuries. However, political struggles at least partially anchored in identity claims have gained in saliency and intensity since the 1960s. The proclivity to reduce (both in theory and in practice) all politically relevant struggles to class politics became increasingly contested as new social movements and minority groups imposed themselves in the public sphere by pressing issues related to gender, sexuality, ethnicity, language, physical and intellectual capacities and so forth.[109] "Nowadays," as Foucault wrote in 1982, "the struggle against the forms of subjection—against the submission of subjectivity—is becoming more and more important, even though the struggles against forms of domination and exploitation have not disappeared. Quite the contrary" (1983: 213). What we have now is not a situation in which distributive justice has become irrelevant, but a political scene in which a variety of concerns intersect. The civil rights movement in the 1960s is a case in point of this intertwinement of struggles for equality in terms of recognition and redistribution.

Other factors also contributed to this politicisation of identity. The critique of Eurocentrism (the presumed identity between civilisation and European values and the derived mental habitus of judging other cultures through the prism of these values) and the critique of colonialism prompted the demise of the progress-through-assimilation view. The assimilation model for dealing with minority cultures within or with "exotic" cultures abroad now lacks the metaphysical underpinning formerly provided by Enlightenment conceptions of

[109] As Laclau and Mouffe sum up in their classic analysis of socialist discourse: "what is now in crisis is a whole conception of socialism which rests upon the ontological centrality of the working class, upon the role of the Revolution, with a capital 'r', as the founding moment in the transition from one type of society to another, and upon the illusory prospect of a perfectly unitary and homogeneous collective will that will render pointless the moment of politics. The plural and multifarious character of contemporary struggles has finally dissolved the last foundation for that political imaginary" (1985: 2).

Reason and Progress. Struggles for the recognition of marginalized or suppressed identities gained in strength as respect for cultural diversity imposed itself as a new norm of legitimacy.

Moreover, the intensification of international migration since 1945 forces people of different cultural backgrounds to find ways of sharing the same physical and political space. The respect of diversity norm provides immigrants and refugees in multicultural cities with a background justification for the symbolic and political recognition of their distinct status. As a result, most states around the world have to wrestle with the difficulty of harmonising the demands of equality, freedom, justice, stability, and social cohesion with respect for difference. To name but a few, countries such as Canada, the United States, Mexico, Colombia, Britain, Belgium, Spain, France, Germany, Turkey, Bosnia, Russia and the former Soviet republics, Rwanda, South Africa, India, Sri Lanka, China, Indonesia, New Zealand and Australia are all confronted with bewildering political problems related to management of the unity-diversity tension.

Political philosophers, in turn, face an array of new challenges. Cultural differences, intersecting with gender, sexual, class, generational and religious differences, complicate the notions they were accustomed to working with: "the people," self-determination, common good, equality, freedom, constitutionalism, the rule of law and so on. In political philosophy, current discussions around cultural diversity and minority rights emerged from the debates over the predominance of liberalism in theory and in practice. The theorists of difference recuperated and pushed further the communitarian and feminist critiques of liberal notions of impartiality, state neutrality and public reason, while simultaneously criticising communitarianism's rather hermetic conception of community.[110]

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[110] The rise of cultural diversity as a politically and legally salient issue is also reflected in the recent development of international law. While human rights were understandably the focus of international law after 1945, increasing attention is now paid to the rights of cultural and national minorities and of indigenous peoples. I'm thinking here, for instance, of the Draft Declaration on the Rights of Indigenous Peoples, the Framework

Several political philosophers have approached the questions of minority rights and of the respect for diversity from a normative and analytical perspective.[111] The debates over multiculturalism have so far been dominated by the issue of *justice* (Kymlicka 2001a: 169). Questions such as "are minority rights morally permissible?", "are group rights justifiable from within a liberal ontology?", "to which types of rights are specific minorities entitled?", "what are the terms of a multicultural theory of justice?", "is nationalism compatible with liberalism?", "what can a liberal state demands from immigrants and what is a just framework of civic integration?", "is liberalism a context transcending framework or a culturally imbued and a residually imperialist doctrine inimical to cultural diversity?", are heatedly debated in political philosophy since the early 1990s.

Needless to say that these normative and analytical discussions have greatly increased our understanding of the problems raised by the new way of seeing cultural diversity. Normative theory, as an approach to political philosophy, nevertheless raises difficult problems. A successful normative theory claims to have arrived to the criteria that can enable rational and reasonable persons to discriminate the just from the unjust. These theories are most problematic when their justification is based on controversial metaphysical doctrines. As we saw in Chapter One, the death of God is best understood as the problematisation and decline of this kind of authority. But normative theory does not need to be transcendental in a strong sense. In fact, most contemporary normative theories are based on immanent and logical arguments. Yet, as Habermas asked Rawls in their exchange, what are the status of the prescriptions pronounced by philosophers (1995)? The erosion of the transcendental markers of certainty refers the edification of norms and laws to the exchange of pros and cons between

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Convention on the Rights of National Minorities, and of the European Charter for Regional or Minority Languages.

[111] As Kymlicka puts it squarely: "as political philosophers, we are interested in the normative issues raised by such minority rights" (2001a: 159).

embedded and embodied subjects in the public sphere. This does not mean that the philosopher must renounce the idea of arriving at the "right" answer with regards to moral and political questions (Mason 1993), but that her voice will be one among many in the public confrontation of perspectives. I will discuss some of the strengths and weaknesses of normative political philosophy through an engagement with Kymlicka's work in section 5 of this chapter.

Others have focused their attention on the civic or democratic dimension of multiculturalism. In a normative and political context in which majorities can less easily impose their customs and ways on minorities, some have started to reflect on the requirements of a truly multicultural democracy.[112] These reflections revolved around the forms of political struggle available to minorities for challenging allegedly discriminating norms, laws or practices, and likewise around the conditions of the possibility of intercultural dialogue and post-imperial political culture. It is mainly to this discussion that I wish to contribute (see section 4 and Chapter 6).

The respect for cultural diversity puts another complexion on the task of thinking a form of public reasoning attuned to the demands of our time. As we have seen, getting citizens to agree on the norms of social cooperation is thwarted by the fact that there can be reasonable disagreement on what constitutes a legitimate form of authority. Not only does the pluralism of values, schemes of interpretation and interests increase the possibility of miscommunication and misunderstanding between citizens—this distortion can often but not always be reduced through public deliberation— but the "essential contestedness" of several political terms makes genuine and reasonable disagreement on the meaning and application of

[112] While some philosophers such as Kymlicka (1995), Carens (2000) and Barry (2000) devoted most of their energy to the normative questions raised by multiculturalism, Tully (1995, 2002d) and Connolly (1995, 1999), among others, focused more exclusively on the democratic aspect. Others must be situated somewhere in the middle (Young 1990, 2000; Parekh 2000; Laden 2001).

notions such as "equality," "justice," "freedom" and so on, more common. Cultural diversity also complicates the pictures of democracy and public reason presented in Chapter 4 because it represents another potential source of political disagreement. Cultural diversity often overlaps with and heightens ethical pluralism. This entanglement increases the intractability of some political disagreements. Schemes of social cooperation and action-coordination plans are therefore generally more laboriously elaborated in conditions of cultural diversity. The respect for difference norm of legitimacy demands that institutions be designed, power shared and narratives of identity told in ways that strike a balance between the legitimate expectations of both majority and minority cultures. In Chapter 6, I examine whether the challenge of multicultural democracy gives us further reasons for opting for a more agonistic conception of democracy, and for a plural and decompartmentalized notion of public reason such as the one sketched out in Chapter 4. In turn, this will give me the chance to test the "stability through agonistic deliberation" hypothesis presented in Chapter 4 and in the Conclusion to Section One.

Before doing so, I must first clarify the concepts of "identity", "culture", "belonging", "nations" and "identity politics" as they will frequently be evoked throughout the next three chapters (sections 2-4). This preliminary step of conceptual clarification is often left to anthropologists and other social scientists by political philosophers. This step is however required by the approach to political philosophy that guides me through these topics, as it concentrates mainly on getting an appropriate description of the challenges set up by cultural diversity to democratic and liberal politics. In so doing, it attempts to sketch out ways political philosophy can contribute to the removal of some of the contemporary obstacles to freedom, justice and social cooperation.[113] Approached from this perspective, the activity of political

[113] This approach is thus not purely descriptive (Tully 2002a: 534). As Stephan White demonstrates, it is dubious that any approach can and should be free of any normativity (2000).

philosophy does not aim so much as producing new theories, but "gets its light" and "finds its purpose" from the politico-philosophical problems posed by the introduction of the respect of reasonable cultural diversity norm into our political map (Wittgenstein 1953 : par. 109). A contrast with Kymlicka's theory in section 5 enables me to put some aspects of this approach into relief.

2. Identity and Belonging

Understanding "identity politics" and the struggles for recognition of excluded or suppressed identities requires a proper description of the concept of identity itself; the way identity is conceived has an impact on the way in which the introduction of identity-related matters in the public realm is assessed. I understand identity as a multifaceted form of self-awareness and self-description based on ascriptive and subjective characteristics such as gender, sexuality, ethnicity, nationality, language, class belonging, lifestyle and so on. The process of identity formation is relational or dialogical, in the sense that it involves interaction with others in a cluster of contexts of interlocution, and it comprises an irreducibly hermeneutical dimension (Taylor 1989: 25-53). As I don't need for my purposes to go too deeply into ontological reflections on the role played by intersubjective relationships of recognition in the unfolding of personal identity (Taylor 1994; Honneth 1995) or played by cultural belonging in the development of autonomy (Kymlicka 1989; 1995), it is sufficient for my purposes to note that people belong to various meaning-giving communities which supply them with means for the cultivation of practical wisdom and ethical confidence.

When this process of transmission is successful, the practical wisdom and ethical confidence gained through the participation in a form of life anchor one's relationship to the world and to others. Belonging thus provides principles of judgement and patterns of cross-references (interpreted, evaluated and taken up differently by each) that enable people to orient and conduct themselves in a variety of practical contexts. An identity is therefore not

only a form of self-awareness; it is also a process of ethical self-formation (Foucault 1984). "My identity", Taylor elaborates, "is defined by the commitments and identifications which provide the frame or horizon within which I can try to determine from case to case what is good, or valuable, or what ought to be done, or what I endorse or oppose. In other words, it is the horizon within which I am capable of taking a stand" (1989: 27).[114]

Finally, the notion of identity is relational in another sense: it necessarily adverts to the different, the non-X, i.e. to those who do not share *that* identity. There are, as we will see below, a variety of ways of conceiving the self-other relationships.[115]

Belonging becomes a political issue when members of a community feel that they are treated unfairly *qua* their membership to a particular community. Political contestation usually peaks when this felt inequity of treatment is said to thwart the community's further development or even survival. Before moving to the political struggles based on identity claims, we need to elucidate what is involved in belonging to a community. We know that for some leaders and political entrepreneurs, 'authentic' or 'true' belonging requires that absolute priority is given to the community, that the hegemonic narrative of identity and stories about the past are endorsed, and that allegiance to a nationalist or patriotic political project is pledged. 'Insiders' can be distinguished from 'outsiders' on the basis of this thick ethic of authenticity. This is the conception of belonging that the critics of identity politics usually zero in on. But this description greatly misrepresents the general economy of belonging. People belong to a plurality of communities. Class, profession, ethnicity, nationality, gender, sexuality, generation, religion and beliefs, political allegiance, lifestyle are all potential loci of

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[114] In Christine Koorsgaard's terms, this is a "practical identity." As she explains: "the conception of one's identity in question here is not a theoretical one, a view about what as a matter of inescapable scientific fact you are. It is better understood as a description under which you value yourself, a description under which you find your life to be worth living and your actions to be worth undertaking. So I will call this a conception of your practical identity. Practical identity is a complex matter and for the average person there will be a jumble of such conceptions" (1996: 101).

[115] See Tully (2004) for further developments on the notion of identity which underpins "identity politics."

identification and belonging. The axes of collective identification are multiple and communities can be local, regional, national or transnational in character. This multiplicity of more or less chosen and more or less ascribed collective allegiances disrupts organic conceptions of the community, as a community always gathers people sharing some markers while differing on others. Women's movements, to take an example, are segmented by differences of ethnicity, generation, sexuality, spirituality, class and political sensibility (Maillé 2002; Lamoureux 2001). Aboriginal nations in Canada are composed of urban aboriginals and aboriginals living on-reserve, elders and youngsters (who sometimes, because of past assimilative policies, hardly speak the same language, in a literal sense), men and women, traditionalists and non-traditionalists, while the Assembly of First Nations strives to coordinate the demands of over 630 aboriginal communities dispersed on the immense land of Canada.

3. Cultures and Nations

3.1 The Concept of Culture

Cultures, to take the form of belonging that I am primarily interested in here, were once thought of as largely self-enclosed and homogeneous systems of meaning and practices, and thus as incommensurable forms of life. According to Claude Lévi-Strauss, a world genuinely hospitable to cultural diversity must allow for discrete and self-referential cultural entities aware of each other and who borrow from one another on occasion in order to reach new stages of development, but who remain largely aloof from foreign cultural influences in order to preserve their cultural integrity and distinctness (Levi-Strauss 2001; Geertz 2000: 69-72; Wieviorka 2001: 67). To be sure, Levi-Strauss' vision of culture is not by any means essentialist and static, but it is arguably nostalgic. He knows that cultures interact and even need one another for resolving conceptual deadlocks, but he thinks that too much communication and interaction between cultures can only lead to a "coarse" and "puerile"

"bastardisation", to a levelling down of meaningful cultural differences and, as a result, to a dilution of the richness of the world. For Lévi-Strauss, "on ne peut, à la fois, se fonder dans la jouissance de l'autre, s'identifier à lui, et se maintenir différent" (2001: 172). Cultures should consequently strive to maintain a "differential gap" (*écart différentiel*) by exhibiting a certain deafness and blindness towards the outside.

It is not clear to what extent is this picture of either past or present relations between cultures helpful. The travels, explorations, patterns of exchange, forced displacements and wars that have run continuously through history upset the hermetic conceptions of culture (Clifford 1997). As Edward Said has argued, cultures are, partly because of imperialism, entangled, criss-crossing and thus non-monolithic (1994b: xxv). "To ignore or otherwise discount", he writes, "the overlapping experience of Westerners and Orientals, the interdependence of cultural terrains in which colonizer and colonized co-existed and battled each other through projections as well as rival geographies, narratives, and histories, is to miss what is essential about the world in the past century" (*Ibid.*, xx). Moreover, the ongoing exchange of people, money, ideas, values, practices, symbols, technologies and commodities across cultural frontiers characteristic of modernity, currently amplified by the process of globalisation, hammered the last nail in the coffin of the Levi-Straussian image of the world. Cultures cannot be thought of as "wrappers"; they overlap, criss-cross, become similar and remain different to some varying degrees.

The fact of cultural diversity does not only refer to the multiplicity of cultures politically institutionalised in a nation-state or in some other modes of political governance. Difference can no longer be seen as pure exteriority, as that which is extrinsic to identity. The "billiard-ball" conception of cultures does not hold sway under present conditions (Tully 1995: 10). Cultures are permeated by diversity; they are internally heterogeneous. Difference must be seen as both internal and external to identity. "Identities," writes Stuart Hall, "are

constructed through, not outside, difference" (1996: 4). Jacques Derrida directs our attention towards this irreducible trace of alterity lying at the core of identity when he writes that cultural identities are never quite identical to themselves. In Derrida's words:

> *What is proper to a culture is to not be identical to itself.* Not to not have an identity, but not to be able to identify itself, to be able to say "me" or "we"; to be able to take the form of a subject only in the non-identity to itself or, if you prefer, only in the difference *with itself* [*avec soi*]. There is no culture or cultural identity without this difference *with itself.* In this case, self-difference, difference to itself [*différence à soi*], that which differs and diverges from itself, of itself, would also be the *difference (from) with itself* [*différence (d')avec soi*], a difference at once internal and irreducible to the "at home" (with itself) (1992b: 9-10).

This new way of seeing the identity/difference relationship has wide-ranging heuristic and political consequences. Indeed, several studies have shown how the reification of the 'other' is an effective device for producing and consolidating the 'self': the stabilization and preservation of self-integrity is thought to depend on the constant reiteration of an allegedly ontological difference between self and other (Said 1994a; Todorov 1982; Connolly 1991). The spectre of a radically heterogeneous, and therefore threatening, exterior provides the appearance of homogeneity and an incentive for solidarity among the members of the 'we'. This resolution of the identity/difference tension, that we find most famously in Hobbes' *Leviathan*, figures at the core of the realist or sovereigntist vision of international relations (Walker 1993). According to this picture, the modern state ensures stability within its borders through the exercise of absolute authority (territorial sovereignty). As no overarching or cross-cutting form of authority regulates the relations between states, the (mined) field of international relations can at any moment becomes a war of all against wall.

The new concept of identity challenges homogeneous and essentialist interpretations of culture, which assumes that what makes the distinctiveness of a culture can be distilled and

encapsulated. On the contrary, "the identity, and so the meaning, of any culture is [...] aspectival rather than essential: like many complex human phenomena, such as language and games, cultural identity changes as it is approached from different paths and a variety of aspects come into view" (Tully 1995: 11). A culture is shaped and negotiated through interaction between its members and between cultures, and varies depending on the angle from which it is viewed. Belonging, then, does not exclude non-coincidence, disorientation, *dépaysement*. Cultures are complex arrangements of intertwined identity-markers. Differences of gender, sexuality, ethnicity, generation, class, traditions, political allegiance or individual expression can foster perplexity, misunderstanding and disagreement between the members of a culture.

It should be noted however that the recognition of cultural entanglement and of internal diversity propelled the deconstruction of essentialisms, not the dissolution of distinct cultures in the maelstrom of generalised hybridity. The proliferation of points of contact between cultures does not efface their lines of difference. In most cases, as Chapter 7 on aboriginal peoples will testify, cultural change channelled through the appropriation of external influences does not corrode the claim to cultural distinctness. It is now commonplace to note that a strong-willed desire to preserve and promote cultural diversity is opposed to the worldly processes of economic, cultural and, in some contexts, political integration. As Clifford Geertz affirms, "whatever it is that defines identity in borderless capitalism and the global village it is not deep-going agreements on deep-going matters, but something more like the recurrence of familiar divisions, persisting arguments, standing threats, the notion that whatever else may happen, the order of difference must be somehow maintained" (2000: 250).

A culture, in sum, is a multilayered ethical community (it provides meaning and orientation), a polyphonic and dissensual community of conversation, and a continuously

evolving form of collective self-consciousness and self-assertion which need not to be seen as grounded in an immutable essence.[116]

3.2 Nations and Nationalism

The new understanding of culture canvassed here is at odds with the common understanding of nations and nationalism. Modern politics, from the Treaty of Westphalia to late in the 20th Century, worked with the assumption that cultures needed to be nations and that nations needed to be states. Culture was in a way absorbed by the nation. Nationalism, as defined by Ernest Gellner in his classic study, is "the striving to make culture and polity congruent, to endow a culture with its own political roof, and not more than one roof at that" (1983: 43). National cultures strove for homogeneity, as a requirement of modern industrialisation, and nationality imposed itself as the primary locus of identification and allegiance (*Ibid.*: 54, 55). The nation thus acted as an all-encompassing identity and as a unitary subject transcending particularistic identifications. As such, it could provide a cultural base for the exercise of territorial sovereignty. In Craig Calhoun's words, "the nationalist claim is that national identity is categorical and fixed, and that somehow it trumps all other sorts of identities, from gender to region, class to political preference, occupation to artistic taste" (1994: 314; Bhabha 1994: 149). Nationality's prerogative would lie precisely in its capacity to synthesize diverging identifications into an overarching identity. The nation was, with the great

[116] The anthropologist David Scott (2003), in an innovative paper on the concepts of culture used by political theorists, reminds us that this constructivist, "Geertzian" conception of culture should be historicized and critically assessed, rather than taken at face value. While Scott's point is right and timely, the fact that he nonetheless does not want to replace the constructivist and internally differentiated conception of culture by another one suggests that this conception is still the most productive one for anthropologists and political theorists alike. Moreover, one could note that the new anti-essentialist orthodoxy should not prevent us from acknowledging that some values or practices can be legitimately considered by members of a culture as *essential* to their integrity and distinctness. Think of indigenous nations' relation to the land for instance. This does not entail that there cannot be conflicts of interpretation over these practices and values, but that a majority of the members of a given culture believes that, at a certain point in time, their cultural integrity and authenticity is dependent upon such and such characteristics. (And authenticity does not have be thought of as static).

monotheisms, the most efficient system for hierarchising, subsuming or suppressing multiplicity (Balibar 1995; Anderson 1991).

As a result, in the 19th century, "national cultures" were politically institutionalised in a way that was particularly inimical to internal diversity. In France for instance, Bretons, Basques, immigrants from neighbour countries, but also peasants, traders, aristocrats, Catholics and Protestants, were turned into Frenchmen and Frenchwomen. French was adopted as the one official language and gradually replaced the diverse regional languages (Alsatian, Catalan, Flemish, Basque, Occitan, Breton). After the Revolution, France was fragmented into 83 departments which cut across its historical regions and redrew its internal boundaries in order to dissolve existing solidarities and lines of demarcation (Kymlicka and Straehle 1999: 75). As the unification of Italy and Germany in the 19th century also testify, several European nations emerged from the ashes of local differences and intermediary bodies (Thiesse 1999). Nation-building, remark Kymlicka and Straehle, "is almost always connected to minority nation-destroying" (*Ibid.*: 74).

The processes that led to the assimilation of difference are usually covered up in nationalist historiographies. As Renan pointed out, forgetting is just as important as remembering in the life of a nation. National unity and social cohesion, he thought, require the erasure of the chapters of the past that recount the violence of the nations' more turbulent moments. Temporal depth and internal cohesiveness are emphasized to the detriment of the ruptures and discontinuities of the past (Calhoun 1997: 11). When not covered up, the assimilation of difference is justified in the nationalist pedagogy as a sign of modernity and progress (Keating 2001: 76-81).

Nations and nationalism stand in tension with the norm of respect for cultural diversity. Accordingly, the symbolic and political order of the nation is now being challenged in a number of ways. The struggles for recognition and self-determination of minority groups

challenge the nation's homogenizing propensity. As a result, shades of difference within the nation have reappeared. The relation between national identity and internal diversity must be re-appraised, as nations, like cultures, are never quite identical to themselves.[117]

4. Struggles for the Respect and Accommodation of Cultural Diversity

As we saw in section 1.2 of Chapter 4, to exercise power is to steer the thought or actions of others, thus to frame their field of possibilities. However, power and resistance are not mutually exclusive. The attempt to exercise power can be resisted in a multiplicity of ways. When the relations of power are asymmetrical to the point that they constitute a structure of domination, modes of resistance are largely confined to "infrapolitics." Forms of insubordination are infrapolitical when they can only be displayed outside the realm of explicit public contest (Scott 1990).[118] Alternatively, when relations of power and practices of freedom are deployed along more agonistic lines, subordinated groups and individuals have access to an array of means of more direct and open confrontation.

Depending on time and context, cultural groups resisting annihilation or assimilation found themselves somewhere between a sutured structure of domination and an open-ended relation of power. As addressed above, the delegitimation of the assimilation model for coping with cultural difference provides a normative background against which contemporary minority groups can carry out their demands. While Basques, Catalans and Galicians were limited to survival and clandestine insubordination under Franco's regime, they took a foothold in the democratisation of Spain for pushing openly for further decentralization and recognition (Moreno 2001: 214). Aboriginal peoples in America and Oceania opposed to the European colonization of their lands artfully resisted, as far as they could, the ensuing

[117] See Maclure (forthcoming 2003) for such an attempt to rethink the relationship between national identity and diversity.

[118] By "infrapolitics," James Scott wants to designate "a wide variety of low-profile forms of resistance that dare not speak in their own name" (1990: 19). Alexander Solzhenitsyn's (at least partly) autobiographical *One Day in the Life of Ivan Denisovich*, which narrates the survival and hidden resistance of a men sent to the Gulag, is peppered with examples of infrapolitical modes of resistance.

assimilation or marginalization policies (the denial of their prior status as self-governing peoples, tutelage, indirect rule, the heterenomous definition of native status, ghettoization, capitalist development and the exploitation of natural resources on their lands, residential schooling, assimilative liberalism, group rights in exchange of the extinction of ancestral rights). As I will address in Chapter 7, their "arts of resistance" nonetheless expanded as the 20th century drew to a close: the rights of native peoples became a matter of global justice (epitomized by the *draft Declaration on the Rights of Indigenous Peoples*), First Peoples have access to a range of international for a where they can disclose their claims, and they have gained voice and power (despite recurrent setbacks) in countries such as Canada, the United States, Mexico, Norway, Australia and New Zealand. The status of immigrants in developed capitalist countries has also greatly changed since the mid-19th century. Roughly speaking, immigrants, caught in the midst of industrialization and nation-building, were first desired as an indispensable workforce during the early phases of capitalist development, but not welcome as full-fledged members of the emerging nations.[119] During the 20th century, notwithstanding periods of boundary-closing, some categories of immigrants were invited to settle in and assimilate to the host society, while others were segregated and expected to return to their country of origin (Zolberg 2001). As I address in a moment, it is now increasingly accepted that immigrants can negotiate a culturally-sensitive mode of integration which involves both some degree of assimilation and some degree of accommodation of their cultural difference.[120]

The forms of political activity through which internal minorities fight against what they perceive as unfair treatment have been labelled "identity politics" or, more restrictively,

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[119] As an example of this attitude, Max Weber thought that Polish immigration to Germany was good for German capitalism, but bad for German identity (Zolberg 2001).

[120] This is of course a very rough picture of an otherwise highly differentiated phenomena. Modes of incorporation vary from one country to another and according to the origins of the immigrants.

"struggles for recognition". Contemporary identity politics are distinct from the liberation and anticolonial struggles that led to the independence of the United States and the countries of Latin America and Africa. Minority cultures, by definition, do not live in a situation of external colonization. They intermingle with the majority on the same territory or live in adjacent territories. Their goal, as we will see, is rarely full-fledged political independence. Their demands are focused around the accommodation and recognition of their identity-related differences, and can include constitutional recognition, devolution, group-specific rights and redistribution.

4.1 Demands for Civic Integration and Self-Determination

These demands can be gathered under two main categories.[121] The first set of claims targets the conditions of differentiated, diversity-sensitive modes of civic integration. These demands for multicultural citizenship are mainly carried out by immigrants and refugees who wish to integrate with the host community, but without having to assimilate or to express their cultural attributes within the exiguous limits of the private sphere alone. They are claiming what Kymlicka calls "polyethnic rights," that is "group-specific measures [...] intended to help ethnic groups and religious minorities express their cultural particularity and pride without hampering their success in the economic and political institutions of the dominant society" (1995: 31). Generally speaking, immigrants want to learn the common public language and decipher the prevailing cultural idioms, integrate into the job market, entertain harmonious relationships with their neighbours, co-workers and fellow citizens, and recreate networks of sympathy and solidarity. Although some of this can be attainted through assimilation or ghettoization, most will prefer to negotiate a culturally sensitive mode of integration.[122] The

[121] My account is inspired by, but slightly differs from, Kymlicka's and Tully's respective categorizations of the demands for recognition and accommodation of cultural diversity (Kymlicka 1995; Tully 2004).

[122] That said, it must be noted that qualitative research reveals that some first- and second-generation immigrants explicitly reject the very idea of "integration" and refuse to appropriate the identity of the receiving society

achievement of a differentiated integration necessitates the availability of a range of group-specific rights, policies and programs such as: supporting the development of voluntary associations and medias in the immigrants' original language, and of programs for learning original languages for second (and ulterior) generation immigrants, allowing the possibility of displaying religious symbols and practices in allegedly secular public spaces (such as the Muslim headscarf, the Sikh kirpan, the Jewish erouv, the Catholic cross, etc.), making the workplace non-discriminatory and more hospitable to cultural and religious diversity (permitting turban wearing in the police force for instance), accommodating alternative religious calendars, revising official historiography for retrieving the contributions of immigrant communities and to acknowledge both past conflicts and patterns of collaboration between cultural groups, applying charters of right in a diversity-aware manner, supplying a cultural diversity training to teachers, police officers, civil servants, health-care and social workers, increasing the institutions' and electoral system's representativeness, sponsoring regional and lesser-used languages when relevant, and so forth (The Runnymede Trust 2000; Kymlicka 1995; Tully 2004).

A multicultural citizenship also requires less tangible work on the "social imaginary," i.e., on the attitudes, mentalities and collective representations of the host society.[123] This kind of discursive work must be carried out first to combat latent racist thinking ("street-level" racism), but also to challenge essentialist narratives of identity and "thick" ethics of authenticity (Maclure 2003; The Runnymede Trust 2000; Gilroy 2000).

(Labelle 2001). This does not go against the thrust of the argument canvassed here, as this position of withdrawal and refusal is generally conditioned by such factors as symbolic exclusion (members of "racialized" minorities being constantly tied back to their alterity and exteriority), economic deprivation, political exclusion, etc., but it does however complicate the claim that immigrants straightforwardly want to integrate.

[123] It should be noted that "host" societies are themselves, to various degrees, internally diverse. Immigrants tend to settle in already multicultural cities. We are thus not confronted with the encounter between "strange" or "mysterious" migrants and homogeneous cultural milieux. The multicultural and intercultural character of most host societies provides a space of mediation for the integration of new comers.

If, on some occasions, multicultural rights, policies and attitudes can lead to distant cohabitation and relative isolation, as for instance with Hassidic Jews in large metropolitan cities, they generally enable immigrants to familiarize with the variegated ethos of the host community, to participate in its institutions and, in so doing, to partake in its ongoing symbolic and material transformation. Moreover, although this is less discussed in the literature, multiculturalist social pragmatics can also aim to stimulate interculturalism. While state policies can enable the reproduction of some original practices that immigrants wish to retain (multiculturalism), they can also encourage cross-cultural encounters through deliberative fora, festive gatherings, artistic manifestations and other cross-cultural collective endeavours (interculturalism). Contextual explorations are thus necessary to assess the impacts of multicultural rights and policies, as they can foster both distance and compartmentalization, on the one hand, mutual understanding and reciprocal contamination on the other.

Demands of the second type comprise the struggles for self-determination generally carried out by minority nations and aboriginal peoples. As discussed above, colonization and the construction of modern nation-states generally involved the de-structuration of smaller nations. Vindicating the inherent right to self-determination of peoples, formerly colonized or absorbed nations argue that their prior status as self-governing communities entitles them to their own political and legal institutions in some spheres of jurisdiction. As alluded to, these contemporary demands for self-determination are rarely driven by a will to full political independence. For at least three reasons, struggles for political autonomy are being articulated from within a post-Westphalian logic of shared sovereignty. First, the members of a minority nation often hold on to dual national identifications: they can for instance identify more strongly with the smaller political and cultural unit while simultaneously being attached to the larger association. For example, a majority of Scots, Welsh, Catalans, Basques, Quebecers,

and Puerto Ricans rank their Scottish, Welsh, Catalan, Quebec and Puerto Rican identity first, but still want to remain tied to Britain, Spain, Canada and the United States. These dual national identifications, to be sure, overlap with an array of other sources of identification. What is more, minority nations are not culturally monolithic: their own internal minorities might well feel more or equally attached to the larger association (think for instance of the Anglophone community in Quebec). As a consequence of the cultural entanglement discussed in section 2, minority nations must themselves respond to the preoccupations and claims of internal minorities. Political demands must consequently be formulated across multiple loyalties. I will come back to this point in Chapter 6.

Second, some national groups do no have the population and infrastructure necessary to sustain a modern state apparatus. As Gellner, among others, has pointed out there are way too many national groups in the world for a thorough implementation of the nationalist principle ("each nation ought to be endowed with its own state"). Aboriginal populations in North America and Oceania for instance—who were decimated by the wars and epidemics caused by European colonization and later moved to exiguous reserves—mobilize to imagine and negotiate modes of political governance which would respect and actualise their right to self-determination without condemning them to the self-defeating tasks of seceding and nation-building. This is a daunting task, as the balance of power is massively in favour of the Crown and also as aboriginal communities do not always walk at the same pace. But the language of shared sovereignty they speak is neither a heresy nor a last resort; it is in fact much more congruent with traditional aboriginal political thought and practice than the Western notion of sovereignty as it emerged in the 17th century (Alfred 1999: 46-69).

Third, the allegedly natural isomorphism between state and nation is challenged by the mutations associated with globalisation (Nootens 2002). These mutations disrupt the

Hobbesian conception of sovereignty. Although contemporary nation-states are far from impotent, several dynamics now escape their control. Left on its own, a state can do very little to prevent climatic changes, economic crises, international terrorism, mass migration, or to interrupt the transnational flux of money, people, viruses, images, ideas and so forth. International organizations, multinational corporations and transnational civil society movements interact and rival with states on the global political scene. It is now commonplace to note that globalisation provoked, among other things, a compression of time and space. Events occurring somewhere on the globe have deep impacts far away: the access to cheap labour and to suitable infrastructures in China, for instance, can prompt the closing down of *maquiladoras* in Northern Mexico.

What is more, states must also cope with demands for power-sharing coming from within. Minority nations, regions, global cities and localities challenge state paternalism and push for the achievement of a genuine democracy of proximity. As a result of these external and internal pressures, state sovereignty has been relativized and has refocused on certain fiscal, social and security-related missions. Nation states are not vanishing, but sovereignty is now shared, overlapping and dispersed.

As already stressed, minority nations' struggles for self-determination, in the West at least, are at home within this deflationary logic of sovereignty. For all the aforementioned reasons, they do not equate self-rule with the full exercise of sovereignty over a given territory. As Michael Keating suggests, "the new minority nationalisms have a view of sovereignty which is highly attenuated by the recognition of interdependence and the limitations of the nation-state [...] This gives a new meaning both to the idea of the nation and to the nationalist project" (1996: 53; Guibernau 1999; Castells 1997; Dieckhoff 2001). The necessary correlation between the nation and the state, to go back to Gellner's understanding of nationalism, has been ruptured. Minority nations generally strive for constitutional

recognition, devolution, federalization, the respect of their jurisdictions and the application of the norm of mutual consent for altering the agreed-upon share of powers, subsidiarity, the freedom to use their legal tradition and for international representation, rather than for secession and outright independence.[124] Their aim is to have the political means to ensure, as far as possible, the development of their culture and form of society in a context of widespread interdependence, and to negotiate their place in this inchoate post-Westphalian order.[125] Because the dispersion of sovereignty checks the power of central states and creates room for international affirmation of non-fully sovereign nations, minority nations in the West are quick to push for more economic and political integration (Keating 1996).

That said, some non-sovereign nations such as Quebec, Scotland, Flanders, The Basque Country and Catalonia still hold, to varying degrees, the card of secession in hand. This can be explained by the fact that nationalism is not the minorities' prerogative. Majority nations tend to see the claims of minority nations as threats to their unity, integrity and cohesion, and often respond with nation-building policies of their own. This has clearly been the case in Canada since the 1995 close referendum on the future of Quebec (Taylor 1999: 277, Gagnon forthcoming 2003), and there is some evidence that the decentralization process in Spain is being hampered by a "neo-centralist political discourse" currently in vogue in Madrid (Guiberneau forthcoming 2003). The option of secession is thus thought to give some leverage to minority nations in their negotiations with central governments and constitutes a

[124] See the articles gathered in Gagnon and Tully (2001) for a wide range of case studies and theoretical approaches related to multinational states.

[125] This entails that the right to self-determination for peoples in international law is becoming more and more obsolete. The right to self-determination recognised to colonized peoples in international law was meant to secure freedom for *external* colonies and applies more difficultly to contemporary stateless or partly stateless nations. But see note 2 and Chapter 7.

last resort alternative if negotiations reach a deadlock.[126] Minority nationalism in the West, then, flirts with separatism when central governments are thought to be intransigent.[127]

The two types of demands described here—differentiated civic integration and post-Westphalian self-determination—differ in their immediate aspiration (integration versus a certain degree of separateness) and can even conflict in practice (an Italian immigrant settling in Liège could well identify with a pan-Belgian identity and oppose to the further political consolidation of Wallonie; a Quebec Jacobin nationalist could well see multiculturalism as threat to national integrity). Identity-based demands nevertheless share several features. First, these claims, as we saw, are founded on the norm of respect of cultural diversity and overlap in their refusal to equate social cohesion, unity and stability with cultural assimilation. Second, they all refer to an asymmetric notion of equality according to which *equal* treatment does not entail *identical* treatment. Unlike majorities, more vulnerable minority cultures and religions cannot rely on sheer number to defend and promote their culture, language and religion. Group-specific rights are required to level, as far as possible, the playing field (Kymlicka 1995). This is not, as it is often presented, a clash between a collectivist ontology and an individualist ontology. As I address in the following chapter, a majority culture *de facto* enjoys protection and promotion through numeric superiority and through the corresponding control over the state. The use of its language in school, medias, business, public administration, public deliberation, research and cultural industry parade as natural rather than as predicated upon a cluster of "special collective rights". This is why identity politics challenge difference-blind liberalism. The affirmation that identity and culture are political matters is thus common to all identity-based demands.

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[126] One could see the Spanish Basque Country as a counter-example here, but the majority of Basques in Spain reject the straightforward separatist position of the (now outlawed) *Batasuna* and favour further decentralisation.
[127] See Seymour (2000) for evidence in Quebec and Guiberbau (2003) in Catalonia. It is probably too soon to anticipate the effects of devolution on the support for independence in Scotland (McCrone forthcoming 2003).

5. Political Philosophy and Minority Rights: A Critical Dialogue with Kymlicka

The way I described the two types of demands appears to be largely congruent with Kymlicka's typology of group-specific rights. For him, minority nations are entitled to self-government rights while immigrants can legitimately claim polyethnic rights, granted that these rights are used in a way compatible with liberal principles. Many have berated Kymlicka for creating two distinct statuses and apparently favouring nations over immigrant communities (Young 1997; Parekh 2000: 103-4; Mason 1999: 270). Kymlicka's typology is also said to unduly freeze cultural groups into pre-defined categories and to set pre-determined limits to the scope of theirs demands. These are serious objections, but I think Kymlicka's main argument for establishing two types of rights is sound: minorities who uphold a national consciousness almost always claim some degree of political autonomy, while immigrant communities do not represent themselves as nations and very rarely demand self-government rights. Immigrants, as a matter of choice or necessity, generally want mainstream institutions and values to be reformed in a way that makes a culturally sensitive mode of integration possible. They want, *inter alia*, their children to be educated in the dominant language so as to broaden their life-prospects. And these children, conversely, generally want to stop being identified as outsiders, as they were both born and socialised in the country their parents immigrated to.[128] The point, then, is not to confer a higher moral status to nations, but to focus on national and immigrant minorities' distinct political discourses. It is difficult to conceive how justice and stability can be approximated in political communities at once multicultural and multinational without the experimentation of differentiated forms of citizenship based on the reasonable aspirations of the diverse cultural groups living together. To take an example, First Nations see the proposals to deal with their claims within the language of liberal multiculturalism as a refined form of domestication (see

[128] Hence the crucial importance of the work on the social imaginary discussed in section 4.1.

Chapter 7), whereas ethno-cultural communities do not claim the kind of self-government powers vindicated by indigenous peoples. Some groups, such as the Anglophone minority in Quebec, fall somewhere between these two categories.

It is worth asking whether the problem with Kymlicka's position resides in his theoretical approach, rather than in the substance of his conclusions. Here I believe we can glimpse some of the differences between normative analytical theory as practised by Kymlicka and a majority of political philosophers working on multiculturalism, and a more "practice-oriented" approach based on the study of specific languages games. Kymlicka is not content with the observation that immigrants and national minorities put forward different demands and consequently raise distinct, yet related, challenges to both the nation-state and liberalism. As a normative analytical philosopher (albeit a contextualist one), he also wants to be in a position to judge which types of rights different types of minorities are entitled to (2001b: 4). Normative theory, as I alluded to, even in its more interesting contextualist voice, seeks to be more than an *ad hoc* form of practical reason. Kymlicka's typology is indeed designed to be a transcultural framework of evaluation capable of mapping the complex demands of contemporary cultural politics. In fact, Kymlicka's typology is a key element of the larger "liberal theory of minority rights" or "comprehensive theory of justice in a multicultural state" that he is developing (1995: 6).

However, his typological approach is not without raising problems. For one thing, the point that immigrant communities do not normally claim separate institutions is a strictly empirical and contingent one. It does not tell us that these communities won't at any point demand self-government rights. So what if an ethnic minority effectively decides to carry out a nationalist agenda (Carens 2000: 81)? One of Kymlicka's possible answers is that immigrant communities can legitimately claim self-government rights insofar as they develop, over the years, a national self-consciousness. This answer would surely contribute to the de-

rigidifying of his heuristic categories. But would not this open the door to the strategic nationalisation of all forms of identity politics? Kymlicka, who is alert to this eventuality (that he calls the "slippery slope" problem), could alternatively hold on to a more primordialist conception of nations according to which long established and sufficiently institutionalised ethno-cultural communities alone can be considered as nations and claim self-government rights.[129] This is the line Kymlicka seems to adopt:

> But like any other right, this right [to live and work in one's own culture] can be waived, and immigration is one way of waiving this right. In deciding to uproot themselves, immigrants voluntarily relinquish some of the rights that go along with their original membership. For example, if a group of Americans decide to emigrate to Sweden, they have no right that the Swedish government provide them with institutions of self-government or public services in their mother tongue (1995: 96).

Swedish people of American origin, then, cannot at any point claim for self-government rights. The same thus logically goes for their children. But, as Andrew Mason points out, the children of territorially concentrated immigrant groups which were able to reproduce some of their past cultural structures find themselves in a position similar to long settled national minorities: neither of them "waived" their right to live in their cultural milieu through voluntary immigration (1999: 270). This problem is more theoretical than practical, as second and ulterior generations of immigrants rarely develop national self-consciousness, but still constitutes a real difficulty for Kymlicka's *theory*. Kymlicka is not content with the recurrent, yet still factual and thus contingent, observation that the children of immigrants generally want to integrate into mainstream society. His approach is not prudential but normative, and

[129]Both of the options available to Kymlicka are underpinned by a theory of how nations emerge: the more fluid conception of groups and group-rights presupposes a constructivist understanding of nations, while the more rigid one entails a primordialist outlook on nations. Kymlicka's theory would probably gained in clarity would he specify his position on this perennial debate.

normative theory raises universal validity claims that cannot ultimately depend on contingent empirical observations. This is why the mere possibility that immigrants or second generations develop national self-consciousness and claim self-government rights is a serious problem for Kylimcka.[130]

Moreover, the argument that immigrants and their children cannot under any circumstances demand self-government rights tends to freeze communities' continuously evolving identity-formation process, or at least to fix a priori limits to what they can become. Indeed, Kymlicka, in a reply to Iris Young, maintains that in order to avoid sliding on the "slippery slope" of continuous and ever growing self-interested demands, "we need to show that ethnocultural groups do not form a fluid continuum, in which each group has infinitely flexible needs and aspirations, but rather that there are deep and relatively stable differences between various kinds of ethnocultural groups. Contrary to Young, I think it is important to insist that ethnocultural groups differ in kind, not just in degree" (1997: 80). The dangers Kymlicka wants to avoid are real, but the route he indicates seems to be just as slippery. Reifying ethnocultural identities comes with the risk of identity-ascription and misrecognition. The point is not to suggest that groups change self-representations like people change shirts nor that minority claims are always legitimate and well-supported, but instead to underline that identities are primarily evolving forms of *self*-representation anchored in a lifeworld and partially structured by external recognition or non-recognition. Even if it is true, as I think it is, that immigrant communities do not generally strive for self-government rights, identities change through time and it is obviously impossible to know in advance what the outcome of that process will be. Globalisation, for instance, has transformed regional, national

[130] The problems with Kymlicka's theory lend plausibility to Wittgenstein's argument that even the more sophisticated theories or definitive structures of rules cannot grasp all the overlapping (yet distinct) meanings a word or a concept take in its various applications (1953: par. 84).

and diasporic identities in the past 20 years in a way difficult to predict for political philosophers and social scientists writing in the 1960s and 1970s.

There are ways of approaching the question of minority rights that do not enclose groups into fixed categories nor give *prima facie* legitimacy to all forms of identity politics. Political philosophy can first strive for an appropriate description of the claims and arguments brought into play by minorities. Political theorists can then look for analogues and compare the claims studied to commensurable cases. Once this is done, a normative and critical dimension can be brought in. The description and clarification of the relevant context(s) of interaction include an investigation of the games of power (the agonistic interplay between techniques of government and arts of resistance) played by the participants.[131] This description of the games of power can initiate or consolidate a critique of the asymmetrical relations of power at play, and can also legitimise modes of resistance to these power relations. The knowledge and perspectives produced by such an investigation can in turn feed the public reasoning process initiated by the minority and, *eo ipso*, contribute to the (often not consensual) settlement of the practical conflict. To be sure, a more systematic theory can also play just such a role, but it still has to answer the difficult questions related to its internal boundaries and to the general validity claim it raises. In addition, as this section exemplifies, a form of "critical phenomenology" can be used as a test for the various theoretical and practical answers given to a problem or a set of problems.

In restraining from hypostasising minority claims, we (1) bypass the problem of the "hierarchy of rights" apparently inherent in Kymlicka's framework (Parekh 1997: 62) and (2)

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[131] Axel Honneth considers this approach opaque to the forms of social injustice and moral discontent not already visible in the public sphere. In order to avoid such an "anti-normativist" tendency (as he calls it), Honneth needs to confer the status of a philosophical anthropology to his analysis of recognition. The limit identified by Honneth to the approach canvassed here is real, but his alternative proposal is in turn a contestable quasi-transcendental analysis of human moral experience which does not have much to say about "contingent" political and moral struggles. In the end, it is not at all clear how his framework resolves the problem of invisibility. See Fraser and Honneth (2003).

avoid freezing identities at a specific moment of their development. First, in focusing on the language spoken by a minority itself in a particular context of actions, the charge of granting a higher moral status to some types of minorities is deviated. In fact, not listening to the terms used by minorities can be interpreted as a neo-imperial form of disrespect. Second, restraining from generalising and fixing the observations drawn from a particular language-game into a compartmentalized theory dissolve the danger of reifying identities. The occurrence of new contexts of interaction brings into play the need for new critical descriptions of these contexts. Among other things, the avoidance of fixed categories renders Kymlicka's disputable argument that immigrants waived their right to cultural reproduction by leaving their country of origin unnecessary (Parekh 2000: 103; Carens 2000: 81). What an immigrant group is entitled to is to be decided, with reference to both similar and different cases, each time anew.

As Kymlicka could promptly reply, this does not provide us with external standards for judging the validity of minority claims. For one thing, the less normative approach does not seem to have many resources for countering the "slippery slope" effect. But political philosophy can do very little to prevent this effect in practice. The difference between the two approaches, in that case, is that normative theory states that self-government demands stemming from ethnic minorities are a priori inadmissible—it thus defines a kind of idealized norm—while the critical-phenomenological approach investigates the context, compares and contrasts it to other cases, and tries to feed the exchange of public reasons with enlightening perspectives. The critical-phenomenological approach is derived from the premise that it is citizens themselves who evaluate and decide whether a claim is legitimate and worthy of support or not. Civic freedom, rather than justice, is thus foregrounded (Tully 2002a: 551).[132]

[132] This is not to downplay the importance of justice, quite the opposite, but rather to refer the construction of justice to the activity of practical reasoning between citizens; hence the priority given to the conditions of civic freedom over the elaboration of theoretical conceptions of justice. From that perspective, claims of justice are

Political philosophy, seen under this light, does not supply authoritative principles of judgement that can by themselves settle practical conflicts. This is, as argued in the previous chapters, public reason's function. But political philosophy is surely an important voice and an enlightening ray of intelligibility in the public reasoning process. Again, normative theory can also play such a role, but there seems to be a tension between the validity claims it raises (its ambitions) and this deflationary vision of its function (its actual role).

The problem of explaining the numerous borderline or 'abnormal' cases which necessarily pass through the fissures of Kymlicka's classification is also dissipated by the self-restrained approach advocated for here. As Kymlicka himself recognizes, descendants of slaves, former colonizers turned into vulnerable minorities, refugees, illegal immigrants, travelling peoples and guest-workers, to which Young adds former colonial subjects who immigrated to Europe in search of the promised citizenship, do not fit neatly into his categories (Kymlicka 1997: 77-9; Young 1997: 50). Alternatively, the less normative and more descriptive approach enables the establishment of similarities across, and differences between, diverse sets of cases. In so doing, it allows political philosophers to think cultural politics along the lines of what Young calls a multicultural continuum (1997: 48-53).

Kymlicka would perhaps be unmoved by these arguments, as he seems to equate philosophy to theory-building and to the application of theories to particular cases, and philosophical dialogue to the activity of comparing and contrasting different *theories*.[133] This

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seen as just that: claims of justice made by citizens on the basis of more or less generalizable reasons. Claims of justice are here interlocutions in the public reasoning process.

[133] As Kymlicka puts it in his reply to the participants to a symposium on *Multicultural Citizenship*, "my approach is not the only alternative to [the] orthodox liberal view, but as of yet, there are few well-developed alternatives available in the literature. It is simply too early in the debate, therefore, to judge whether the objections raised by my commentators are fatal to my approach. They may turned out to be sorts of hard choices and trade-offs which will accompany any worked-out theory, and which in fact are minimized by my approach. We need to get more theories on the table before we can judge the power of these objections" (1997: 72-3). For him, Raz, Taylor and Habermas' work on multiculturalism are not systematic and grounded enough to take part to this comparative activity (*Ibid.*: 86, note 1). Note however that Kymlicka started to interrogate himself in his last book on the role and status of normative political theory (2001b: 6-9).

is but one way of conceiving political philosophy and I tried to provide reasons and examples which show what can be gained from a different approach to political philosophy. However, this point should not be overstated. Multiculturalism raises issues caught between facts and norms, and contextual normative theorizing contributes to a better understanding of these complex issues. Contextual normative theories lay before us ways of coping with problems related to justice and social cooperation under conditions of diversity. They contribute to the legitimation or delegitimation of some principles and practices.[134] As a result, normative theories impact on the ways practical-political debates over multiculturalism are conducted. It is thus a valuable way of doing political philosophy. What is more disturbing and hardly accurate is the propensity of some of its practitioners to see it as *the* way of doing political philosophy. Normative theorizing in a postmetaphysical voice raises difficult questions about the role and status of theories and theorists. And systematic theories, as we saw with Kymlicka's framework, have problems coping with the complex and shifting character of contemporary societies.

In sum, there are good reasons to think that normative analytical theory, critical theory, genealogy, deconstruction and the approach sketched out here are all modes of deciphering, and acting on, our complex predicament, and that political philosophers can reasonably disagree on the merits of each approach.

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Theorists and practitioners of politics can hardly ignore the issue of cultural diversity and the challenges raised by multiculturalism. This is not to say, of course, that all believe that the politicisation of identity is legitimate and that recognition and accommodation of cultural diversity is a condition of justice and freedom. In the next chapter, I address some of the claims developed by the critics of identity politics and multiculturalist policies. This will bring

[134] The alternative approach sketched out above can also yield, through different routes, the same outcomes.

me to focus on the democratic aspect of identity politics and to examine the impact of such politics on social integration.

Chapter 6

Re-Appraising the Politics of Recognition.

Identity Politics and its Critics

Respect for reasonable cultural diversity has become a major issue in political thought and practice. Now that the conception of culture that underwrites identity politics has been clarified, as well as the types of political demands carried out by cultural minorities and some of the strengths and limits of the dominant theoretical approaches to the question of multiculturalism, it is now possible to move to an examination of the character and impact of identity politics. In this chapter, I start with a sketch of the argument that the politicisation of identity logically involves the essentialization of identity (Section One). I then explore why the language of recognition is commonly used to frame identity-based political demands and also highlight some of the limits that inhere within this language of description (Sections Two and Four). This leads me to amend the language of recognition in a way that highlights the activity-oriented character of identity politics. In doing so, I situate identity politics within the broader game of democratic politics (Sections Three, Four and Five). To sum up, I argue that the interesting question raised by the politicisation of identity does not have to do with the a priori validity or invalidity of such a political strategy, but rather that it concerns the democratic process by which identity claims can be adjudicated.

1. The Charge of Essentialism

As detailed in Chapter Five, there are various ways of approaching the demand for the recognition and accommodation of cultural diversity. These demands can be met with a cluster of rights and policies devised to adapt citizenship, understood both as a status and as an activity, to multiculturalism and multinationality. But this should not blind us to the fact that there are some, both in academia and in politics, who contest the very legitimacy of group

rights and policies. There are a wide range of sources of justification available to the critics of multicultural and multinational citizenship: neutral liberalism, some version of discourse ethics supplemented with a notion of constitutional patriotism, republican visions of the common good, nationalist defences of authenticity and integrity, the post-modern language of fluid and hybrid identities or some other mixture of these perspectives.[135]

The "charge of essentialism" is one of the most recurrent and powerful critiques lodged by those who challenge the validity or desirability of group-specific measures. The claim is that the recognition and accommodation of cultural differences stands at odds with a constructivist and pluralized conception of identity, such as the one presented in the previous chapter. There would be an epistemological incompatibility between minority rights and the deconstruction of cultural essentialisms. The main line of argument is that " multiculturalists " need an essentialized, internally homogeneous, clearly bound and self-contained notion of culture in order to ground their claims for the rights of minority cultures. Brian Barry, quoting Alison Jaggar, writes that "ethnic groups [...] are seen by multiculturalists as 'self-evident, quasi-biological collectives of a reified culture'" (2001: 11). The insistence on cultural survival that Barry sees as implicit in a politics of recognition imprisons groups into a static conception of culture (*Ibid.*: 65). According to Chandran Kukathas, "the most seductive and dangerous move in that politics [of identity] asserts that identity is *not* political but, somehow, natural or original" (1997: 150; see also Templeman 1999). In a related manner, Seyla Benhabib stresses that the politicization of identity has the negative effect of freezing the identity that is being brought to the fore. Given that she believes that struggles for recognition

[135] For that reason, I am unsure that we can say, with Kymlicka, that a consensus over one form or another of "liberal culturalism" have emerged in the theoretical literature on multiculturalism (although he is probably right to say liberal democracies have all in a way or another adopted measures that can be associated with multiculturalism) (2001b: 39-48). As I am about to survey, critiques of multiculturalism and the politics of recognition are not lacking in the theoretical literature. Note also that some of these languages of justification can equally be invoked to defend multiculturalism.

can only be pursued through the reification of identity, she logically pleads "for sociological skepticism vis-à-vis group-differentiated rights claims" (1999: 293). The politics of recognition are, in her view, built upon an aporia: "movements militating for identity/difference claims simultaneously posit the contingency of proposed identity definitions while arguing for their essential character" (*Ibid.*: 295). These movements would thus be caught in the midst of a performative contradiction that can only be surmounted by the essentialization of identity. "Between sociological enlightenment and social militancy," she therefore concludes, "there is a hiatus" (*Ibid.*: 301).

Finally, and along similar lines, one could stress that since there is no fixed, substantive and consensual identity that precedes actual political struggles, there is nothing to be recognized in the first place. Kukathas proposes that formal recognition (which is a type of institutionalization) produces an identity that did not exist *for itself* prior to the public recognition and accommodation of that identity (1992: 110). According to him, cultural groups should be treated as voluntary associations that can be formed, sustained and dissolved at will by individuals. Cultural reproduction thus depends on cultures' capacity to compete on the marketplace of culture and power, a process that should not be distorted by state interference. Liberalism, understood as the protection of individual rights (such as the right to associate) and as tolerance towards diverse forms of individual expression through state neutrality, is *de jure* and *de facto* a "theory of multiculturalism" (1997: 134). A liberal state must then be driven by a "politics of indifference" towards collective projects in general.

If they were proven to be based on an accurate description of the struggles and demands of minority cultures, these objections would indeed be fatal to the politics of recognition and accommodation of cultural diversity. Identities, as argued before, are evolving forms of self-consciousness, anchored in a historical and normative background (a permeable form of life), which always include an element of difference and non-coincidence. The

essentialization of identity therefore amounts to drawing the lines of authenticity and belonging around a particular representation of that identity. In doing so, it necessarily excludes alternative representations which do match that description. But is it true that the demands carried out by immigrants, indigenous peoples and non-fully sovereign nations are grounded in that 'old,' opaque conception of culture and identity?

2. The Language of Recognition

I want to defend the idea that the struggles of minority cultures do not necessarily involve the essentialization of identity, but that the dominant language of recognition for describing such struggles needs to be reframed and expanded. The prevalence of the language of recognition comes from the largely accepted idea that processes of identity formation and reformation are thoroughly dialogical. Intersubjective relations are not just the communicative games played by autonomous and antecedently individuated subjects, but are rather the very process by which one gains intelligibility about oneself, develops the ethical skills to take a stance on particular issues and generates the impetus to project oneself into various existential possibilities. As Charles Taylor argues, human agents evolve in a number of "webs of interlocution" in which they learn about themselves and the world and seek recognition from others (1989: 36). Many have concluded from the dialogical character of identity that recognition is the necessary requirement for basic self-confidence, self-respect and self-esteem. This line of thought, mainly drawn from Hegel, has received its clearest and most cogent formulation in the work of Taylor and Axel Honneth. Taylor's argument for the necessity of recognition is that:

> our identity is partly shaped by recognition or its absence, often by the *mis*recognition of others, and so a person or a group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. Nonrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning

> someone in a false, distorted, and reduced mode of being. [...] Due recognition is not just a courtesy we owe people. It is a vital human need (1994: 25-6).

And Honneth continues:

> the reproduction of social life is governed by the imperative of mutual recognition, because one can develop a practical relation-to-self [self-confidence, self-respect and self-esteem] only when one has learned to view oneself, from the normative perspective of one's partners in interaction, as their social addressee. [...] The aforementioned imperative [...] provides the normative pressure that compels individuals to remove constraints on the meaning of mutual recognition, since it is only by doing so that they are able to express socially the continually expanding claims of their subjectivity (1995: 92-3).

Accordingly, when we articulate the meaning of contemporary identity politics using the Hegelian language of recognition, we can but conclude that these struggles over "who we are" are means of enhancing self-respect and self-esteem (or dignity). There is surely an element of truth in the Taylor-Honneth argument. Mis-recognition or non-recognition can be demeaning and can prevent individuals or groups from even entering in the process of competing over an appropriate form of recognition (that is, a form of recognition consonant with the individual's or group's self-description). But one could argue that the concept of recognition implies and refers to the essence of an already formed identity that precedes, and would be the object of, the struggle for recognition. To be sure, theorists of recognition inspired by Hegel's dialectical thinking can hardly be accused of holding on to such a static conception of identity. It is true however that the language of recognition can be misleading if what is to be recognized is not defined with great care. Indeed, it is not self-evident to see how the language of recognition dovetails with a processual and pluralized notion of identity. Moreover, Taylor's insistence on cultural "survival" in his much debated essay on recognition appears to confirm that recognition politics and identity essentialism are internally related

(1994). What is it that ought to "survive," critics ask, if not a substantive and fixed identity (Habermas 1994; Appiah 1994)?[136]

Addressing these concerns demands a wider and more detailed description of what is involved in the politics of recognition. Prima facie, the language of recognition suggests that *attaining* recognition is what identity politics is really about. If there is a kernel of truth in that teleological understanding, this emphasis on the end-state of recognition eclipses certain aspects of the activity of struggling for recognition, and gives the misleading impression that (1) identities have an inalterable core that needs to be recognized and (2) that the *telos* of this activity is the once and for all recognition of that core identity. This is problematic for two reasons. First, identities are lived, interpreted and narrated in a variety of complementary, evolving and conflicting ways. What the recognition of the "essential substance" of an identity really amounts to is the entrenchment of the hegemonic representation of that identity and, as a consequence, the exclusion of alternative representations. Second, as we can already anticipate from Kukathas' point surveyed above, the action of recognition comprises not only a cognitive dimension, but also a constructive one (Garcia Düttman 2000; Markell 2000). On the one hand, recognition refers to the cognition of an already constituted identity that precedes and enables the actual political struggle. There must be, in other words, something 'there' for igniting the political process in the first place.[137] On the other hand, the process that leads to recognition (or mis/non-recognition) alters the identity upon which the struggle is

[136] Many critics have argued that Taylor's conception of identity in his essay on recognition is static and perhaps essentialist. This is an abusive conclusion. Taylor repeatedly points out that the development of identity, in modern times, is a matter of ongoing "dialogue" and "struggle." Authenticity, for Taylor, is not purely a matter of faithfulness towards one's traditions, but it also involves a great deal of self-creation. Part of the problem perhaps lies in Taylor's insistence on the notion "cultural survival," which indeed seems to assume that cultures have an authentic core that must survive through the action of time. The struggle for the respect of cultural diversity need not be grounded in such a view of culture. For example, *contra* Taylor, I would suggest that Quebec's struggle for recognition since the 1960s is better understood in terms of "affirmationnism" (which involves nothing more than the existence of a majority of Quebecers who, despite their divergences, nevertheless promotes the ongoing cultivation and transformation of Quebec distinctness), than in terms of cultural survival (see Maclure 2003).

[137] Note here that the 'there' need not be thought as primordial and natural, but can itself be seen as discursively constructed.

grounded in the first place. Public discussions and debates among the bearers of an identity "X" about the modalities of the recognition of "X" by the bearers of the identity "Y," and between the members of "X" and "Y" on the desirability of recognizing "X," transforms the character of "X" (and of "Y"). In their debates among themselves, the bearers of "X" are exposed to a plurality of ways of representing their shared identity, and their exchanges with "Y" supply them with reflections of "X" that do not necessarily coincide with their own self-image. As Hegel explored in Chapter Four of the *Phenomenology of Spirit*, this is part and parcel of the process of identity formation.[138] The identity which is the object of the struggle for recognition is thus not only affected by the (positive or negative) outcome of the struggle, but also changes through the process of struggling for recognition. And when a relationship of mutual recognition is established, this also transforms the identities at play and produces unforeseeable consequences. The experiment in mutual recognition must then begin anew on new grounds.

There thus seems to be a tension between a constative dimension and a transformative dimension that is built into the fabric of the struggles for recognition (Garcia Düttman 2000: 3-26). If the constative aspect stands in tension with the transformative aspect, recognition politics cannot be grasped exclusively as a quest for the definitive recognition of already constituted and fixed identities. According to the critics of minority rights surveyed above, identity politics and the language of recognition, as a result of the necessary connection between recognition politics and identity essentialism, foreground the cognitive aspect and muffle the performative aspect. But is this a problem inscribed in the very nature of struggles for recognition, as critics argue, or is it a problem inherited from the language of description deployed to render this form of political activity intelligible? I try to show in the following

[138] For those who prefer real examples to "Xs" and "Ys," see Fanon (1991) and de Beauvoir (1949) for concrete embodiments of this process.

sections that we are faced with, on the one hand, a conceptual-linguistic problem and, on the other hand, a practical problem slightly different from the one identified by critics of the politics of recognition.

3. The Democratic Aspect of Struggles for Recognition

Identity politics, critics elaborate, necessarily involve the reification of identity. The assumptions underlying identity-based political demands would be that (1) these demands are supported by a homogenous 'we,' (2) that an a-temporal essence is ingrained in the identity of this 'we' and, by extension, (3) that any alterations to the essential substance of this identity lead either to its dissolution or to its unbearable dilution. It is worth asking here whether critics are not making a category mistake. The problem that critics of recognition politics and minority rights draw our attention to is real enough, but their conclusion seems erroneous. There is little doubt that some leaders, political entrepreneurs and other citizens resort to the homogeneization and essentialization of identity in order to strengthen their political demands. The 'us' is presented as monolithic so as to exercise more pressure on the majority. As a result, dissenters are accused of inauthenticity or treason and, in the worst cases, they are violently silenced. In addition, attempts to unify the 'us' generally entails the reification and stereotypification of the 'them' (see Chapter 5, Section 3.1). Indeed, history and contemporary affairs offer a great variety of concrete, often tragic, embodiments of the "consolidation of the self through the evilization of the other" strategy. Turning porous markers of self-representation into rigid boundaries of identity can open up the way for deadly ethnic conflicts. The tragic examples of former Yugoslavia and Rwanda immediately come to mind.

This hard and difficult problem is a practical-empirical one and, unless it can be shown that identity essentialism *necessarily* vitiates all forms of identity politics, it should be treated as such. Critics and defenders of identity politics need to focus on what usually happens in constitutional democracies when leaders and groups carry out an essentialist and exclusionary

politics of identity?[139] As I will further develop in reference to Tully's work, excluded citizens and groups normally invoke the democracy principle in order to voice their disagreement, to display the injustice committed against them and to present their own set of identity-based claims. In so doing, dissenters fissure the essentialized identity representation, reveal its singular, perspectival and contested character, and initiate a robust democratic dialogue over their allegedly 'shared' identity. This is what happens when Britishness and Englishness are conflated or when Quebecness is restricted to the descendants of French Canadians (The Runnymede Trust 2000: 14-39; Maclure 2003: 119-46). Similarly, aboriginal women speak out when male aboriginal leaders ignore their concerns in their political struggles, and aboriginal social critics and other citizens contest the representations of aboriginality displayed by chiefs and other representatives when the latter are thought of as "co-opted" (Alfred 1999).

The real theoretical and practical issue raised by identity politics, from the perspective of minorities, is how to acknowledge internal diversity and dissent while still being in a position to challenge the prevailing structures of recognition, redistribution and governance. Finding ways of articulating heterogeneity and collective action is the predicament of all groups engaging in identity politics in a democratic setting: linguistic minorities, women, gays, lesbians and transsexuals, indigenous peoples, minority nations, people living with intellectual or physical handicaps, and religious minorities are all segmented by other relevant identity-related differences. These groups cannot assume that their members will in every contexts rank *this* identity marker first or agree with other members on the preferable course of action. The "heroism of political identity," to borrow Foucault's words, fits uneasily with the pluralization of the sources of belonging and identification. For many of us, then, who we

[139] I limit my analysis here to constitutional democracies, as these are the ones both theorists and critics of multiculturalism focus on.

are is defined progressively and continuously by the problems we experiment with, as we experience them (Foucault 1994: 785). But as Foucault exemplified in his own political battles, this does not cancel the possibility of collective action.[140] What people gather around is not an essence, an immutable substance shared by all the members of a collective, but a common feeling of injustice, a shared refusal to be recognized *this* way or to be governed by *these* people, according to *these* principles and objectives, and so on. (Foucault 1990: 38).

Contra the critics of minority rights and recognition politics, identity essentialism is not ingrained in identity politics. Identity essentialism is employed time and again by leaders to bypass the political predicament of minority groups just described, but such a strategy can only be successful if dissenting internal minorities are violently silenced. This politics of exclusion, critics could admit, is not systematically deployed by every movement engaging in identity politics, and is rarely fully successful, at least in the long run, in constitutional democracies. The safeguard of individual rights and of the democratic freedom to initiate new rounds of public deliberation provide internal minorities with some space to disagree and to publicize their concerns.[141] What a close examination of concrete minority struggles reveals is not a political dynamic fully sutured by identity essentialism, and therefore a priori illegitimate, but rather a multifaceted process characterized by, on the one hand, internal agonistic dialogues over an allegedly mis-recognised identity, debates over the political tactics to deploy, attempts to essentialize both self and other on the part of some groups, disagreement and the creation of unstable majorities.[142] It is also characterized by, on the other hand, equally agonistic debates with the majority over some desirable forms of

[140] Tariq Modood, after a wide ranging survey of ethnic minorities in Britain, came to a similar conclusion: "the identities formed in such processes [identity politics] are fluid and susceptible to change with the political climate, but to think of them as weak is to overlook the pride with which they may be asserted, the intensity they may be debated, and their capacity to generate community activism and political campaigns" (2000: 183).
[141] Moreover, according to David D. Laitin, the "new institutional configurations" based on multileveled modes of governance "will help to create a powerful counter-force to such entrepreneurs [engaged in identity essentialism], with an interest in making the world safe for multiple and layered national identities" (2001: 110).
[142] See Chapter 7 and Maclure (2003) for evidence of such a process.

recognition, redistribution or devolution. What actually stands out as a dominant characteristic of the politicisation of identity is more identity-transformation, through public dialogue within and among groups, than successful attempts to essentialize and freeze identities. Critics conflate a general dynamic enmeshed with identity-transformation with particular trends and instances of that more general process.[143] Principled judgements against recognition politics and minority rights, then, miss much of the complexity of identity politics (Clifford 2000: 95), and tend to occlude the democratic aspect of such struggles. Such judgements fall prey to a certain craving for generalities: a principled critique of identity politics indeed assumes that all concrete embodiments of identity politics share a sort of essence that makes them a priori illegitimate. The differences between, and the tensions within, distinct forms of identity politics are thereby conjured away.

Alternatively, a form of political philosophy borrowing more from immanent critique and phenomenology can (1) shed light on specific struggles for the recognition and accommodation of difference (focusing both on the debates within the minority and on the dialogue between the minority and the majority), (2) reveal the asymmetrical relations of power at play, (3) disclose the exclusions fostered by identity essentializations, and (4) adumbrate some of the conditions for a fair democratic dialogue and for a legitimate resolution of the practical conflict.

Normative political philosophers might fear that such an approach deprives political philosophy of any resources for ruling out illegitimate minority claims. This is a real issue. Like any political claims, minority claims can be weakly supported and illegitimate. Yet the answer is not to rule out identity politics in advance, but, as just sketched out, to investigate the specific contexts of political interaction in which such a politics crop up. Such an

[143] Therefore, one could argue that local and more circumscribed critiques of concrete instances of identity-essentialism are both more theoretically cogent and politically useful than grander principled critiques.

investigation reveals whether the democratic and constitutional basic norms of political legitimacy discussed in Chapter 4 are respected by the minority. As a general and abstract rule, minority claims must be deemed legitimate, and should as a consequence be acknowledged by the majority, if the process that led to their formulation was respectful of the rule of law and democracy principles, and should be dismissed if it was not.[144]

This answer was formalised and adapted to the Canadian context by the Supreme Court of Canada in its 1998 *Reference re the Secession of Quebec*. In this much discussed reference, the Supreme Court answered three questions presented by the federal government of Canada relative to the legitimacy of the unilateral secession of the province of Quebec. The first and most important question asked to the Court was "under the Constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally?" To sum up the decision, the Court began by laying out the four "foundational constitutional principles" that underpin the Canadian constitutional framework (Supreme Court of Canada 1998: sections 49-82). Among these four principles, we find the equiprimordial and cooriginary principles of modern politics surveyed in Chapter 4: democracy on the one hand, constitutionalism and the rule of law on the other. So as to reflect the nature of the Canadian polity since its inception in 1867, the Court added the principle of "federalism" to these two basic principles. The principle of federalism comes from Lower Canada's (the current province of Quebec) fear in 1867 of being overwhelmed by the English majority and from its corresponding willingness to retain some degree of self-government (sections 55-60). Faced with a relentless opposition to the creation of a unitary state, John A. McDonald, the first Prime Minister of Canada, had to compromise and settle for

[144] Note here that this general and abstract rule is reconstructed from the equiprimordiality of the principles of constitutionalism and democracy. The constraints that it imposes on minorities are thus less demanding than those defined by mainstream public reason theories, as the democracy principle provides minorities with a permanent possibility to challenge the more elaborate procedures of public argumentation that frames concrete political discussions.

a federal state. Finally, the Court stated that since Canada is [in theory] built upon the ongoing cooperation between people from British, French, aboriginal and immigrant roots, equal normative force needed to be granted to the "respect for minority rights" principle. The Court thus acknowledged that the respect for reasonable cultural diversity norm now colours the interpretation and application of the democracy and constitutionalism principles. The Court specified the relationship between these four "defining principles" by writing that they "function in symbiosis" and that, accordingly, "no single principle can be defined in isolation from the others, nor does any one principle trump or exclude the operation of any other" (section 49).

Having established the architecture of Canadian constitutionalism, the Court states that the Canadian Constitution prevents Quebec from effecting secession unilaterally—that is, without prior discussions with those affected by the secession (federal and other provincial governments, internal minorities, First Nations, etc.). Contradicting the *amicus curiae*[145] who pleaded that the secession of Quebec was a political (rather than a juridical) affair, and that the people of Quebec alone could decide on its political future, the Court argued that a clear win by the sovereigntist side on a clear question in a popular referendum could not by itself grant the legality and legitimacy of unilateral secession, as this would confer pre-eminence to democracy over the other equally basic principles of Canadian constitutionalism. Although the interpretation and application of each principle vary from context to context, none of these can act as a meta-norm or as a trump-card.

However, the Court did not leave it there. Perhaps to the surprise of the federal government, it went on saying that a *negotiated* secession which would take up the four

[145] The government of Quebec, arguing that the Supreme Court did not have the legitimacy to decide on such a political issue, did not partake in the deliberations. Led by a sovereigntist party, the government feared that its participation would legitimise the process. It did not provide any support to the lawyer, otherwise known for his sympathy towards the sovereigntist project, who decided to act as the *amicus curiae*.

principles and respect the general economy of Canadian constitutionalism could be accommodated within the Canadian constitutional framework. Indeed, Quebec (or any other province) has a right to initiate deliberation over constitutional amendment (including secession) with its partner insofar as it has first rallied a clear majority over the proposed amendment. Yet, as stipulated by the respect for the rights of minorities principle, majoritarian public assent is void of legitimacy if dissenting voices are brushed aside. But the Court did not say that *consensual* agreement over the proposed amendment was necessary in order to ground the right to initiate constitutional reform. As we saw in Chapter 4, such consensual agreements are scarce in complex societies, and are not sine qua non conditions of legitimacy. "Inevitably," the Court lucidly writes, "there will be dissenting voices" (section 68). The provinces of Canada can initiate constitutional reform if the proposed changes are backed up by a majority, and also if the dissenters' interests and concerns are taken into consideration and accommodated when reasonable.

Yet, as pointed out, this procedure does not confer to Quebec a right to *unilateral* secession, as unilateralism is antithetical to the principle of federalism. Since Canadians from coast to coast would be affected by the secession of Quebec, discussions over secession with the federal government and with the representatives of other provinces are mandatory. Conversely, the right to initiate constitutional change granted by the Canadian Constitution imposes a "corresponding duty on the participants in Confederation to engage in constitutional discussions in order to acknowledge and address democratic expressions of a desire for change in other provinces" (section 69). The respect of the general economy of Canadian constitutionalism assures to provinces, at least in principle, that their claims will not simply be dismissed without further discussions. As a consequence, a negotiated secession emerging out of an inclusive public deliberation could be accommodated within the Canadian constitutional framework. But here again, there are no guarantees that an agreement would

stem out of this public exchange of reasons in which all the parties touched by the proposed change are invited to participate (section 97). Participants do not have a constitutional duty to reach agreement, but to negotiate. In order to induce all parties to negotiate in good faith, the Court nevertheless recalls that international recognition is what decides in the end whether secession is successful or not. In the event of the unconstitutional unilateral secession of Quebec, the international community would analyse the conduct of all the parties involved and decide accordingly to grant or withhold recognition to Quebec. If Canada fails to take its correlative duty or if it acts in bad faith in the negotiations, it could incite other countries to confer legitimacy and effectivity to the unilateral secession of Quebec. Conversely, Quebec's unwillingness to negotiate the terms of secession with Canada, or its reluctance to acknowledge and accommodate minority claims, could persuade the international community to withhold recognition to Quebec.[146]

The Court thus set out a form of public reason—what it calls a "continuous process of discussion"—adapted to the Canadian context. Such a mode of public reasoning, more agonistic than Rawls' and Habermas' sketches, has the resources to toss away unreasonable forms of identity politics, that is, political demands based on the exclusion of those who disagree. Unless normative political philosophers *really* see themselves as legislators, everyone agrees that it is citizens themselves who must judge the legitimacy of identity-based demands. Seen under that light, one of political philosophy's functions is to investigate whether or not forms of public reason, in their concrete embodiments, have the resources to dismiss unreasonable claims. The critique of strong normative political philosophy does not amount to the relativistic acceptation of every minority claim. This is an important point, as the devolution of rights and powers to minorities can have the perverse effect of rendering dissenters and minorities within minorities more vulnerable. This is what Ayelet Shachar calls

[146] For a close examination of the *Reference*, see Tully (2001) and the papers gathered in Schneiderman (1999).

"the paradox of multicultural vulnerability" (2000). The classic example is when the political and legal autonomy granted to a community leads in turn to the restriction or abolition of rights conferred to women under the previous system of regulations. Shachar's work abounds in specific examples of such a nightmare scenario.

Yet, rather than examining the political processes that lead to such scenarios, and examining whether internal minorities or dissenters did or could voice their anxieties before and after the devolution of power to a minority, Shachar takes defenders of a "strong version of multiculturalism" to task for legitimising minority rights. The strong multiculturalist position espoused, according to her, by theorists such as Young and Tully, allegedly "obscures the power relations *within* identity groups by highlighting the conflicts that exist *among* identity groups or *between* identity groups and the state" (*Ibid.*: 64; see also Barry 2001: 127). Not only does this mischaracterizes Young and Tully's thought, as both have pressed that minorities are themselves faced with the task of recognizing and accommodating their own internal diversity, but it misses the target. That a minority group uses its self-government or jurisdictional powers to oppress its own minorities comes from a defect in the procedure that led to the devolution of rights and jurisdictions. The interests and preoccupations of dissenters and internal minorities were either glossed over or repressed. In the language of the Supreme Court of Canada, respect for the minority rights principle was disregarded. The application of the *audi alteram partem* democratic convention—the duty to head attention to the other side—never finds rest: it must govern both inter- and intra-group relationships (Tully 1995, 2000a).[147] If internal minorities and dissenters' claims were heard

[147] As Shachar remarks, in agreement with Young and Tully, "no democratic principle can justify a multicultural accommodation policy that does not hear the voices of those insiders who might, ironically, be damaged by the very policy that purports to assist them" (2000: 81). Turning to the application of the *audi alteram partem* convention within minorities seems less problematic than Kymlicka's distinction between legitimate "external protections" and illiberal "internal restrictions," as it puts the specification of the "legitimate" and the "illegitimate" back into citizens' own hands (Kymlicka 1995). See Aletta Norval's thoughts of the politics of

and taken into consideration before the devolution, the restriction or abolition of rights then comes from an illegitimate application of the jurisdictions obtained by the leaders of the community.

4. Reframing and Expanding on the Language of Recognition

If my argument is correct, the charge of essentialism is incapable of supporting, by itself, a principled a priori rejection of identity politics. One could however admit that identity politics is not necessarily committed to identity essentialism, but nonetheless believe that the language of recognition which usually articulates identity politics tends to reify hegemonic pictures of an identity and to freeze its development at a particular point in time. The language of recognition would thus hypostasise the constative moment of identity politics while concealing its performative/transformative dimension. Moreover, casting identity politics in the language of recognition might give the false impression that identity politics is exclusively a matter of recognition. These lines of criticism raise issues that must be addressed by those unmoved by principled judgements for or against identity politics. The language of recognition, although invaluable, fails to capture and convey some dimensions of the politicisation of identity. This language must consequently be reframed and expanded, and it must be made clear that the politics of recognition does not exhaust identity politics.

4.1 Disclosure and Acknowledgment

In his recent work, Tully highlights some of the problems we are confronted with when we see identity politics as quests for definitive recognition (2000c; 2001). As already fleshed out, the internal diversity and heterogeneity of collective identities make forms of fixed and unalterable recognition contestable and potentially stifling. The mutable character of identity can hardly be accommodated by the conception of recognition as a single act (Emcke 2000:

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recognition carried out by Afrikaners for a case where the *audi* convention is not being applied within (1998: 101-4).

494). The politics of recognition, then, if they are to be construed as struggles for *the* just and stable form of recognition, are bound to fail to do justice to the plural and evolving texture of identity. As Tully puts it, "struggles over the mutual recognition of identities are too complex, unpredictable and mutable to admit of definitive solutions" (2001: 5).[148]

There must be, then, something other than the actual end-state of recognition at play in identity politics. According to Tully, these politics are first and foremost activities of "disclosure and acknowledgment", by which he means that they are primarily (1) practices oriented toward the public unveiling of an identity-related difference that has been distorted, silenced, unilaterally privatised or used as criteria of discrimination by the majority and (2) demands addressed to this majority to acknowledge the disclosure of the mis/non-recognised identity. Tully most probably adverts to the phenomenological concept of disclosure in order to stress that identity politics are meant to lay something new before our eyes, to challenge the organization of the sensible world through the demonstration of hitherto unseen or repressed ways of being and acting as a citizen. Not unlike other democratic struggles, identity politics is, among other things, a politics of voice and visibility. As Hannah Arendt, Claude Lefort and Jacques Rancière have shown via different routes, this striving to make oneself seen and heard through public disclosure is the necessary first step to the democratic transformation of the prevailing forms of government and, more difficultly, of governmentality. Seen under this light, the principle which underpins the politics of disclosure is not primarily dignity, self-respect or self-esteem, but freedom: the democratic freedom to compete for the modification

[148] For Alexander Garcia-Dütmann, "the *dogmatic* usage of the concept [of recognition] turns recognition into a result, a stabilized relationship which can no longer be destabilized," while the "*anti-dogmatic* usage of the concept marks the disunity, it does so each time anew and each time differently" (2000: 23).

of the current structure of recognition as identities change in the course of the very process of identity criticism and disclosure.[149]

For Tully, the intersubjective and agonistic activity of disclosure and acknowledgment is "an intrinsic good of modern politics" and should therefore be examined in its own terms, rather than being subsumed (and concealed) by the end-result (2001: 5). The public acknowledgement by the majority of claims displayed by minorities is in itself an important democratic moment, even if it translates as a failure of recognition, as it allows the continuation of the deliberative process. The use of "acknowledgement," here, instead of "recognition," echoes the Supreme Court of Canada insistence on the majority's duty not to reach an agreement, but to heed attention to minority claims and to enter into negotiations with the claimants when their demands are well supported. For Stanley Cavell, the act of acknowledging must be distinguished from the outcome of the acknowledgement, i.e. from the form the acknowledgment takes. What we understand from Cavell's point is that the very act of acknowledging one's claim, regardless of its success or failure, confirms one's status as an *agent*. "A 'failure to know,'" Cavell observes, "might just mean a piece of ignorance, an absence of something, a blank. A 'failure to acknowledge' is the presence of something, a confusion, an indifference, a callousness, an exhaustion, a coldness" (Cavell 1976: 263-4). There is a sense, thus, that the failure to acknowledge is a moral failure.

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[149] This freedom of bringing something new to the public realm can be redescribed as what William Connolly calls "the politics of becoming." The politics of becoming problematizes and transforms the often sedimented "politics of being" (the current structure of recognition). According to Connolly, the politics of becoming emerges "when a culturally marked constituency, suffering under its negative constitution in an established institutional matrix, strives to reconfigure itself by moving the cultural constellation of identity/difference then in place. [...] By the politics of becoming I mean that paradoxical politics by which new cultural identities are formed out of unexpected energies and institutionally congealed injuries....To attend to the politics of becoming is to modify the cultural balance between being and becoming without attempting the impossible, self-defeating task of dissolving formations altogether" (1999: 51, 57). In Rancière's terms, but against his own conception of identity politics, this form of contest is a mode of " political subjectivation." New modes of political subjectivation prompt the transformation and the re-arrangement of the social space (1996).

Cavell's point here shifts the emphasis from substantive recognition to the act of acknowledging. The importance of this point for my purposes is confirmed by the observation that even when the acknowledgment takes the form of a politics of non-recognition, as it was the case for gays and lesbians for numerous years, the politics of disclosure remains productive for two main reasons. The first reason is that disclosure initiates a session of public deliberation around the contested form of recognition. Public deliberation, in turn, fosters specific civic virtues that are much needed under conditions of ethical and cultural pluralism. The second reason is that disclosure acts as a kind of public catharsis: it pushes minorities to convert their felt alienation into public argumentation rather than into private frustration.

First, the reflexive practices of articulating the unfairness or unacceptability of a given form of recognition, of deliberating about it, and of competing for an alternative description in a public space are, in themselves, means of enhancing self-knowledge, self-respect and self-esteem. This is not say that repeated public setbacks do not undermine minorities' self-confidence, quite the opposite. But when this happens, minorities regroup into "counterpublics" of persons similarly positioned in a field of power/knowledge relationships, they enter into processes of opinion- and will-formation, gain confidence, pride and solidarity, and they re-appear in the public space *if* public reason is not hermetic to their ways of thinking and acting as citizens.[150] Competition with others increases one's capabilities, as Nietzsche repeatedly argued, and deliberation enables one to become more intelligible to oneself and to others, and both in turn contribute to the fostering of psychological health and stability, as discussed by the theorists of recognition.[151] Honneth himself recognises that the agonic activity of debating over, and challenging, a structure of recognition can in some

[150] For different perspectives on the importance of "subaltern counterpublics," see Fraser (1997: 69-98), Scott (1990), Young (2000) and Gilroy (2000).
[151] As Taiaiake Alfred underlines, surviving colonialism, despite all the problems that it created, made native peoples "strong" and capable of facing contemporary challenges (1999: xx).

circumstances be enough to bolster self-esteem. At the end of *The Struggle for Recognition,* Honneth writes that

> for the victims of disrespect [...] engaging in political action also has the direct function of tearing them out of the crippling situation of passively endured humiliation and helping them, in turn, on their way to a new, positive relation-to-self. [...] In this sense, because engaging in political struggle publicly demonstrates the ability that was hurtfully disrespected, this participation restores a bit of the individual's lost self-respect (1995: 164).

In sum, as Tully points out, "formal and definitive recognition is not a necessary condition of self-respect and self-esteem," only the free play of disclosure and acknowledgment over a system of mutual recognition that is open to change (2001: 22). This might enable us to better grasp why, for instance, First Nations' resistance is fierce in spite of the absence of fair systems of mutual recognition—which is not to say, of course, that the politics of domination and of non-recognition did not affect their sense of self. The disclosure of past and present injustices in terms of alienation, deprivation and mis-recognition in a manifold of local, national and international fora in the past 30 years has not lead to their full and definitive recognition, but has nevertheless greatly contributed to their *renaissance* in America, Oceania and Scandinavia.

In a related way, the second reason why disclosure is in itself productive is that an agonic mode of being-with-others intensifies one's capacity for dispelling the *ressentiment* fuelled by a demeaning or distorting form of recognition. The public expression of dissatisfaction or humiliation can prevent, to a certain extent, the conversion of anger into aggressiveness and violence. The driving back of certain types of claims outside the sphere of public reason encourages the creation of factions devoted to social destabilization and fragmentation rather than to political reformation. It is when individuals and groups believe

that they can no longer influence the decision-making process, and not necessarily when their position fails to gain public assent, that they are most likely to abandon hopes of social transformation. Hence, as I alluded to in Chapter 4, the necessity of granting a voice to the French Front National within the French republican institutions—insofar as its representatives respect the regulations laid down by the rule of law. As hundreds of thousand of Frenchmen and Frenchwomen support the FN, outlawing Jean-Marie Le Pen's party could alienate several of them from the democratic process and create pockets of resentful citizens. Against 'sanitized' conceptions of public reason, it is thus worth asking whether admitting a wider variety of perspectives, claims and forms of speech into the realm of public reason really and necessarily leads to disunity and instability. William Connolly has been keen on arguing that an "agonistic respect" and an "ethos of engagement" between adversarial perspectives might be the only way to discharge, as much as possible, the resentment felt by marginalized groups and avoid the culmination of rivalries into bellicosity (1999: 8; see also Parekh 2000: 306). Of course, there is no guarantee that an open and fluid democratic process can always dissolve or contain resentment. Yet, to take an example, the continuous democratic and constitutional reform of the constitution in Belgium since the 1970s—a country in which the level of resentment between communities is said to be quite high—has apparently been successful in managing rivalries and in grounding a functional, albeit minimal, scheme of cooperation.[152]

However, the argument presented here should not be overstated. It is true that both theories and critiques of recognition zero in on the end-state of recognition. This focus on the *telos* of recognition politics conceals the process, the activity of *struggling for* recognition (the 'doing') and, as a consequence, presents a truncated image of identity politics. The strictly teleological understanding misses the civic virtues derived from the democratic aspects of

[152] This is not to say that the fact that Belgium has not yet imploded is exclusively due to the successive constitutional reforms in Belgium since the 1970s. Other factors, such as the construction of the European Union, must also be brought into the picture.

identity politics, namely that the democratic process can contribute to changing minorities' self-images, to enhancing their capabilities, and likewise to build civic ties between citizens. As Tully points out, "a great deal of what is going on in struggles over recognition is not aiming at recognition so much as it is making public displays of the intolerability of the present form of recognition and displaying another form of identity" (2001: 21). This is not to say that the actual outcomes of identity-based struggles are irrelevant. Tully, having studied the past and present relationships between Euro-Americans and aboriginal peoples with great care, knows that being involved in the serious game of disclosure and acknowledgement will not always be sufficient to invigorate self-confidence and to dispel resentment. As discussed in Chapter 4, agonistic deliberative democracy can deliver positive side effects if individuals or groups have a real chance of partaking in the exchange of reasons and if the process is not structurally biased against some of the parties. Public disclosure can hardly generate the effects discussed here if some participants, in the long run, always end up on the loosing side. But this does not invalidate the general point made here, since perpetual mis-recognition, combined (usually) with enduring economic deprivation and political alienation, pretty much cancels the possibility of meaningful civic participation. Rather, this point of qualification reveals that a politics of disclosure requires certain background conditions, in terms of rights, respect and recognition—that must often themselves be gained by means of democratic challenges to the political order of things—that are unavailable when power relations are in effect sutured relations of domination.

4.2 Identity *Politics*

Identity politics exceeds the grammar of recognition; likewise, the claim for definitive recognition is not inscribed in its logic. Understanding contemporary identity politics therefore demands a wider assortment of languages of description. In addition to the reasons

surveyed above, it has also been noted that the expanding use of the discourse of recognition, both in theory and in practice, runs the risk of robbing the language of redistributive justice of much of its normative strength (Fraser 1997: 11-40). In a time in which the dynamics of globalisation seems to increase pauperisation at home and abroad, this fetishization of recognition would have, perhaps unwittingly, the damaging effect of legitimizing maldistribution. Some writers have concluded on that basis that identity politics should be subsumed under class politics (Rorty 1999: 229-242), that the problems allegedly caused by mis-recognition can be dealt with within the grammar of liberal-egalitarian politics (Barry 2001) or, in a more balanced way, that both the logic of recognition and the logic of redistribution ought to be deployed in the relevant contexts of action (Fraser *Ibid.*).[153]

As just stressed, recognition politics is only an aspect, albeit an important one, of identity politics. A politics of recognition is a particular way, very rarely used in isolation, of framing and channelling identity-related political demands. Political struggles based on identity are not always strictly restricted to political, constitutional, legal or symbolic recognition. They sometimes overlap with demands for redistribution. Nancy Fraser rightly underlines that "culture and political economy are [almost] always imbricated with each other, and virtually every struggle against injustice, when properly understood, implies demands for both redistribution and recognition" (*Ibid.*: 12). For example, discrimination in the job-market and in the workplace remains one of the most pressing and dispiriting problems faced by people immigrating to liberal-democratic societies (Salée 2001; The Runnymede Trust 2000). A majority of aboriginal peoples in developed "post-colonial" countries live well under the threshold of poverty and are harshly afflicted by a cluster of social pathologies such as drug addiction, alcoholism, high levels of suicide, academic failure, family violence, etc. In both

[153] See Young's reply to this sort of criticism and Feldman's useful expansion of Fraser's theory (Young 2000: 85-7; Feldman 2002: 410-440).

these cases, ethnicity is a vector of socio-economic deprivation and, as a corollary, the demands for recognition and for redistribution are intermeshed. In another set of cases, struggles for recognition of economically advantaged but non-sovereign nations such as Flanders, the Basque Country, Catalonia, Scotland and Quebec intersect with claims for decentralization and constitutional reform.[154] Identity politics thus only rarely involves the symbolic or constitutional recognition of a mis/non-recognized identity. Identity politics is embodied in democratic struggles for the respect and accommodation of identity-related differences in terms of recognition, redistribution and political autonomy.[155]

It must be kept in sight that we are dealing with identity *politics*. This mode of political activity is distinct from other forms of democratic struggles, but not different in kind.[156] Groups engage in identity politics when a set of norms of social cooperation are put into question on the grounds that some identities are mis-recognized, insufficiently institutionalised, used as a criteria of discrimination and so forth. The formulation of identity-based claims thus refers, like any other political demands, to the forms of public reasoning that citizens use in order to settle their disagreements and resume civic cooperation.

5. The Public Sphere under Conditions of Cultural Diversity

The predominance of normative analytical theory in contemporary political philosophy might divert our attention from the necessity of thinking about the terms of the public sphere under conditions of diversity. As argued in Chapter 5, normative political philosophy, which aims among other things at judging the validity of specific political claims, can greatly contribute to the clarification and evaluation of given principles or arguments made public, but obviously

[154] In the case of aboriginal nations, demands for recognition, redistribution, lands and self-government rights are all intermeshed. As we will see in Chapter 7, meeting the claims of aboriginal peoples exclusively with the distribution of socio-economic rights represents a new brand of assimilationism.

[155] I am referring here to identity politics vindicated by cultural groups, as such politics deployed by homeless persons or gays and lesbians for instance involve partly different political demands. See Feldman (2002).

[156] Although we can agree with Fraser that struggles over distribution and struggles for recognition do interfere and intersect, insisting on the "analytical distinction" between them might obscure that they are both aspects of the broader game of democratic politics.

can not substitute itself for the political judgement of citizens.[157] The norm of respect for cultural diversity calls for a form of public practical reason adapted to conditions of ethical and cultural pluralism. Public reason delineates a shifting communicational space in which citizens, informed by their overlapping and contrasting values, identities and interests, resolve problems related to terms of togetherness. When common values, projects and identities are distended by political disagreement, a form of reasoning- and judging-together is called upon to reignite social cooperation and the coordination of actions. A shared identity can delineate the boundaries of public reason and strengthen citizens' desire to cooperate but, as citizens sharing a common identification give different, sometimes conflicting, meanings to their shared identity, and because they usually disagree on the 'common good', it cannot by itself ensure social cooperation.[158]

I have already sketched out in chapter 4 a conception of public reason more responsive to contemporary pluralism. I argued that the generalization principle and the decontextualization requirement upon which Kantian conceptions of public reason are grounded should be replaced by a more fluid exchange of internal and shared reasons between differently situated citizens. As what distinguishes a public reason from a non-public reason must itself be debated according to some form of public rationality, I proposed toning down the discipline of public reason. Echoing this less constraining conception of public reason, Bhikhu Parekh writes that "reasons are public not because their grounds are or can be shared by all, as the secularist argues, but because they are open to inspection and can be intelligently discussed by anyone with the requisite knowledge or willingness to acquire it" (2000: 327).

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[157] From the perspective of an anthropologist such as Clifford Geertz, political theory is useful when it tries to be "a school for judgment, not replacement for it" (2000: 256).

[158] Kymlicka considers that "people decide who they want to share a country with by asking who they identify with, who they feel solidarity with. What holds Americans together, despite their lack of common values, is the fact that they share an identity as Americans" (1995: 188). This position begs the question of what are the ties that bind a multicultural national community together when the shared identity is itself the source of political disagreements. And as Kymlicka recognizes, this liberal-nationalist position is incapable of explaining unity in multinational associations.

As the examination of the Supreme Court's reference helps us to see, softening the discipline of public reason does not entail that "anything goes." Quite the opposite, it instead creates space for more robust processes of reciprocal evaluation between conflicting positions.

In the case of culturally diverse societies, Kantian conceptions of public reason prevent citizens from drawing directly or explicitly on the resources of their cultural backgrounds—the same resources that constituted them as citizens in the first place—for partaking in the activity of debating the rules and substance of the association. Most critics of liberalism have pointed out that this stance disadvantages minorities, as the majority's values, moral frameworks, interests and cultural attributes ineluctably rub off on the state's collective orientations. The choice of a language for education, justice and public administration, the history taught in school, the selection of "national" symbols, the choice of public holidays according to some religious events (such as the *Ascension* and the *Pentecôte* in radically secular France), the process of dividing the territory into particular units, the conceptions of the family recognised by the law, and the modes of sociality constructed as "normal" are all directly or vicariously related to the majority's language, culture, religion, visions of the good and so on.[159] Admitting only reasons and claims that can be agreed upon by all, as the sanitized conception of public reason imposes, signifies in practice that majorities can *de facto* enjoy channels of interconnection between culture and politics, while minorities must confine culture to the private sphere. As a result, majorities and minorities do not play the game of cultural politics on a level playing field.

Moreover, as we saw in this chapter, culture in multicultural settings is a vibrant and irreducible political issue. A wide set of demands for recognition, legal accommodation,

[159] To an interviewer who asked him whether France was not more Catholic than it concedes in its self-representation as secular, the French intellectual Regis Debray said "Two combatants [Religion and the Republic] always end up by looking alike. After struggling relentlessly against the clergy, the Republic imitated it" (Arsenault 2002: 25; my translation). In a report commissioned by the French government, Debray suggests that the teaching of the Great Religions should be brought back to the *lycée*.

political autonomy and redistribution find their impetus in cultural belonging. The admission of reasons, modes of speech and demands particular to distinct cultural identities within public reason is necessary for at least two reasons. First, it helps members of the wider society understanding why such and such values or practices are for some fellow citizens crucial to the way they orient themselves in the world. The exchange of "reasons of one's own" increases the level mutual understanding between citizens. Second, it contributes to the disclosure of the always imperfectly neutral and universal character of public norms, laws and policies. A plural and decompartmentalized conception of public reason supplies perspectives of comparison for evaluating the degree of generality of the reasons publicized. The interplay between perspectives that are all to a certain extent drawn from particular visions of the world (as they do not come from nowhere) favours the distillation of reasons and justifications that best embody the never fully realized norms of justice and impartiality. From that point of view, Kantian conceptions of public reason constitute adequate frameworks for resolving disagreements only in an ideal frictionless world in which the norms for judging the validity of specific claims are truly and fully impartial.

In addition, a less constraining approach to public reason provides an incentive for public participation, as individuals and groups are entitled to voice their concerns and claims in the terms they consider most appropriate and through the modes of public discourse they feel more comfortable with (granted that this form of civic participation respects basic individuals rights and some minimal requirements of communication) (Parekh 2000: 223). In turn, as argued in the Conclusion to Section One, agonistic public deliberation, if it rarely yields consensus, contributes to the creation and consolidation of thin bonds of belonging between citizens who otherwise disagree on the specific conditions of justice, freedom and social integration. This source of stability and belonging is often ignored by the theorists of recognition and multicultural justice. In light of what was said in the previous and current

chapters, we can grant these theorists that assimilation, non-recognition, political heteronomy and culturally-based discrimination severely impair minorities' feeling of belonging to wider association and their willingness to cooperate. Their corollary point, that social integration under conditions of diversity demands some combination of recognition, group rights, redistribution and anti-discrimination measures, is therefore cogent. That said, this vision of social integration, shared by most theorists working on multiculturalism, remains under the spell of the social harmony tradition, as it ties social integration to agreement over some form of recognition, redistribution or devolution. Yet, we cannot realistically expect that citizens will reach consensus over such hard political issues. In the end, stability and social cooperation rest not on the non-plausible dissolution of political disagreement, but rather on a vibrant civic culture.

In order to ground the thoughts on cultural diversity and democracy gathered in chapters 5 and 6, I examine in the following chapter the challenge posed by the emergence of "aboriginal rights" to the dominant understandings of citizenship and public reason. But before doing so, something must be said about the very possibility of communication across differences.

Conclusion: Is Cross-Cultural Communication Possible?

Under the present conditions of cultural entanglement described in Chapter 5, we can no longer afford to think, like Levi-Strauss does, that toleration requires distance and relative indifference (Levi-Strauss 2001: 167). Accordingly, much of the approach advocated for here hinges on the possibility of communication and mutual understanding across differences. But some wonder whether political dialogues are possible in contexts permeated by the fact of cultural diversity. Is the main condition for public deliberation—commensurability between distinct perspectives—present in multicultural societies? According to a thesis that was

particularly strong in the 1980s and the beginnings of the 1990s, the possibility of intercultural mediation vanished with the deconstruction of the eurocentric and falsely universal *Grands Récits*. The lack of confidence in the possibility of finding a neutral ground upon which people belonging to different cultures could meet and exchange, and the distrust towards the validity of allegedly "external" standards for assessing foreign cultural values and practices, convinced many that the very idea of intercultural mediation was either inconsistent or dubious.[160] The "violent heterogeneity of language games," argued Jean-François Lyotard, has enhanced our capacity to "bear the incommensurable" (1979: 8-9). One way of interpreting Lyotard's claim is to say that insofar as dialogue requires some degree of commonality between the interlocutors, the ground for mutual understanding is absent under conditions of cultural diversity. Cultural identities are represented, in that train of thought, as epistemological and moral enclaves rather than as porous systems of meaning and representation.

This line of argument is less credible nowadays because it relies on an opaque, essentialist conception of culture that cannot account for the (uneven) process of exchange and translation between cultures. As we saw in Section 3.1 of Chapter 5, an investigation of cultural entanglement reveals complicated networks of similarities overlapping and criss-crossing: sometimes overall similarities, sometimes similarities of detail (Wittgenstein 1953: par. 67; 1982: 22). Although we can accept that finite human understanding does not have access to a meta-language capable of hosting intercultural dialogue on a fully neutral ground, it remains plausible to think that the ongoing interaction between cultures can and does produce unstable grounds for dialogue, translation and negotiation. In most cases, the

[160] This line of argument is often combined with a peculiar reading of Foucault on the omnipresence of power relations. The possibility of cross-cultural mediation is said to be canceled both by incommensurability and asymmetrical power relationships between groups.

similarities between distinct cultural language-games or, put differently, the contact zones between cultural groups, suffice to anchor intercultural communication.

Moreover, the pluralization of identity horizons favours the multiplication of such points of contact. Belonging, as we saw, does not erase differences. Men, for instance, encounter at times disorienting differences of social class, sexuality, gender, generation, spirituality, ethnicity, and ideology in their relationships to one another. To adapt Heidegger's terminology, living and coping with diversity is an "existentiale," a conditions of sociality in the context of Western late modernity.[161] As a result,

> citizens are [always already] to some extent on a negotiated, intercultural and aspectival "middle" or "common" ground with some degree of experience of cross-cultural conversation and understanding; of encountering and being with diverse others who exhibit both cultural similarities and dissimilarities. The politics of cultural recognition takes place on this intercultural "common" ground, as I shall call the labyrinth composed of the overlap, interaction and negotiation of cultures over time (Tully 1995: 14; Parekh 2000: 124-5).

The fact that diversity permeates the praxis of everyday life—to different degrees whether one lives in a metropolitan city or in a peripheral village, or in a country described as heterogeneous or as homogeneous—fosters skills to deal with cultural differences, while the contact zones between cultures yield enough common ground for engaging in cross-cultural mediation. This form of agonistic or messy practical dialogue, criss-crossed by differences

[161] It is therefore not only "being-with," as Heidegger wrote, that has an ontological dimension, but being-with others who differ from us to some extent. This has to be noted, as Heidegger seems to reduce "being-with" to the dissolution of singularity into the quicksand of publicness (the "They"). Hannah Arendt corrected Heidegger, in her work, on this aspect of being-with. This "existentiale" need not be seen as new or exclusive to our age, but it is safe to suggest that late modernity has greatly radicalized both individualization and multiple belongings (Giddens 1991).

and power relations, differs greatly from the normative ideal of undistorted communication, but still dissolves the fear of generalized incommensurability.[162]

[162] See Williams (1993 : 156-173) for a complementary and more detailed critique of the incommensurability thesis.

Chapter 7

'Visions' of Post-Colonialism:

Aboriginal Rights in Canada[163]

The questions relating to multiculturalism, identity politics and the public sphere under conditions of cultural diversity have thus far been approached at a fairly abstract level. Although I have attempted throughout this thesis to back up my arguments with historical and contemporary examples, I have not yet provided a sustained analysis of a particular context in which the questions addressed are being concretely played out. One might think that this omission has something odd about it, as I claim to be informed by an approach that starts from practice (i.e. specific power-laden sites of interaction) in order to test our dominant languages of elucidation, evaluation and intervention upon some of the problems we face in the conduct of human affairs. This chapter on the rights of indigenous peoples is meant to address, at least partially, this absence. Note, however, that the approach sketched out in Chapter 5 does not claim to be primarily defined by, and let alone to own the monopoly of, case-studies. As already alluded to, several normative theorists anchor their deontological approach in fine-grained contextual analyses. The main line of demarcation between the more strongly normative approaches (such as liberal political philosophy and critical theory) and the one argued for here resides in their respective ambitions. To put it perhaps too starkly, normative theory aims to be a source of authority—a kind of theoretical reason which can either replace or set limits to the judgment of citizens—while a more critical-phenomenological approach wants to contribute to, and is subsumed by, public practical reasoning. This, in turn, explains why this approach is primarily concerned with the expansion of civic freedom rather the elaboration of theoretical conceptions of justice. I will come back to this in the conclusion.

[163] I wish to thank Shauna McRanor for her illuminating comments on this chapter.

The relationship between aboriginal and non-aboriginal peoples in the context of present-day multicultural and multinational political communities is a multifaceted topic that needs to be approached through the integration of a variety of disciplines, including history, anthropology, law, political philosophy and comparative politics. In order to restrict the scope of my discussion, I will for the most part zoom in on the interpretation, definition and implementation of aboriginal rights in Canada. The first three sections will be devoted to the evolution, scope and limits of the notion of aboriginal rights. I will then seek to explore whether the Government of Quebec's current approach to the indigenous question, exemplified by the agreements negotiated with the Eeyouch (Crees) and the Innu (Montagnais), represents a significant departure from the conventional way of understanding and defining aboriginal rights. I will particularly focus on the replacement of the extinguishment of aboriginal rights strategy hitherto privileged by the Canadian state. Finally, I will reflect on the virtues of self-determination for minority peoples and on the reconfiguration of citizenship and sovereignty implicit in the recognition of aboriginal rights. The aim of this examination of a specific field of interaction (the relationship between indigenous and non-indigenous peoples) is not to validate a theory of multicultural democracy, but rather to lend plausibility and concreteness to the approach developed in Chapters 5 and 6.

1. The Evolution of Aboriginal Rights

The struggle for recognition and self-determination of native peoples is an embodiment of the politics of identity discussed in Chapters 5 and 6. The rights of aboriginal peoples emerged as an intelligible discursive category in Western law in the past decades only.[164] In Australia, it is only with the 1992 *Mabo* decision that the legal fiction of *terra nullius*— according to

[164] In fact, aboriginal rights have been in Western law for 500 years, but they become the site of struggle in practice and debated in court since the 1970s.

which Europeans at the time of first contact could legitimately acquire territory occupied by autochthonous peoples on the basis that land was not properly used and exploited[165]—was formally invalidated. It was then affirmed that forms of native title to land could have survived colonization (Patton 2000; Webber 2000). In Canada, the federal government thought, as late as 1969, that plain assimilation to mainstream society was the most effective and enlightened way to improve the life-conditions of aboriginal peoples (Department of Indian Affairs and Northern Development 1969). But, as it was surveyed in Chapter 5, the normative climate surrounding the treatment of minority peoples and cultures has greatly changed since then. In the past thirty years especially, native peoples demurred at their treatment as internal ethnic minorities and fought to regain their status as *peoples* entitled to some form of self-determination. A number of aboriginal nations around the world undertook an obstacle-laden process of cultural and political revitalization. These battles were not in vain. In several countries of the so-called "New World," explicitly assimilative enterprises gave way to more or less genuine attempts to recognize and accommodate indigenous identities. In parallel, the rights of indigenous peoples (re)earned an international standing. During the International Decade of the World's Indigenous People (1993-2003), a United Nations Declaration on the Rights of Indigenous Peoples was drafted under the auspices of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, itself coming under the Commission on Human Rights.

Canada has been, and still is, one of the most interesting laboratories with regard to aboriginal peoples-settler states relationships. The modern turning point in Canada regarding aboriginal rights occurred with the 1973 Supreme Court landmark decision in *Calder et al. v.*

[165] See Tully (1993: 137-178) for Locke's version of this particular legitimation strategy.

Attorney-General of British Columbia.[166] Before the *Calder* judgement, aboriginal rights were treated as personal and usufructuary, and were thereby incumbent upon the pleasure of the Crown (Asch 1999: 429-432). In opposition to the British Columbia Court of Appeal, which ruled that aboriginal rights had been extinguished by the assertion of the Crown's sovereignty, the Supreme Court adjudicated that the Nisga'a (the indigenous nation who had launched the litigation) held aboriginal rights by virtue of their occupation of the land prior to their contact with Europeans. Rejecting the Lockean and oft-stated argument that native people were too low on the scheme of cultural development and social organisation to hold property rights on the land they inhabited, Justice Judson prosaically stated that "when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what Indian title means and it does not help one in the solution of this problem to call it a 'personal or usufructuary right'" (*Ibid.*: 431). The justices then split 3–3 on the question of whether or not aboriginal rights had subsequently been extinguished by colonial legislation. In the end, the Nisga'a lost their appeal on a technical matter, but the case established that aboriginal rights existed prior to, and possibly throughout, the assertion of Crown sovereignty.

The next major breakthrough in the recognition of aboriginal rights came in 1982 with the patriation of the Canadian Constitution from Great Britain. Moving into the new regime of truth set in place by the *Calder* case, the federal government, under pressure, took advantage of the occasion offered by the patriation of the Constitution and by the adoption of the Canadian Charter of Rights and Freedoms to provide constitutional protection to aboriginal rights. Section 35 of the *Constitution Act, 1982* states that "the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed," whereas

[166] In this chapter, "indigenous," "aboriginal" or "native" peoples are used interchangeably. In the Canadian context, "aboriginals" include Indian, Inuit and Metis people.

Section 25 specifies that the guarantees included in the Charter "shall not be construed so as to abrogate or derogate from any aboriginal, treaty, or other rights or freedoms that pertain to the aboriginal peoples of Canada." While this stands as a positive constitutional recognition of the aboriginal and treaty-derived rights of indigenous peoples, it leaves the scope and nature of these rights uncharted. A set of constitutional conferences gathering federal, provincial and aboriginal representatives held between 1983 and 1987 failed to deliver an agreement on the definition of the rights of indigenous peoples.

In the 1990s, several court judgements contributed to the sketching of an evolving framework for interpreting and defining aboriginal rights. The Supreme Court defined, in *R. v. Sparrow*, the "existing rights" referred to in Section 35 as those rights flowing from the indigenous peoples' occupation of the land from time immemorial and from their status as organized societies before contact (Murphy 2001: 119). Contemporary indigenous nations are still today entitled to these rights insofar as they have not been clearly and plainly exchanged and thus extinguished. The Supreme Court added that even though ancestral rights originate from prior occupation and usage of the land, they should not be construed as frozen in a bygone era. These rights must rather be "interpreted flexibly so as to permit their evolution in time" (Supreme Court of Canada 1990: 1093). Moreover, if aboriginal rights are not unrestricted, they are more strongly protected than common-law rights and should therefore be given a "generous, liberal interpretation" (*Ibid.*: 1106). Yet, the Court did not go so far as to challenge the pre-eminence of Crown sovereignty.[167] The Crown can still legally impinge upon aboriginal rights insofar as a "strict" test spelling out the conditions according to which aboriginal rights can be overridden has been successfully passed (*Ibid.*: 1106-19).

[167] As the justices put it squarely: "there was from the outset never any doubt that sovereignty and legislative power, and indeed the underlying title, to such lands vested in the Crown (Supreme Court of Canada 1990: 1103).

The Supreme Court made a further step towards the clarification of aboriginal rights in the 1996 *Van der Peet* case. Chief Justice Lamer, speaking on behalf of the majority, started by suggesting that the "recognition" and "affirmation" of aboriginal rights entrenched in Section 35(1) of the *Constitution Act, 1982* are meant to create a constitutional space wherein the pre-existence of indigenous societies that anchors aboriginal rights can be "reconciled" with the assertion of Crown sovereignty over the Canadian landscape (Supreme Court of Canada 1996). As was already less formally stated in *Sparrow*, the content of aboriginal rights must accomplish the double task of recognizing aboriginal rights flowing from pre-existence—rather than from colonial legislation—*and* confirming the sovereignty of the Crown. Asked to establish how the rights recognized and affirmed in Section 35 should be defined, the Chief Justice first argued, *via negativa*, that aboriginal rights are distinct from the general and universal rights shared by all and derived from the "philosophical precepts of liberal Enlightenment" (*Ibid.*: par. 19). Accordingly, aboriginal rights are by definition group-specific: they can only be enjoyed by indigenous peoples. Therefore, aboriginal rights spring from aboriginality itself; from the distinctive cultural identities of aboriginal peoples. For an activity to be considered as an aboriginal right, it must thus be established that the said activity is "an element of a practice, custom or tradition integral to the distinctive culture of the Aboriginal group claiming the right" (*Ibid.* : par. 46). The prevalence of an activity at the time of contact does not suffice to prove that the activity is "integral" to the aboriginal culture. Rather, it must be established by the claimants that the activity was a "defining feature of the culture in question" (Morse 1997: 1029-30).[168] As Michael Asch suggests, the Court chose to construe aboriginal rights as "way of life rights," rather than as political rights, and henceforth to dilute the scope of such rights (1999: 436).

[168] Applying the *Van der Peet* test, the Supreme Court ruled that the Eagle Lake First Nation, located in Ontario, could not conduct large-scale gambling activities, on the basis that its representatives failed to demonstrate that gambling was "integral to [and not only prevalent in] the distinctive culture" of the Ojibway (Morse 1997).

This device imagined by the Court raises the question as to how it is to adjudicate whether a practice, custom or tradition is "integral" or essential to an indigenous culture. As just noted, the Supreme Court justices ruled that practices integral to aboriginality are those that were already performed at the time of contact and continued afterward. Practices developed as a result of the interaction with settlers or as means to adapt to the fluctuations of life are thereby excluded from the category of aboriginal rights recognized in section 35 of the 1982 Constitution. Indigenous cultural practices may have evolved so as to adapt to modern life, as the flexibility provision built into the *Sparrow* decision made clear, but they must however be firmly rooted in the "pristine" pre-colonial era in order to qualify as ancestral rights. Unsurprisingly, the Court's conception of both culture and aboriginal rights was harshly criticized (Barsh and Henderson 1997; Morse 1997; Asch 1999, 2000; Borrows 2000; Murphy 2001).[169] In short, the Court was accused of freezing indigenous culture in a bygone pre-colonial past that was obviously severely damaged by colonization and the subsequent development of Euro-American societies. If the definition of "ancestral" rights does logically call for a historical investigation of how things were before colonial contact, the dynamic process through which cultural identities evolve through time (as examined in Chapter 5) nonetheless puts into question the validity of an approach that ties contemporary rights to allegedly more authentic pre-existing traditions. Indeed, the Court ignored the possibility that aboriginal cultures could simultaneously change, through interaction and adaptation, and preserve their integrity and singularity.[170]

Alternatively, the Court justices could have construed aboriginal rights as flowing from pre-existence, as they did, but as also potentially including the motley of pre- and post-

[169] Such criticisms include two Supreme Court justices who dissented from the majority judgement in *R. v. Van der Peet.*

[170] For John Borrows, "aboriginal practices and traditions are not 'frozen'. Aboriginal identity is constantly undergoing renegotiation. We are traditional, modern, and post-modern people. Our values *and* identities are constructed and reconstructed through local, national, and sometimes international experiences" (2000: 333). See also Barcham (2000).

contact indigenous customs and ways as they were altered and modelled by the passage of time and by the intertwinement of the fates of both aboriginal and non-aboriginal peoples. This approach has the advantage of incorporating both an understanding of the work of colonial history on the nature of aboriginal culture as well as an understanding of the impact of the demands of modern life on the definition of aboriginal rights. It also problematizes the Court's emphasis on the "centrality" criterion: what is "central" to a culture may be defined by a fidelity to the past as much as by the passage of time and the demands of the present.[171]

When it comes to defining aboriginal rights, there is a striking similarity between the Canadian and the Australian approaches. Applicants to native title in Australia must prove the ongoing existence of their traditional laws, customs, beliefs and practices. In the 1999 *Report of the Native Tribunal Commissioner*, Justice Olney defines (in line with the *Native Title Act, 1993* that stemmed out of the *Mabo* decision) traditional customs as a "set of laws, beliefs, and practices that are 'integral to a distinctive culture' rather than a mere 'description of how people live,' how their ancestor once lived, or how a portrait of their lives might be opportunistic to the law" (Povinelli 2002: 3).[172] Such historical tests of cultural authenticity appear to have been designed exclusively for indigenous nations. No one would imagine imposing the standards sketched out by high courts in Canada and Australia on non-aboriginal minority nations who exercise or claim a certain degree of autonomy within larger democratic nation-states or federations (Barsh and Henderson *Ibid.*: 995-6). This peculiarity is due to the

[171] A further difficulty ingrained in the Courts' approach is that it places non-indigenous Justices in a position where they have to adjudicate what is integral and what is "incidental" to indigenous cultures (Barsh and Henderson 1997: 1000). According to Law Professor Bradford W. Morse, "the courts and the legal profession in general are poorly trained for such an exploration" (1997: 1031). The Court tries to counter the danger of ethnocentrism by counting as valid aboriginal genres of justification and argumentation, such as the weight given to oral traditions for instance. This does not change the fact that, in the end, a non-aboriginal authority is endowed with the responsibility of assessing the significance aboriginal practices, values and paths of cultural development. See Barsh and Henderson (1997: 998).

[172] Reflecting on the authenticity, antiquity and integrity requirements to which Aborigines must comply if they want to gain recognition for native title, Elizabeth A. Povinelli writes: "to be truly Aboriginal, indigenous persons must not only occupy a place in a semiotically determined social space, they must also identify with, desire to communicate (convey in words, practices, and feelings), and, to some satisfactory degree, lament the loss of the ancient customs that define(d) their difference" (2002: 48).

nature of the justification of aboriginal rights. Aboriginal peoples claim that they are entitled to collective rights, including the right of self-determination and the title to land, on the basis that they were, prior to European colonization, sovereign peoples using and occupying the land in their own distinct ways, and were cooperating with, or waging war against, other equally sovereign peoples. They see their right to self-determination as springing from that prior status as sovereign entities organized around their own normative order. It is thus on the basis that they are "aboriginal," "indigenous," "native" or "autochthonous" peoples that they vindicate collective rights. As was suggested at the outset, this language of justification has been (at least partly) accepted by domestic and international law.

Now, this justification rooted in history is not different in kind from the reasons given by non-aboriginal minority nations in order to ground their right to self-determination. As was shown in Chapter 5, sovereign and non-fully sovereign nations always posit temporal depth and historical continuity to justify their status as self-governing nations. The main line of demarcation is that indigenous nations were decimated, fragmented into a cluster of communities ("bands"), parked into exiguous portions of lands ("reserves"), deprived of the land upon which their worldviews revolved, and quasi-systematically submitted to cultural assimilation.[173] One of the upshots of colonialism is that aboriginal peoples do not have, unlike several other non-fully sovereign nations, the concentration of population and the territorial base for a complete *de facto* and *de jure* exercise of sovereignty. This practical impossibility serves the interests of the Crown in that it contains and neutralizes to a great extent the challenge that indigenous sovereignty represents to Crown sovereignty. This might contribute to explaining why non-aboriginal legislators and justices have sought for a way to

[173] The system of residential schools in Canada and the "stolen generation" in Australia are the most telling examples of the politics of assimilation carried out by settler states. In both cases, indigenous children were taken away from their family and placed into non-aboriginal environment. For the legacy of colonialism on contemporary aboriginal people, see Alfred (1999: 34). Among other things, the level of physical and psychological distress within aboriginal communities is in general incomparably higher than within the larger population.

lend meaning and concreteness to ancestral aboriginal rights in a *sui generis* manner, i.e. in a way unique to indigenous peoples.

At first glance, the *sui generis* approach appears to be predicated upon an intercultural public reasoning congruent with the one sketched out in Section 5 of Chapter 6. Indeed, the definition of aboriginal rights as unique implies that such rights do not originate from Euro-American law and cannot therefore be construed as other common law rights. The recognition of ancestral rights logically entails the recognition of the pre-existence of aboriginal systems of law that acted as mechanisms of social integration and regulation prior to contact. However, this is not to say that aboriginal rights stem exclusively from aboriginal law. Aboriginal rights have been constitutionalized in order to shield aboriginal peoples from assimilation through their definition and application within the Canadian constitutional framework. As already noted, aboriginal ancestral rights are faced with the double task of "reconciling" the prior occupation and usage of the land with the assertion of Crown sovereignty. They must therefore be thought of as bi-cultural in nature: they ought to be "cognizable" in both indigenous and non-indigenous systems of law. As John Borrows puts it, their "essence lies in their bridging of Aboriginal and non-Aboriginal legal cultures" (2002: 10). For the Supreme Court, quoting the Law professor Brian Slattery, aboriginal rights constitute a "form of intersocietal law that evolved from long-standing practices linking the various communities" (Supreme Court of Canada 1996: par. 42). In sum, aboriginal rights are designed to open up a space of mediation or a middle ground wherein the coordination of distinct but inescapably intermingled normativities can be negotiated (Webber 2000).[174] Aboriginal rights are tools of co-existence.

[174] It should be noted however that it remains non-aboriginal justices alone that are called upon to operationalize this fusion of legal horizons.

There is thus a sense in which the *sui generis* approach breaks with the imperial absorption of indigenous legal cultures into Western law (Borrows *Ibid.*: 9-11; Murphy *Ibid.*: 119). In addition, to consider the aboriginal peoples-Crown relationship as *sui generis* entails that the rights of indigenous peoples are distinguished from those of internal ethno-cultural communities. That admitted, the *sui generis* approach is arguably double-edged. As alluded to, the downside of this particular framing of aboriginal rights is that it might also give credence to the belief that aboriginal rights differ fundamentally from the rights of non-aboriginal minority nations. But this differentiation, I want to suggest, can only be founded on the *fait accompli* logic or *ex post facto* rationalization according to which ancestral rights are construed and defined as limited "way of life" rights that must be addressed case-by-case on the unacknowledged basis that aboriginal peoples cannot effectively exercise sovereignty (in a Westphalian sense). Indeed, the principled "narrow" definition of aboriginal rights appears to be based on nothing more than the balance of powers set in place through colonialism. In delineating aboriginal rights in such a way, they can be more easily "reconciled"—from a non-aboriginal perspective—with Crown sovereignty, as the former do not call the latter's ultimate authority into question. But a *fait accompli* situation is not intrinsically legitimate, particularly when the situation in question was carved out of colonial history.[175] It remains obscure why we should think that aboriginal peoples, insofar as their ancestral rights have been recognized on the basis of their pre-existence as organized societies, are not entitled to the same kind of rights that are conferred on non-aboriginal peoples, granted that they have not voluntarily conceded these rights to the Crown. Although these rights can be defined and applied differently whether they are exercised by Quebec or by the Atikamewk nation, it is not clear why we should think that they differ in nature. In the end, there does not seem to be

[175] As Asch and Patton point out, the blind spot of the *ex post facto* justification is an appraisal of how the current balance of powers was obtained (Asch 1999: 441; Patton 2002: 354).

any justification for insulating the Crown's ultimate authority from aboriginal rights other than the plain *fact* that aboriginal nations can only mount limited challenges in practice to Crown sovereignty (Chartier 1999: 95; Alfred 1999: 59-60).

This "soft colonialism" derives primarily from the decision to construe aboriginal rights as being more cultural than political, but the *sui generis* framework, by distinguishing indigenous nations from other non-sovereign nations, might intentionally or unintentionally reinforce the domestication of aboriginal peoples.[176] On this view, C.J. Lamer's distinction between universal rights and aboriginal rights looks like an argumentative diversion, as it finesses the difficulty of conciliating aboriginal and Crown sovereignties. Aboriginal rights are self-evidently group-specific, but they are nonetheless grounded in a universal right entrenched in the UN Charter: the right to self-determination of peoples. The contrast that really matters concerns the rights of the majority vis-à-vis the rights of cultural minorities. The way in which C.J. Lamer frames the questions eludes the hard question raised by the recognition of aboriginal rights: is the absorption of indigenous sovereignty into state sovereignty legitimate and, if not, how can both orders of sovereignty be conciliated in a non-imperial way?

2. The Scope and Meaning of Aboriginal Rights

When construed as cultural rights, aboriginal rights are ultimately innocuous to the assertion of Crown sovereignty. One way for aboriginal peoples to resist the "culturalization" (and containment) of their ancestral rights is to (re)politicize such rights. If it is true that some First Nations attempted to gain recognition for a set of "way of life" rights—ranging from the exploitation and commercialization of renewable and non-renewable resources to high-

[176] The UN special rapporteur argues that the *sui generis* approach is a means to deny that treaties ratified with aboriginal peoples are inter*national* treaties in the conventional use of the term and, correspondingly, to establish that such treaties are domestic issues that can be fully adjudicated via internal procedures (Martinez par. 115-6). For a constrasting view, see Murphy (2001).

revenue business ventures—through the rough judiciary route opened up in *Van der Peet*, indigenous nations in Canada have nevertheless simultaneously maintained that their recognized status as self-governing societies prior to contact confer upon them a basic right to self-determination that does not flow from State legislation and that cannot be unilaterally extinguished by the Crown. As the Eeyou (Cree) Grand Chief Ted Moses affirms:

> for Eeyouch, there is no more basic principle in Eeyou history and relations than a people's right to govern themselves and their territories in accordance with their traditional laws, customs, values and aspirations. Therefore, as far as Eeyouch are concerned, Eeyouch of Eeyou Istchee have and continue to exercise an inherent and permanent right of Eeyou governance (2002a).

According to Moses, there is therefore nothing more basic for his nation than the recognition and respect of its inherent right to self-determination.[177] For several indigenous nations, the struggle for the capacity to determine their own future in light own their own visions and values is the firm backdrop against which they play the game of judicial reasoning and/or political negotiations with non-aboriginal authorities. The Supreme Court of Canada has approached the issue of self-determination thus far by stating that the inherent rights referred to in Section 35 of the 1982 Constitution include a right to "self-government." "Claims to self-government," as C.J. Lamer wrote in *Pamajewon*, "are no different from other claims to the enjoyment of aboriginal rights and must as such be measured against the same standard" (Supreme Court of Canada 1996b: 832-3). The recognition and specification of the right to self-government through litigation thus puts the onus of proof on native peoples' shoulders, who then have to display, each time anew, historical and ethnographical evidence of the

[177] For similar statements of aboriginal leaders, see Saganash (1993 : 25) and Picard (1999 : 86). This right of self-determination is unambiguously recognized in article 3 the *Draft United Nations Declaration on the Rights of Indigenous Peoples*: "Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

central significance of every single aspect of self-governance claimed by the group for the integrity and distinctiveness of their culture (Morse *Ibid.*: 1029-1036; Lajoie 2001: 26).

The intricate and fragmented judiciary route opened up by the Supreme Court is at odds with the broad right to self-determination vindicated by indigenous leaders. This has led many to conclude that the materialization of indigenous self-government and aboriginal rights in general should be negotiated by accountable political representatives rather than spelled out by justices. The Supreme Court itself has refused to lay down the specific terms of a new and just political relationship between aboriginal peoples and the Canadian state, and has invited duly elected representatives on both sides to negotiate the meaning, scope and implementation of aboriginal rights, including the right to self-government and the title to land. As discussed in Chapters 2 and 4, it is in the political sphere that the basic configuration of a political association can be transformed, i.e. that the ground rules of being-with can be debated and amended. Although the judiciary sphere has been, and still is, the engine of a great amount of societal transformations, it is arguably not particularly well suited for dealing with challenges that plough their way to the very core of Crown sovereignty. While the separation of powers instrumental to liberal-democratic regimes creates the judiciary as an autonomous structure of authority shielded, in principle, from the direct influence of the legislative and executive branches of government, the authority of the courts remains predicated upon the ultimate sovereignty of the Crown. Differently put, courts are the emanations of Crown authority and are tailored to frame or define the modalities of application of Crown sovereignty. Although it is perhaps not unthinkable, it remains improbable that the Crown's courts will shatter and abandon some of the ultimate authority of the Crown over a given territory (Asch 1999: 442; Chartrand 1999: 95; Murphy 2001: 128; Lajoie 2001: 27; Patton 2002: 355-58). In so doing, the court would relativize its own authority and would have to abide by a form of legal pluralism according to which a set of autonomous political and legal orders co-exist, interact

and perpetually negotiate the terms of the overarching political association. This, anyhow, has yet to happen in Canada (and Australia), and we have no indication that Canadian courts are heading towards the path of a significant reconfiguration of Canadian sovereignty.[178] As the Supreme Court's justices put it in *Sparrow* (one of the most "generous and liberal" decisions in Canadian jurisprudence with regards to aboriginal rights): "there was from the outset never any doubt that sovereignty and legislative power, and indeed the underlying title, to such lands vested in the Crown" (1990: 1103). Hence, the "reconciliation" of the pre-existence of indigenous societies with the sovereignty of the Crown is construed in a way that a priori delineates the parameters of the political or jurisdictional autonomy that indigenous peoples can cling to.

Thus far, courts have attempted to translate indigenous normativity into common and constitutional law or, in the Supreme Court's words, to make it "cognizable" to the Canadian legal order. But for such a translation not to amount to a pure process of domestication or assimilation, it has to create an interface wherein heterogeneous codes become mutually intelligible to one another without being robbed of their constitutive autonomy and distinctness.[179] A proper ethic of translation has not hitherto informed, in a consistent fashion, the definition of aboriginal rights in Canada. Rather, aboriginal rights are being incorporated into the overarching Canadian constitutional order. As we will see in Section 3, Section 35 of the 1982 Constitution, conjugated with the subsequent jurisprudence and political initiatives, can at best yield limited "autonomy regimes" operating within the scope of Crown sovereignty. Therefore, the Canadian jurisprudence on aboriginal rights is internally corroded

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[178] One could think that the setting of the Waitangi Tribunal in New Zealand/Aotearoa points toward a truly binational political and legal culture. The tribunal is a judicial body, composed of Maori and non-Maori people, habilitated to hear claims by Maori with regards to the implementation, or lack thereof, of the founding Treaty of Waitangi. Yet this only approaches legal pluralism since the tribunal has no executive power. It can only make recommendations to the legislator. See Pocock (1998: 496).

[179] For the potential of violence involved in the translation of aboriginal normativity into non-aboriginal law, see Patton (2000).

by an aporia: aboriginal rights are thought of, since *Calder*, as accruing within the pre-existence of normatively structured aboriginal societies—rather than within Canadian law—but they remain ultimately incumbent upon the good will of the Crown. This provides for self-contradictory conclusions such as the one reached in the Delgamuukw decision: an aboriginal people has a "right to exclusive use and occupation of the land," once they have proven their exclusive and more or less continuous use and occupation of it at or before the assertion of Crown sovereignty, but the Crown can nevertheless lawfully infringe upon aboriginal title on condition that it is moved by "valid legislative objectives" and that it compensates the affected aboriginal community (Christie 2000).

The limited autonomy regimes that can be set in place within the overriding Canadian framework respond to the fact that the forced assimilation of aboriginal peoples is no longer acceptable, but does not break with the process of "domestication" of aboriginal peoples underway since the 19th century (Alfred 2001; Borrows 2001). In a United Nations Commission on Human Rights study on treaties, agreements and other constructive arrangements between States and indigenous populations, the special rapporteur defines the "domestication of the indigenous question" as "the process by which the entire *problematique* was removed from the sphere of international law and placed squarely under the exclusive competence of the internal jurisdiction of the non-indigenous States" (Martinez 1999: par. 192).[180] In opposition to this overwhelming trend, aboriginal peoples firmly maintain, as a political stance, that the source of their rights lies in their status as organised and autonomous societies prior to contact; a status confirmed by the numerous treaties signed and alliances made with European powers throughout colonial history. Indigenous nations have therefore

[180] According to the rapporteur, indigenous peoples have been submitted to a "process of retrogression" by which "they have been deprived (or saw greatly reduced) three of the four essential attributes on which their original status as sovereign nations was grounded, namely their territory, their recognized capacity to enter into international agreements, and their specific forms of government" (1999: 105).

logically invested in the international scene in order to fight against domestication and to re-earn their status as equal peoples. Despite the difficulty for stateless peoples to gain voice and power in an international law written by states, the moral capital gained through the disclosure of past and present injustices in international public fora gave more leverage to aboriginal nations in their negotiations with non-aboriginal governments (Iorns Magallanes 1999).[181]

Note however that the point is not, for indigenous peoples in Canada, to claim the right to secession and to aim for independent statehood (Saganash 1993: 43; Simpson 2000: 121).[182] As pointed out in Chapter 5, the nation-state system is foreign to indigenous political traditions (Alfred 2000: 11; 1999: 52-3). Furthermore, the decimation, fragmentation, dependency and social ills brought about by colonialism coalesce to render secession next to practically impossible. Rather, what is at stake is the respect of parallel, yet intertwined, structures of political authority. In fact, the type of treaties and agreements sought by indigenous peoples appear to be largely congruent with the plural, complex and overlapping, post-Westphalian modes of governance characteristic of contemporary global politics (Tully 2000b: 56). Generally speaking, indigenous peoples are looking for various forms of jurisdictional autonomy that would enable them to take charge of their cultural, social and economic development in such a way that it could not be abrogated, modified or breached by the Crown without their prior consent. This resembles what has been called the right to "internal self-determination", i.e. the capacity for a people to determine, *qua* the control over a set of institutions, its own future *within* the framework of a larger association.[183] On that basis, many have argued that recognizing a right to internal self-determination to indigenous peoples could both preserve the sacrosanct territorial and political integrity of existing states

[181] But see note 37.
[182] The same can be said of indigenous nations in the United States, Australia, New Zealand and the Scandinavian countries. Even the *Zapatistas* in Chiapas struggle for the reconfiguration of the Mexican state and identity, and not for outright independence.
[183] In contrast, a right to external self-determination includes a right to secession (Dupuis 1999).

and ensure various degrees of autonomy for indigenous peoples. This is the dominant position in international law. A right to self-determination has been recognized to "peoples," but this right competes with the equally important right to "territorial integrity" granted to existing states. As a (problematic) way to resolve this tension, a right to external determination is recognized to peoples that have been colonized from overseas only (the "salt-water" position). National minorities co-habiting with a former colonial power are exclusively entitled to a right to internal self-determination, as they cannot, according to international law, challenge the existing state's territorial integrity (Dupuis 1999). There is thus arguably an inequity toward national minorities built into the fabric of international law.

This conventional way of framing the problem can in some cases yield innovative forms of aboriginal self-government, but does not in the end fully break with the legacy of colonialism: the basic terms of the political association are removed from the public sphere and are consequently out of reach for aboriginal peoples. The a priori definition of the right to self-determination of aboriginal peoples as a right to internal self-determination amounts to a delineation of the scope and meaning of aboriginal peoples' democratic freedom prior to public deliberation.[184] As a matter of principle, the problem lies not in the internalist position *per se*, as it can open into regimes of parallel and overlapping sovereignties consonant with aboriginal political thought and practice, but in the unilateral definition of the rules of the shared political association.[185] As was argued in Chapter 4, to exercise power is to seek to frame or configure another's field of possibilities in a particular way. In the context of the struggle over the meaning and scope of aboriginal rights, the vindication of a broad right to

[184] More cogently, the Supreme Court of Canada, in its reference on the Secession of Quebec, noted that a people, when blocked from the "meaningful exercise of its right to self-determination internally", might be entitled, "as a last resort", to exercise it by secession (1998: 134). It remains to be examined how the Quebec decision affects aboriginal peoples and, more precisely, how it can be conciliated with the Canadian jurisprudence on aboriginal rights (Joffe 1999; Tully 2001).

[185] In Michel Foucault's blunt words, the internalist position does not cut off the king's head.

self-determination on the part of indigenous peoples constitutes an attempt to re-open the range of possible options; it is, in other words, a practice of freedom (Tully 2000b).

As I suggested above, it is very unlikely that the judiciary route will lead to the fashioning of schemes of exclusive and shared jurisdiction over institutions, land and resources responding to the aboriginal peoples' aspirations. I will consequently examine whether such schemes can be crafted out of political negotiations, which are always taking place under non-ideal conditions, between aboriginal and non-aboriginal representatives.

3. Craving for Certainty: Political Negotiations with Indigenous Peoples

Litigation brought about a new grammar of interaction between aboriginal peoples and non-aboriginal governments in Canada. Aboriginal rights are now thought of as flowing from pre-existing autonomous normative orders, or from bilateral treaties, and received constitutional protection in the 1982 Constitution. Tribunals, together with the incipient international human rights regime, to some extent counter-balanced democratic majoritarianism. Having said that, the judiciary approach has in all likelihood reached a limit.[186] The Supreme Court itself recognized that the tribunal was not the best-suited forum for redesigning the relationship between indigenous peoples and the state. Chief Justice Lamer exhorted, in the *Delgamuukw* decision, political representatives to take upon themselves the daunting task of achieving reconciliation:

> As was said in *Sparrow*, at p. 1105, s. 35(1) [of the 1982 Constitution] "provides a solid constitutional base upon which subsequent negotiations can take place". [...]

[186] This conclusion can be generalized to other countries of the "New World." As the UN special rapporteur notes, "the entire indigenous *problematique* and its possible overall solution cannot be approached exclusively on the basis of juridical reasoning. The problems confronted in a sizeable number of multi-national States are essentially political in essence. Thus, considerable political will is required from all the parties concerned, but in particular from the non-indigenous political leadership of modern States, if these problems are to be resolved through forward-looking new approaches. Juridical discussions and argumentation simply take too long, require copious resources (which the indigenous side almost always lacks or has only in limited amounts), and in many cases are prejudiced by centuries of sedimented rationale. In addition, the urgency of the existing problems simply leaves no room to engage, at the threshold of the twenty-first century, in the type of juridico-philosophical debates which Las Casas and Sepúlveda pursued in the sixteenth century" (par. 254).

> *the Crown is under a moral, if not a legal, duty to enter into and conduct those negotiations in good faith.* Ultimately, it is through negotiated settlements, with good faith and give and take on all sides, reinforced by the judgments of this Court, that we will achieve what I stated in *Van der Peet*, *supra*, at para. 31, to be a basic purpose of s. 35(1)—"the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown". Let us face it, we are all here to stay (Supreme Court of Canada 1997: par. 186; my emphasis).

It is in the political sphere, the Chief Justice argued, that just settlements must be devised. But there is no guarantee that the stony ground of concrete politics is any less mined than the judiciary route. Treaty negotiations, intrinsically long and intricate, are commonly delayed by punctual government change, abundant bureaucracy and voluntary foot-dragging. Governments' will to negotiate fair and respectful agreements with aboriginal peoples is almost systematically put to test by either uniform conceptions of equality, assimilationist propensities, latent racism or populist rhetoric conveyed by fringes of the population and relayed by elected representatives or media figures. In addition, the invisible hands of the market often squint at, or have already reached into, the lands and natural resources claimed by aboriginal peoples as parts of their ancestral patrimony and contemporary mode of life. For non-aboriginal governments, reaching agreement with native peoples' demands the protection or removal of land and resources from capitalist development. Hence, non-indigenous governments' intention to recognize and define aboriginal rights through negotiations most commonly comes up against the pressures of corporate interests and capitalist development.

Notwithstanding these obstacles, the trail of political negotiations can hardly be avoided. In its final report, delivered in 1996 after five years of public consultation and deliberation, the Canadian Royal Commission on Aboriginal People (RCAP) stated that future negotiations between indigenous nations and federal and provincial governments needed to

proceed from a "nation-to-nation" relationship. By taking this stance, the Commission, composed of aboriginal and non-aboriginal members, reasserted that the Crown-subject hierarchy must give way to a more horizontal relationship between equal peoples. For the Commission, the principles of mutual recognition, respect, sharing and responsibility ought to be the pillars of the targeted renewed relationship (Royal Commission on Aboriginal Peoples 1996; Tully 1999b: 417-437).

The post-colonial approach thematized by the commissioners has yet to infuse into Canadian political culture and to permeate in a consistent way the negotiations between indigenous nations and the Crown's governments. If the avowedly assimilationist agenda of the 1969 White Paper is long dead, one is forced to conclude that imperial residues are still soiling the Canadian approach to aboriginal affairs. The main line of fracture between Canada and indigenous nations lies in their discrepant ambitions: the federal and provincial governments strive to obtain juridical certainty about indigenous nations' ancestral rights to land and resources through negotiated settlements, whereas indigenous nations aim to lay the foundation of an evolving relationship between equals that will not be hermetic to the fluctuations of time. As noted, Section 35 of the 1982 Constitution grants *undefined* ancestral rights to aboriginal peoples. Given that no agreement on the definition of such rights was reached in the constitutional conferences subsequently held in the 1980s, the basic intention of the federal government of Canada has ever since been to bring juridical certainty through the elaboration of a set of well-defined and final rights negotiated case by case with every indigenous nation.[187]

For non-indigenous governments, the standard way of achieving clarity and finality is to trade economic, social, cultural and (limited) political rights for the extinguishment of

[187] Up to now, only those few native peoples, such as the James Bay Crees, the Inuit and the Nisga'a, who have reached settlement with the federal and provincial governments have seen their ancestral rights defined and, in theory, implemented.

aboriginal ancestral rights. As Taiaiake Alfred reports, "the stated objective of federal policy is to achieve 'certainty about rights of ownership and use of land and resources' by exchanging 'constitutionally-protected but undefined common law aboriginal rights for constitutionally, clearly-defined treaty rights and benefits'" (1999: 122). Within these parameters of negotiations, aboriginal peoples are invited to extinguish the claims they have in virtue of their ancestral rights in order to acquire rights and resources primarily oriented towards the improvement of their social, economic and cultural development indexes. For aboriginal peoples, acquiescing to such parameters entails that they relinquish the possibility of claiming further and potentially broader political rights on the basis of their prior status as self-governing nations. In other words, it involves that Canadian citizenship becomes the only source of their rights (Asch 1999: 433). In such a framework, aboriginal peoples are internal minorities entitled to a differentiated form of recognition and to *sui generis* rights.

Indigenous peoples and the Crown's governments are thus at cross-purposes. For most indigenous nations, the aim of reaching settlement with the Crown is to build a renewed relationship grounded in a spirit of coexistence, ongoing collaboration, mutual adaptation and respect of one another's autonomy. Aboriginal peoples do not rebel against the goal of clarifying the scope and meaning of their ancestral rights, but rather contest the premise that clarity can only be achieved through the extinguishment of their rights. They point out that all peoples evolve and adapt to the changing nature of life. On that basis, it is unreasonable, they argue, to define and circumscribe a people's means of collective development at a certain point in time and to forego the possibility of revising or expanding upon these means in step with the work of time and interaction on their cultural and natural environment. Nonetheless, "Canada's final solution to the problem of reconciling indigenous nationhood with state sovereignty," according to Alfred, "is to force indigenous peoples to do what no other people in the world must do: formally define themselves and seal their rights in a document which is

not subject to evolution or alteration as the group responds to the shifting realities of the political and economic environment" (2001: 7).

In light of the jurisprudence that emanated from the *Calder* decision and from the ensuing constitutionalization of aboriginal rights, indigenous peoples have opposed the extinguishment requirement. Lending support to this opposition, the UN special rapporteur described the extinguishment strategy as a "form of duress" and the UN Human Rights Committee correspondingly recommended to Canada to abandon such a strategy (Martinez 1999: par. 143, 302; Human Rights Committee 1999: par. 8). Against the backdrop of the heightened sensitivity towards the rights of minority cultures discussed in Chapter 5, federal and provincial governments now avoid speaking the language of extinguishment. They nevertheless arguably seek to achieve similar results in practice through the deployment of alternative semantic resources and negotiation strategies. Whereas the former strategy was to exchange economic and cultural rights against the blanket surrender of ancestral rights, the new governmental approach offers the constitutionalization of a limited right to self-government with a stronger jurisdictional autonomy over mainly social, economic and cultural development. In counterpart, aboriginal parties must accept that an agreement reached under these new premises constitutes "the full and final settlement [which] exclusively sets forth their aboriginal title, rights and interests within Canada" (Government of Canada document, quoted in Asch 1999: 444). This entails that aboriginal peoples voluntarily relinquish the possibility of claiming rights not included and defined in the definitive settlement of their claims. In this framework of reconciliation, the normative charge associated with their status as pre-existing sovereign people provides them, via Section 35 of the Constitution, with the justification for claiming group-specific rights, but then melts into air with the definition of their ancestral rights.

This framework informs the *Final Agreement* ratified by Nisga'a people of the Nass Valley in British Columbia, the province of British Columbia and the Canadian government in 1998. The treaty, which retrocedes to Nisga'a ownership over a slim portion of their traditional land, access to resources and self-government powers, stipulates that

> if, despite this Agreement and the settlement legislation, the Nisga'a Nation has an aboriginal right, including aboriginal title, in Canada, that is other than, or different in attributes or geographical extent from, the Nisga'a section 35 rights as set out in this Agreement, the Nisga'a Nation releases that aboriginal right to Canada (Nisga'a Final Agreement, General Provisions, section 26).

The *Agreement* constitutes the "full and final settlement" of Nisga'a undefined ancestral rights recognized in Section 35 of the 1982 Constitution. In addition, some of the legislative and juridical autonomy gained by the Nisga'a is ultimately subordinated to certain provincial and federal laws and, in some cases, to the authority of non-aboriginal courts (Borrows 2001: 636). The comprehensiveness and scope of the agreement, combined with the lassitude associated with a negotiation process that has spread over more than 30 years, convinced a majority of Nisga'a voters (61%) to support it in a popular referendum, but several Nisga'a and other Aboriginals believe that the settlement is too little for the present and is too constraining for the future. Accordingly, many other indigenous nations refuse to see the *Nisga'a Final Agreement* as a template for their negotiations with the federal and provincial governments (Alfred 2001).

Along similar lines, in the recent Tlicho (Dogrib) self-government agreement, the federal government requires the Tlicho to sign away any other ancestral rights not explicitly defined in the accord. In the event that rights not included in the agreement were discovered or created, the Tlicho would have to forgo the possibility of asserting them. In short, what is called the "non-assertion fall-back release policy" greatly limits indigenous nations' access to courts in the eventuality of new jurisprudential developments. Although the convoluted

character of this formula has given way to contradictory interpretations (Barnsley 2002), it is not much of a stretch of imagination to describe the federal policy as extinguishment under a new guise (Saganash 2002; Windspeaker 2002).

This craving for juridical certainty and finality stands at odds with the renewed relationship envisioned by most indigenous nations. Few deny that it is necessary to establish agreed-upon rules in order to delineate and protect property rights, to regulate access to natural resources and to coordinate actions. Yet the drive for certainty manifested by non-aboriginal governments, combined with the antiquity and authenticity requirement stipulated by the Supreme Court, tend to construct aboriginal nations as fossils or archaeological specimens that must now be protected, rather than seeing them as living cultures. In contrast, aboriginal peoples see the renewed relationship in terms of an ongoing process of reconciliation and coordination guided by the horizon of intercultural justice (Royal Commission on Aboriginal Peoples 1996). Hence, the terms of the relationship must ensure coordination in the present, but cannot be cast in stone. The reconciliation and coordination device must be endowed with the resources to adapt to the unforeseen transformations of the environment, economy, law, demographics and so on. The implementation of a bilateral agreement itself engenders consequences that cannot be fully anticipated by the negotiators. In the midst of this flux, democratic participation and deliberation plays a community-sustaining role. As I tried to demonstrate in Chapter 4 and in the Conclusion to Section One, stability and cooperation hinge more fundamentally, in the long run, on a fluid and permanent political process than on the best intentioned package of rights, policies and resources delivered at a certain point in time. Differently stated, the practice of citizenship cannot be fully replaced by a non-public process of management and arbitration. It is when aboriginal people feel that the rules they must abide by are out of reach and are hermetic to their concerns and aspirations that their will to cooperate falters. Constitutionalism and the rule of law cannot fully override

democratic freedom. As addressed in Chapter 6, this is not a politically relativistic position: the point is not to consent to all claims made by aboriginal peoples, but to let public reason filter out those demands that may be deemed unreasonable.

4. Challenging the Terms of the Relationship: Aboriginal Self-Determination in Quebec

Aboriginal peoples have been asserting their rights since the time of contact. In the past 30 years especially, they have struggled for the recognition of their rights as peoples through a variety of means: juridical reasoning, political negotiations and activism on both the domestic and international scenes. Although the predicament of aboriginal peoples varies considerably from one country to the other, this multifold politics of disclosure and recognition has been successful in giving more leverage to aboriginal peoples in their negotiations with non-aboriginal governments. However, we have seen that tribunals have greatly circumscribed the scope of aboriginal and treaty rights, that governments seek to attain certainty and finality through a policy akin to extinguishment, and that international law—written by sovereign states—can hardly dig into the subsurface of state sovereignty. I want to argue that it is nevertheless too soon to conclude that this approach has reached its limit. Aboriginal peoples have accumulated a great capital of recognition over the last decades. As we have seen, the main stumbling block in the political negotiations between indigenous nations and Canadian governments is the imposition of an extinguishment requirement as a parameter of negotiation. The question that must therefore be asked is: Can aboriginal peoples force governments to negotiate the modalities of application of their ancestral and treaty rights in a way that establishes mutually acceptable rules of cohabitation, but without delineating too narrowly the field of possibilities for future generations? In other words, is the definition of aboriginal rights logically and politically compatible with a flexible and open-ended notion of self-determination? Although it is too soon to draw any definitive conclusions, there are signs

that a new language of reconciliation, centred upon mutual recognition, self-government and the ongoing adaptation to the changing circumstances of late-modern life, is now being experimented with in the recent and current negotiations between the government of Quebec and some indigenous nations.

4.1 Background: Aboriginal Politics in Quebec

In light of the recent history of the relationship between indigenous peoples and the Quebec state, there is something unexpected about the fact that new modes of coexistence are being imagined and tested in Quebec. As I will briefly summarize, few would describe the past 30 years of this relationship as a period of innovative intercultural dialogue and creative political thinking. Whereas several strategic alliances were sealed between the French colonizers and various indigenous nations from the 16th to the 18th century, the First Nations saw their sovereignty usurped as the balance of power gradually but decisively shifted in favour of the European settlers. As elsewhere in Canada, it was not before the 1970s that the very concept of the rights of aboriginal peoples (as peoples) largely gained some effectivity.

The presence of aboriginal peoples within the borders of Quebec became a politically salient issue when the government of Quebec began in the 1960s to investigate the potential for natural resources development in the Nordic part of its territory, occupied almost exclusively by indigenous peoples (Crees, Inuit, Naskapis). Quebec acquired this vast portion of land from Canada in 1898 and 1912. In the early 1970s, Quebec undertook to develop the abundant hydraulic capacity of the James Bay area. According to the 1912 *Boundaries Extension Act*, the development of the Northern territory was conditional on the prior release from aboriginal peoples of their rights to the land targeted by the development projects. This condition was not met. The Quebec Liberal government did not deem it necessary to enter into negotiations with the aboriginal populations before announcing its intention to harness some of the most powerful rivers crossing the Cree and Inuit traditional land. As a

consequence, the Quebec Superior Court forced the government in 1973 to enter into negotiations with the aboriginal parties and ordered a halt of the construction of the hydroelectric project already underway (Gourdeau 2002).[188]

The outcome of the negotiations was the *James Bay and Northern Quebec Agreement* (JBNQA) concluded between the governments of Quebec and Canada, the Crees and the Inuit in 1975. Three years later, the JBNQA was modified by the *Northeastern Quebec Agreement* which included the smaller communities of Naskapis who had claims on the territory covered by the JBNQA. As the JBNQA was the first comprehensive agreement ratified since the 1920s, it is considered the "first modern treaty" in Canada. The amplitude of the agreement was unprecedented: not only did it include provisions securing the pursuit of traditional activities, through land settlement and specific programs and policies, it also gave birth to a variety of means of self-government in fields such as education, health, justice, police force, environmental protection, and social and economic development (Morin 2002; Hamelin 2002). Be that as it may, if the JBNQA went much farther then the 18th century treaties in terms of governmental powers, land distribution, and resources allocation, it remains a treaty designed in a colonial spirit (Dupuis 2002). In exchange for the rights, powers and resources obtained in the treaty, the Crees and Inuit had to surrender their broader ancestral rights and claims on the territory. As it is unambiguously specified in the text of the agreement:

> in consideration of the rights and benefits herein set forth in favour of the James Bay Crees and the Inuit of Québec, the James Bay Crees and the Inuit of Québec hereby cede, release, surrender and convey all their claims, rights, titles and interests, whatever they may be, in and throughout the lands in the territory of Québec, and Québec accepts this surrender" (quoted in Lemoyne 2002: 74).

[188] The Quebec Superior Court's decision was delivered 10 months after the *Calder* judgement.

As noted above, if one can argue that a form of extinguishment policy is still looming in the current Canadian approach to treaty negotiations, indigenous nations no longer consent to such a blanket surrender of their rights. The Crees, Inuit and Naskapis were strained by the government of Quebec's relentless will to move forward with a hydroelectric project that has turned out to be, 25 years later, one of Quebec's most important means of economic development. Furthermore, the BJNQA was the first treaty of the Calder era. The jurisprudence regarding aboriginal rights unravelled in a way that was unforeseeable for the indigenous leaders who negotiated the treaty. Notwithstanding these constraints, Cree and Inuit leaders generally point out that their communities, struck by extreme hardship due to the absence of infrastructure a mere 25 years ago, advanced by leaps and bounds in terms of social and economic development (Diamond 2002; Aatami 2002).[189] Yet, as we will see below, the implementation of the agreement, or the lack thereof, created much discontent within indigenous communities.

Quebec's general policy regarding aboriginal affairs developed in the early 1980s and culminated with the adoption of a "motion recognizing the rights of aboriginal peoples" by the legislative assembly in 1985. In the wake of the 1982 constitutionalization of aboriginal rights, the motion recognized aboriginal peoples living on the Quebec territory as "distinct nations" entitled to ancestral or treaty-derived rights (Gourdeau 1994: 334). The motion specified that indigenous nations were endowed with a "right to autonomy *within* Quebec" and encouraged governments and aboriginal nations to enter into negotiations over the definition of ancestral aboriginal rights.

In place of such negotiations, the 1990s were punctuated by a succession of provocations and confrontations. Among these clashes, the 1990 "Oka Crisis" stands out as

[189] According to the Cree leader Albert Diamond, "the Crees have accomplished in 25 years what it took the Canadian Society or the Québec society 100 years" (2002: 62).

the most violent one. The conflict was prompted by the Oka municipality's plan to use a parcel of land considered as sacred by the neighbouring Kanien'kehaka (Mohawk) community in order to extend a golf course. In reaction, the Mohawks, led by a more voluntarist subgroup, launched an armed resistance that turned into a 78 days-long confrontation with the Quebec provincial police force and the Canadian army. A corporal from the Quebec police force was killed under nebulous circumstances. The conflict inaugurated the radicalization of aboriginal resistance throughout Canada and decisively put the so-called "Indian Problem" at the forefront of the political agenda (Salée 2003: 122; Trudel 1995). The Oka Crisis left a stain on the Quebec and Canadian collective memory.

Another tempest in the Quebec-First Nations relation was created by the state's intention to boost Quebec economy by embarking upon massive hydroelectric projects (Great Whale and Nottaway-Broadback-Rupert) on rivers left untouched in the first phase of Nordic development. Noting that the JBNQA explicitly mentions the possibility of undertaking further hydroelectric development, the government of Quebec here again saw the prior consent of the aboriginal populations as a negligible factor. The Crees, for whom the ecosystemic disruption engendered by hydroelectric development stands in conflict with deep-seated values and upsets the pursuit of some traditional activities, squarely opposed the harnessing of rivers saved from diversion and dam construction in the 1970s. The Cree leadership travelled to such places as New York, Brussels and Geneva in order to disclose Quebec's intentions. This international politics of embarrassment, together with partnerships with green activists, forced Quebec to abandon the Great Whale project and to discuss with the indigenous leadership the possibility of instigating the Nottaway-Broadback-Rupert (NBR) project. In addition to this political antagonism based on both conflicting values and interests, the Cree leadership vocally opposed the sovereignty project proposed in the 1995 referendum and claimed that their status and boundaries would not be affected by the eventual

secession of Quebec. This was construed by many Quebec sovereigntists as an unacceptable threat of partition.

These examples of deep political disagreement are but the most visible symptom of a more general relationship characterized by a lack of mutual intelligibility, recognition and trust. Yet it has often been noted that the shared predicament of indigenous nations and Quebec as minority nations within Canada could in principle open up on a register of mutual sensitivity rather than act as a catalyst for confrontation. Against all odds, when the dust lifted by the conflicts falls aside, the Cree and Quebec leadership built upon their partial community of fate in order to enter into dialogue over the terms of a just association. According to the Crees, the relationship set in place by the 1975 JBNQA was disrupted by a lack of will from Quebec (and Canada) to implement the letter, and to respect the spirit, of the agreement. Although the agreement bolstered rapid institutional development, many obligations in terms of service and program delivery were not met by the governments and few actions were taken to remedy the social, health and psychological problems proliferating within the rapidly growing Cree communities. Conflicts over the interpretation of the agreement multiplied and were inevitably turned into long and expensive lawsuits. From the Cree perspective, the JBNQA was steadily falling "into the long trail of broken treaties" (Moses 2002a). Political disagreements over hydroelectric and forestry development, as well as over the future of Quebec within Canada, were thus added on top of a highly consuming conflict over the interpretation and implementation of the JBNQA. These were the conditions under which the Cree and Quebec leaderships entered into negotiations.

4.2 Achieving Peace with the Crees

Mutual recognition was the first step taken by the parties. Following one the RCAP's recommendations, negotiations were conducted by the Grand Chief and the Prime Minister on a "nation-to-nation" basis. The objective of the discussion was to set the Cree-Quebec

relationship on a new track by strengthening the Cree's autonomy over economic and community development. The parties were motivated to negotiate in good faith by the interculturalist belief that the fate of both the Cree and Quebec nations were inextricably enmeshed (Moses 2001). A 50 years *Agreement Concerning a New Relationship Between the Government of Quebec and the Crees of Quebec* —rebaptized "The Peace of the Braves" by the Grand Chief—emanated from the negotiations. The agreement is an actualization of the JBNQA that gives the Cree nation the financial means to take greater responsibility over its social and economic development through annual transfer payments indexed according to the economic development on the territory. More innovatively, a variety of economic partnerships with regard to hydroelectric, forestry and mine development are included in the agreement. Rather than simply receiving an amount of money in compensation for the exploitation of natural resources on their land, Cree enterprises will partake in the business ventures and a proportion of Cree workers will be hired by non-aboriginal corporations. It is hoped that Cree economic participation will generate sufficient and recurrent incomes for the communities, as well as jobs and openings for the numerous young Crees who will reach adulthood in the next decade.[190] Moreover, the agreement includes an environmental protection mechanism designed to ensure that development is not conducted in way that is antithetical to the Cree traditional way of life and to the principles of sustainable development. In counterpart, the Crees agreed to settle or withdraw the pending legal proceedings related to the past application of the JBNQA. The government accepted to abandon the NBR project in exchange for the Crees' consent to a smaller project (1/8) on the Rupert River. Finally, a liaison committee and a mediation process have been devised in order to coordinate actions, to cope with unforeseeable issues and to resolve disagreements and conflicts of interpretation over the

[190] This aspect is of paramount import, as past experiences with indigenous communities testify that redistribution without prospects for the future feeds a culture of dependency that is at the root of most of the ramping social illnesses afflicting indigenous communities.

terms of the agreement. Both parties have agreed to deal with disagreements politically before resorting to courts. The Crees insisted on incorporating an element of flexibility and openness into their renewed relationship with Quebec.[191] The agreement was debated within the Cree communities and was supported by 70% of the Crees who voted in a referendum on the agreement.[192]

The agreement put an end to a stormy decade in Quebec-indigenous relations. Since the ratification of the agreement in 2002, the Cree leadership repeats in Canada and abroad that the "Peace of the Braves" represents a paradigm shift in the relationship between indigenous and non-indigenous peoples and that it could, accordingly, inspire governments and indigenous nations elsewhere in the world (Moses 2002b; Saganash 2002).[193] This claim seems to be grounded on three dimensions of the agreement: 1- a symbolism of mutual respect, recognition and trust suffused the political relationship among the parties; 2- an evolving and flexible political framework of interaction was set in place; 3- mechanisms of ongoing aboriginal participation in economic development were designed. Against the background of the previous sections, it is worth asking whether this agreement represents a significant break with the Canadian juridical and political approaches surveyed and problematized above. Does the "Peace of the Braves" truly contain the seeds of an exportable model of power-sharing and action-coordination between indigenous and non-indigenous peoples?

As explored in Chapters 5 and 6, the recognition of indigenous nations as *equal nations* entitled to govern themselves is surely a necessary first step toward the emergence of

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[191] "From our perspective", Moses wrote, "a relationship among peoples and nations is not a static thing. It changes and develops over time in response to new conditions. If constant efforts are not made to maintain and update it, it can easily deteriorate and fall apart" (2002a).

[192] For details and comments on the agreement, see Government of Quebec (2002a), Moses (2001), Saganash (2002), Trudel and Vincent (2002).

[193] Referring to the agreement, Moses said that that Crees and the Quebec government have "reached an understanding and a level of mutual respect and recognition that [he] believe[s] is the beginning of a rights based approach for indigenous peoples throughout the world" (2002c).

a post-colonial relationship. But as charitable rhetoric can be used to wrap up and embellish neo-colonial attitudes and practices, the language of recognition must truly permeate and inform political deliberation between indigenous nations and the state and yield consequent outcomes. It has been noted that the continuation of the extinguishment strategy by the Canadian government constitutes, from an indigenous perspective, a truncated recognition of indigenous nationhood. As we saw, the definitive surrender or exchange of rights is hardly compatible with the desire to preserve the possibility and capacity for future generations to freely govern themselves in light of their own set of commitments, obligations and circumstances. For those indigenous nations for whom the different guises of the extinguishment policy are unacceptable, a truly post-colonial relationship must be embedded in political settlements open to review and amendment. Such political settlements do not preclude the attainment of juridical certainty through the share of jurisdictions, lands and resources, but do not permanently shield some aspects of the relationship from democratic deliberation. Against this backdrop, the spirit, more than the actual substance, of the Cree-Quebec agreement might be thought of as containing the seeds of a renewed relationship. As pointed out, the agreement is a re-actualization and a polishing of an already existing treaty (the JBNQA) that includes a straightforward extinguishment clause. As a matter of fact, the Cree-Quebec agreement is first and foremost a socio-economic agreement (Trudel and Vincent 2002).[194] Therefore, it will be plausible to conclude that a paradigm shift in the relations between indigenous and non-indigenous peoples is taking place only when the new symbolism experimented with in the Cree-Quebec agreement will deliver a proper treaty.

4.3 Thinking Outside the Extinguishment Paradigm: Treaty-Negotiations with the Innu

[194] A smaller but similar agreement has been reached with the Inuit, the other signatory of the JBNQA, in April 2002 (Government of Quebec 2002b).

A treaty-project currently negotiated between the Innu and the Quebec government arguably contains the embryo of a new form of political relationship between indigenous nations and settler states. The Innu have never defined, exchanged or surrendered their collective rights through the ratification of a treaty. In virtue of Section 35 of the 1982 Constitution, they consequently own undefined territorial, cultural, socio-economic and political rights. The Innu entered into comprehensive land claims negotiations with the federal and provincial governments in 1980. The negotiation process made very little headway before the unveiling of a new framework of discussion (*L'Approche commune*) in 2000. In June 2002, the negotiators of four Innu communities and of the governments of Quebec and Canada publicized a *Proposal for an Agreement-in-Principle of General Nature between the First Nations of Mamuitun and Nutashkuan and the Government of Quebec and the Government of Canada*. The fairly elaborated proposal will lead, it is hoped, to the adoption of a treaty within a two years period. Slightly rearticulating the objective stated by the Supreme Court of Canada in its rulings on aboriginal rights, the aim of the negotiation is to conciliate the prior occupation of the First Nations of Mamuitun and Nutashkuan and the affirmation of Crown sovereignty (Government of Quebec 2002c: Section 2.1). Experimenting with a new approach to the definition of aboriginal rights, the mandated negotiators propose to reach the objective of conciliation by "recognizing, confirming and *continuing*" the Innu's ancestral rights on the territory delineated in the agreement-in-principle (s 3.3.1; my emphasis). The Innu's collective rights would still be construed as springing from their distinct juridico-political order, but would receive specification and further protection in the treaty. The agreement would seek neither to enumerate the Innu's rights in a comprehensive and definitive way nor to replace, exchange or extinguish them (s. 3.3.2). Rather, juridical certainty for Innu and Quebecers alike would be attained through the definition of the "effects and modalities of the exercise of [the Innu's] ancestral rights" (s. 2.1). In other words, negotiators deliberate on the

conditions of materialization and application of the abstract rights recognized in 1982, including the title to land and the right to self-government.

The Innu's title to their ancestral land would find expression in the creation of two types of territory: one over which they would have exclusive property rights (*Innu Assi*) and another, much larger, over which they would own differentiated collective rights and prerogatives (*Nitassinan*).[195] Innu governments would replace the existing band councils. Such governments would be endowed with the general power to pass laws and regulations on the *Innu Assi*. An Innu constitution and legal system would be set forth, but some sections of the Quebec and Canadian Charters of Rights and Freedom would still be invested with overarching authority. Hence, the conclusion of a treaty would demand a continuous work of harmonization. Innu laws would take precedence in fields like education, language and culture, family law and local security, whereas other fields such as criminal law, defence and immigration would fall outside Innu jurisdiction (s. 8.4). As with the Crees and Inuit, a variety of forms of Innu participation in economic development are included in the proposal of agreement (Chapter 13).

The main element of novelty contained in the proposal is that the modalities and effects of the exercise of the Innu's ancestral rights *left out* of the agreement would be "suspended," rather than abandoned, until the parties reach an agreement over an amendment to the treaty (s.3.3.4). A procedure for the modification and re-examination of the treaty is laid down in order to deal politically with disagreements related to the interpretation or implementation of the treaty, as well as with problems caused by the silences and blind-spots of the agreement (Chapter 17). According to the proposed amendment procedure, parties

[195] The *Innu Assi* would be made of the current reserves enlarged by the annexation of contiguous parcels of land. The *Nitassinan* would remain under Quebec's jurisdiction, but the Innu would own special hunting, fishing, trapping and gathering rights. They would participate in the management of the territory and natural resources, take part in the development projects and receive a portion of the royalties collected for the exploitation of natural resources (Government of Qubec 2002c: Chapter 4).

would be empowered to modify the treaty at any point in time, granted that the consent of the three parties has been secured. In addition, a formal process of periodical re-examination would also be set in place. In contradistinction with the Canadian approach elsewhere on the territory, the proposal does not seek to subsume—at least in principle—the Innu's right to political, cultural and financial autonomy under the broader normative and political order delineated by Canadian citizenship. The proposal of agreement leaves intact the source of aboriginal rights: the Innu's collective rights would still be thought of as flowing from their status as a self-governing nation prior to contact. Although this is primarily a shift in the language of description and justification, it is not merely cosmetic: it is much more difficult to justify, at the level of basic principles, the "domestication" of a minority nation entitled to distinct collective rights anchored in a parallel normative regime. In fact, the vocabulary of the agreement invites us to think of the Quebec political community in terms of a multinational association and as well as in terms of legal pluralism.

A detailed comparative analysis would be necessary in order to assess how the substantial autonomy transferred to the Innu communities in terms of lands, self-government rights, financial resources and participation in development compares for instance to the package obtained by the Nisga'a in British Columbia. Such a comparative analysis falls outside the scope of this Chapter, but what stands out in the Innu-Quebec negotiation is the type of political relationship sketched out by the parties. A treaty based on the project of agreement that is now being debated in various squares of the Quebec and Innu civil societies would enable the Innu to exercise their rights concretely and would set forth a set of rules of interaction between Innu and Quebeckers in ways more attuned to the changing nature of identities, commitments and surrounding circumstances. In principle, such a treaty could be an instrument of both ongoing self-determination and social cooperation. It remains to be seen

whether the autonomy retrocede to the Innu is substantial enough but, on the level of principles, the framework of negotiations experimented with between Quebec and Innu representatives arguably avoids or downplays the *ex post facto* rationalization according to which the current state of affairs—inherited from colonial history—justifies placing heavy constraints and limits on the indigenous nations' right to self-determination.

5. The Practice of Self-Determination

The ground on which aboriginal peoples are standing in Canada is shaky. After three decades of impressive progress towards the recognition of aboriginal rights, stagnation and deadlock seem to be lying ahead. Both the judiciary and the political routes are rife with obstacles. Nevertheless, most actors and observers believe that the next advances will be gained through political deliberation and negotiations backed up by both punctual court decisions and strong local and translocal activism.[196] Thus far, political projects of *rapprochement* and conciliation have in many cases stumbled over the limitations placed on the scope of aboriginal self-government.[197] Although it is more widely accepted that indigenous peoples are entitled to some form of group-differentiated rights, such rights are conceived as new modalities of the domestication process.

We saw that the nation-to-nation relation recently experimented with by the Quebec government could be thought of as opening up a breach in the conventional approach to

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[196] Some indigenous intellectuals also militate for a more intensive integration into Canadian society. According to this line of thought, aboriginal peoples should strive for their own political institutions, but they should also try to infiltrate the loci of power and influence within Canadian society. Such intellectuals think that integration and interaction is the only way to change how the mainstream society relates to aboriginal peoples (See Chapter 5, Section 4.1 on interculturalism). They add that aboriginal resistance necessitates an acquaintance with non-aboriginal conceptual languages and institutions. Thus, separation and integration should be carried out simultaneously. See Borrows (2000); Turner (2001); Chartrand (1999: 97-9).

[197] On the aboriginal side, problems of unity and leadership often disable serious political negotiation with non-aboriginal governments. For instance, the Innu nation is composed of nine more or less dispersed communities that have learned, over the years, to live as distinct communities. To this day, four Innu communities (which represent 61% of the Innu total population) negotiate the project of agreement, three other communities are less advanced in the discussion process, and the last two communities have hitherto decided not partake to any negotiations.

aboriginal rights.[198] But, consenting to a given definition of formally recognized rights necessarily entails a certain degree of risk for aboriginal peoples (Borrows 2001: 631, 634). Reaching agreement over a formulation and application of abstractly recognized rights implies that one is prepared to compromise on the meaning and scope of such rights and to play by the agreed-upon rules of interaction for a given period of time. Noting that the definition of aboriginal rights might very well end up legitimizing the state's containment of, and encroachment on, indigenous sovereignty, several indigenous citizens and intellectuals believe that the price to pay for reaching settlement with non-aboriginal governments remains too high. Colonial attitudes and policies would still be too firmly in place for allowing genuinely post-colonial relationships.[199]

This is a real and serious objection that cannot be easily tossed aside. In the end, even an apparently innovative framework of negotiations such as the Innu-Quebec model still refers to the "sovereignty of the Crown" and leaves intact the assumption that the state's "territorial integrity" cannot be challenged. To some extent, the structure of authority remains hierarchical.[200]

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[198] As negotiations are currently taken place, there is no guarantee that the Innu-Quebec negotiations will deliver a treaty, but the simple fact that the project of agreement exists indicates that progress has been made in the ideational sphere of norms and values. Remember that the *Calder* judgement, which kick-started the process of recognition of aboriginal rights, actually dismissed the Nisga'a's general claim. The Innu-Quebec framework of agreement can now be invoked by all indigenous nations in their negotiations with non-aboriginal governments. That said, a parliamentary commission on the proposal held in February 2003 revealed that the three parties represented at the Quebec National Assembly support the project of agreement, even if some leaders of non-aboriginal local populations living side-by-side with the Innu have vocally opposed its current formulation. The parliamentary commission was set up in response to such an opposition.

[199] This seems to be the thrust of Alfred's position on political negotiations over the definition of aboriginal rights (1999: 140). In the same spirit, several Crees strongly opposed to the "Peace of the Braves," mostly on the basis that consenting to the harnessing of the Rupert River represents an unacceptable further disruption of the Cree traditional way of life. The agreement was widely debated within the nine Cree communities and finally supported by 70% of the Cree population in a popular referendum. Nonetheless, the fact that the Grand Chief Ted Moses, who negotiated the agreement, narrowly skimmed past defeat in the following electoral campaign shows the depth and persistence of political disagreement over the "Peace of the Braves" among the Cree nation. The Innu-Quebec project of agreement initiated a similar disagreement-laden deliberation process among the Innu nation (See note 34). From another perspective, some aboriginal women argue that their nations are not ready for self-determination yet, as they must first heal the wounds inflected by colonialism (Garneau 2001).

[200] If notions such as "Crown sovereignty" and absolute "territorial integrity" begin to be problematized in the theoretical and normative reflection on the conditions of intercultural justice, the spheres of international and

There are three internally related answers that can be given to such an argument. First, reaching agreements that return significant means of cultural, political and socio-economic development to aboriginal nations is the necessary first step toward the disruption of the asymmetries of power currently in place. Even when they reaffirm the "sovereignty of the Crown," contemporary political agreements between aboriginal nations and states involve *in practice* a redistribution and reorganization of sovereignty. Treaties initiate more or less radical processes of power sharing akin to federalization. Once those patterns of shared sovereignty have been put into place, it is next to impossible for "sovereign" states to unilaterally take powers and jurisdictions back from minority nations without resorting to force. Thus, treaty-making with indigenous nations participates in the reconfiguration of sovereignty inherent in the globalization process (Chapter 5, Section 4.2). Treaties with aboriginal peoples abstractly reassert, and yet practically reconfigure, state sovereignty.

Second, and more generally, one can argue that the virtues of the everyday practice of self-determination deserve to be more strongly emphasized. For indigenous nations who try to shake off the chains of an overwhelming culture of dependency imposed and still nurtured by colonialism, self-determination is a long-term project that involves a complex learning process (Saganash 2002: 120). As just alluded to, most aboriginal peoples in Canada lack the means for exercising their right to self-determination. It is hard to imagine how indigenous nations will ever be in a position to push decolonization further if they do not negotiate political settlements that will increase their capacity for self-determination in terms of political, cultural and socio-economic development. It is plausible to think, somewhat speculatively, that the virtues inherent in the daily experience of sovereignty (an invigorated relation to self, a modified relationship with the majority, an enhanced sense of self-

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domestic law have hitherto been opaque to such questioning. Perhaps the passage from one to the other represents one of the challenges lying ahead for the decades to come.

responsibility, an array of forms of possible interventions on the social and cultural ills that poisoned the community from within) might engender the strength and wisdom necessary to negotiate, in due course, political agreements that better embed the (evolving) standards of intercultural justice. This is not to say that political settlement must be reached at any cost. The autonomy retrocede to the indigenous nation must be substantial enough to initiate real changes and room must be created for the ongoing exercise of democratic freedom. When the latter condition is meet, the contract signed by the parties at a given point in time becomes a reference-point or a milestone in a continuous political interaction.

Moreover, a way for minority cultures that claim nationhood to gain recognition and autonomy is to arrogate and display, whenever possible, the attributes of sovereignty. For a stateless nation, to think and act as a sovereign nation in the face of denegation or misrecognition contributes to changing its relation both to self and other(s). Quebec changed its self-image by representing itself as a nation, and by acting consonantly, without ever gaining the symbolic and constitutional recognition of its nationhood from Canada (Maclure 2003: Introduction). The same can be said, *mutatis mutandis*, of aboriginal peoples. Aboriginal peoples obtained constitutional recognition in 1982, but they are still struggling for the political and economic means to exist as healthy and autonomous nations. Notwithstanding this lack of means, many of them—think of the Mohawks and the Crees for instance—have repeatedly presented themselves publicly as sovereign nations both at home and abroad. This appropriation of the qualities of nationhood has contributed to the aboriginal renaissance discussed above (Tully 2001: 21). In turn, acting "sovereignly" puts the majority nation before the *fait accompli* of nationhood and potentially contributes to changing the terms of the relationship. In other words, performing the attributes of sovereignty forces the acknowledgement, if not the recognition, of the minority's status as a nation entitled to some

form of self-determination.[201] But the capacity to "act as" a sovereign nation is obviously better when rooted in a significant degree of autonomy.

Thirdly, working out forms of political relationship open to some degree of democratic freedom reduces the danger of ratifying agreements for aboriginal peoples. As we have seen, political settlement that does not include an extinguishment clause leaves the door open for adaptation and renewal. The Innu, for instance, are negotiating an agreement that would enable them to modulate or expand upon their means of collective development as the treaty and other factors will modify their environment.[202] Aboriginal rights, when they are thought of as a source of normativity which inheres to aboriginal nations, rather than as a currency that can be extinguished, can manage an evolving interface between aboriginal and non-aboriginal sovereignties. It remains to soon to know whether the "visions" of post-colonialism glimpsed in section 4 are deceitful mirages of justice or the first inchoate manifestations of a post-colonial citizenship regime, but it seems worthwhile moving forward in order to find out.

6. Aboriginal and Non-Aboriginal Citizenship Intermeshed

It is now conceivable that political negotiations, supported by judiciary and grassroots activism, can generate more egalitarian forms of political association between aboriginal and non-aboriginal peoples. Yet comprehensive political agreements involving self-government powers, land redistribution and modes of economic participation do not address all the current problems faced by aboriginal peoples. I noted above that the consolidation of aboriginal self-government (1) is not necessarily a bulwark against capitalist development and (2) cannot by itself engender an interculturalist ethos that could modify the majority's perception of

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[201] Thus, as Nietzsche claimed, the virtues of appropriating the attributes of sovereignty are complicit with the virtues of *struggling for* a given state of affairs. See Chapter 2, section 3 and Chapter 6, Section 4.1.

[202] One could say that such a degree of flexibility and openness is a condition of justice if we admit the intrinsically fallible character of democratic decision-making (see Chapter 4, section 2.1). In fact, agreements that seek to stifle democratic freedom through extinguishment clauses are usually maintained through the imposition of force. Hence, the Crees, after gathering enough strength and power, were able to bring the government of Quebec back to the negotiation table even though the JBNQA contains a binding extinguishment clause.

aboriginal peoples. At least two other problems of primary importance need to be noted. First, 50% of aboriginal persons in Canada live off the existing reserves that serve as foundations for land claims settlements, which means that half of the overall aboriginal population escapes from the jurisdiction of current or incipient aboriginal governments (Chartrand 1999: 104). If some urban Aboriginals dwell in urban centres in order to work or study, there are still many that live in conditions of extreme material and psychological hardship. Other forms of political arrangements must thus be created for addressing the urban aboriginals' particular predicament. Against the backdrop of the reflection on the varieties of minority rights sketched out in Chapter 5, urban Aboriginals could be thought of, for instance, as entitled to specific rights flowing from their belonging to an indigenous nation, but oriented towards their (differentiated) integration into mainstream society. The yet uncharted rights of urban aboriginals would thus involve context-specific mixtures of the three categories of group rights defined by Will Kymlicka and surveyed in Chapter 5, Section 4.1. The implementation of such rights would demand collaboration and delegation of powers between governments.

Second, the creation of separate structures of aboriginal self-governance raises the question of internal minorities much discussed by liberal political philosophers. As discussed in Chapter 5 and 6, minority cultures are themselves permeated by identity-related differences and confronted with demands from their own internal minorities. Hence, the political autonomy granted to a minority culture can lead to the exclusion or oppression of subgroups within that culture. It must thus be asked whether what Ayelet Schachar calls the "paradox of multicultural vulnerability" is raised by the definition of aboriginal rights.

Prejudices towards internal minorities are not systematically built into aboriginal self-government. Aboriginal traditional modes of sociality and authority revolve around the harmonization of the capabilities and responsibilities of all members of the community, as well as around consensual decision-making (whenever possible). Yet, in practice, violence

against women is one of the most damaging social problems faced by aboriginal communities. Several aboriginal men, afflicted by the loss of stable orientation-points, are caught in the midst of the infernal spiral of unemployment, idleness, alcohol-abuse and violent behaviours. In addition, the fact that aboriginal women are often politically voiceless within their communities, as band councils are in most cases male-dominated, compounds the social problems they face (Panasuk and Gagnon 2003).[203]

Stuck between a rock and a hard place, a number of aboriginal women militate for both the rights of aboriginal peoples and for the rights aboriginal women. Although aboriginal women themselves must deal with enduring political disagreements in their deliberations, they generally refuse state paternalism, but nevertheless still ask for guarantees that they will not be victims of the devolution of power. For the Quebec Native Women Association leader Michèle Audette, the rampant violence against women in aboriginal communities must be related back to colonial history: dispossession, disorientation and dependency have damaged gender and family relations. She nevertheless argues that non-aboriginal governments have the responsibility to ensure that there is juridical protection for women as well as room for female participation in the new modes of aboriginal self-governance (Femmes autochtones du Québec 2003).

How can the claims of aboriginal women be accommodated within a process of recognition and definition of aboriginal ancestral rights? Is there a non-imperialist way of avoiding the exclusion or oppression of internal minorities? I noted in Chapter 6 that a cultural minority that invokes the *audi alteram partem* convention in order to launch a

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[203] In Canada, discrimination towards aboriginal women is inscribed within federal policies. Until 1985, the *Indian Act* deprived aboriginal women married to non-aboriginal men of their official status as "Indians" (and of their ensuing prerogatives), whereas aboriginal men could marry non-aboriginal women and retain their status. Women who were robbed of their status recovered it in 1985. Their children were given status as well, but these children must marry with "status Indians" in order to pass on their status to their own children. The federal policy thus created distinct forms of (recognised and non-recognised) aboriginality and enhanced the rampant fragmentation of aboriginal communities. Many band councils have reproduced this discrimination in their specification of the conditions of band membership. See Garneau (2001).

democratic challenge to the established political order cannot consistently deprive its internal minorities of a political voice. I also fleshed out that the norm of respect for cultural diversity did not amount to a form of political relativism according to which any identity-based claim ought to be accommodated. Quite the opposite, cultural minorities carry a heavy democratic burden of proof: they must demonstrate, in the face of deep disagreements and/or plain prejudices, the legitimacy and cogency of their point of view to the majority (hence the retention of the language of public reasoning). The obliteration of the claims of internal minorities, which is a form of political performative contradiction, greatly weakens the cultural minority's case.

A way to approach the "discrimination within discrimination" problem is to make the distribution of group rights dependent upon the respect of abstract and a priori defined norms.[204] The downside of this answer is that it arguably fails to be truly post-colonial: the normative standard is not dialogically worked out but unilaterally imposed by the majority. Another way to approach the same problem is too focus on the incorporation of the voices of internal minorities into the larger framework of discussion. Insofar as we include identity politics within the broader game of democratic politics, there does not seem to be a way around an all-the-way-down application of the *audi alteram partem* convention. From such a perspective, the modalities of inclusion and accommodation of the claims of internal minorities are defined contextually in light of the specific needs and aspirations of the groups involved in the negotiations. This approach was adopted by the Supreme Court of Canada in its 1998 reference surveyed in Chapter 6. In the Innu-Quebec framework of agreement,

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[204] Kymlicka's well-known normative answer to the internal minority problem is to tie the distribution of group-specific rights exclusively to the protection of the minority culture from corrosive external influences. According to his theory, collective rights can be used to preserve the integrity of the minority culture's (evolving) way of life, but not to restrict the basic individual rights and freedoms of its members. This answer, as Kymlicka himself recognizes, neglects the fact that several measures designed to shield a culture from undesirable external influences also encroach upon individual rights or privileges. As I am about to say in the text, it also spawns the question of who is to discriminate between a valid and invalid application of a collective right.

general legislative powers are being transferred to the envisioned Innu government, but several clauses of the Canadian and Quebec charters of rights and freedoms still prevail over Innu communities. Notwithstanding these provisions, the Quebec Native Women Association called upon Innu leaders and the Canadian and Quebec governments to provide better safeguards for women's rights and women's participation in the forthcoming Innu government (Femmes autochtones du Québec 2003).

Conclusion: Separateness and Integration

For indigenous peoples in Canada, self-determination demands a degree of institutional separateness from non-aboriginal cultures and governments. This degree of separateness varies from one nation to another and finds concreteness in an array of institutional forms. Although some aboriginal persons may wish to integrate into mainstream society on an individual basis, indigenous peoples strongly resist their incorporation as ethnocultural communities into a larger multicultural—but uninational—political community. This explains why they have appropriated the language of nation and nationalism. It is not the case, however, that self-determination for indigenous peoples entails the creation of hermetic cultural and political enclaves. The respective fates of Aboriginals and settlers were intertwined at the outset of colonization and remain all the more so in the current globalizing age. Accordingly, self-determination also entails a certain degree of integration. As we have seen, the creation of significantly autonomous indigenous self-governments involves complex patterns of shared sovereignty. In addition, the situation of indigenous women, urban Aboriginals and non-aboriginal persons living on aboriginal lands calls for a delegation of powers from one government to the other. Aboriginal self-determination is not a regression in time. On the contrary, it participates in one of the most complex and unpredictable phenomenon of our time: the reconfiguration of political sovereignty. I hope that the approach

I have presented and defended throughout this thesis can shed light on this increasingly familiar phenomenon.

Conclusion

1. Back to the Urbane Atheist

Pluralism is indisputably one of most widely discussed themes in contemporary political philosophy. Be that as it may, my hunch was, when I undertook to write this thesis, that we easily loose sight of the source and scope of late-modern pluralism. This is why I thought a detour through Nietzsche's reflection on the cautiousness towards ultimate convictions would constitute a timely access road to the body of the thesis. As a reminder, I argued that Nietzsche's thought on the death of God is more productively understood as a meditation on the new relation to God and to its rational surrogates spurred by the modern will to truth rather than as an advocacy for atheism and nihilism. Nietzsche directs our attention to the consequences of the growing incredulity and indecision we have toward religious or secular divinities. The shift in form of life intimated by the death of God poses a variety of challenges. At the individual level, it prompts interrogations such as: How does one orient oneself, i.e. take a stand, in a pluralized moral space? How does one provide meaning for one's life once the traditional schemes of explanation and markers of orientation have lost their transcendental aura? At the collective level, the death of God raises questions such as: How are we to know what justice entails if it cannot be imported from religion, science or philosophy in an uncontroversial way? How are we to coordinate our actions and to resolve our disagreements if we cannot appeal to a form of authority that all consider as regulative?

If justice cannot be deducted from a transcendental point of view, it must then be constructed by finite subjects through deliberation and persuasion. As explored in Chapter 2, there is an intimate relationship between the disenchantment of the world and democracy. This relationship has been thematized by French thinkers such as Claude Lefort, Jacques Rancière and Cornelius Castoriadis. In contrast to what my intuition (and many critics) led me

to believe, the dominant liberal position in contemporary political philosophy, embodied for my purposes by Rawls and Habermas, acknowledges and tries to think through the challenge set by pluralism to political thought. Political liberalism and discourse ethics, which can both be construed as crucial components of a theory of deliberative democracy, recognize that justice and stability cannot be grounded in substantial conceptions of the good; justice and stability must be worked out by citizens themselves via a procedure of reason-giving. As developed in Chapter 4, I agree with the basic orientation of political liberals and deliberative democrats, but hold that the further constraints they place on public argumentation suffer from a justification deficit. In my view, Rawls and Habermas have not been successful in demonstrating that the rule they impose on public deliberation (the generalization test) is a precondition to justice and stability in plural societies. Their distinctions between public and non-public reasons hinges on the assumption that we can impartially discriminate between moral (generalizable) reasons on the one hand and ethical and pragmatic motives on the other. In contrast, I argued that the burdens of judgement do not dissolve at the threshold of public or moral reasoning. The degree to which a given cluster of reasons is context-bound or context-transcending is often itself the object of discussion. The possibility of reasonable disagreement is co-extensive with the civic activity of exchanging (situated) reasons with fellow citizens. Decisions must be reached without the full assurance that reason and justice have triumphed over distorted logic and self-interestedness. In a way, Rawls and Habermas stand in the position of Nietzsche's urbane atheist: they do not believe in metaphysical political philosophy, but they still try to establish, through reconstruction rather than transcendental deduction, norms and rules that can frame the public exchange of reasons but that are not themselves up for grabs in public deliberation. Philosophy, here, greets democracy, but within certain limits.

2. Public Reason and Social Integration

Political liberals and deliberative democrats see stability and social cooperation as correlated to the consensual coordination of actions and resolution of disagreements. In line with the canon in political philosophy, social harmony (the elimination of disagreement) is posited as a condition for social integration. This assumption justifies imposing a Kantian discipline on the game of public argumentation that has the capacity of keeping the most controversial claims outside the realm of public reason. Counter-intuitively, I tried to lend plausibility to the idea that a pluralized and dynamic public reason that makes it possible for citizens to challenge the terms of the political association in their own languages of justification— granted that some of the regulations laid down by the rule of law are upheld—is more likely to foster social integration than a constraining public reason that runs the risk of depriving citizens of a political voice. This form of political alienation, I argued, is more damaging to the desire to cooperate with others than the introduction of allegedly non-generalizable claims within the limits of public reason. A conception of public deliberation that leaves it to citizens themselves to decide what reasons count as valid cannot in many cases consensually resolve entrenched political disagreements, but it is nevertheless more likely to foster the perspectival civic culture that is much needed under conditions of ethical pluralism and cultural diversity. In the long run, stability and social integration depend more on the continuous activity of reworking the political association than on the improbable dissolution of deep disagreements. I argued in Chapter 7 that aboriginal peoples ultimately aim for a flexible and continually evolving political relationship between equals with both Canada and Quebec. Despite the fact that cultures are porous, shifting and internally differentiated systems of meaning, practices and self-description, I suggested in Chapters 5 and 6 that the drive to, and the practice of, self-determination within structures of shared sovereignty is what accounts for both the unity and the distinctness of cultures.

The counterproductive and highly ideal character of Kantian conceptions of public deliberation is brought into relief by the examination of the current citizenship struggles over the recognition and accommodation of cultural diversity in several constitutional democracies. According to the dominant notions of public reason, members of cultural minorities should refrain from framing arguments explicitly drawn from their particular values and practices, as well as from claiming rights or prerogatives that could not be generalized to other cultural groups. As shown in Chapter 5, that culture can be relegated to the non-public sphere is precisely what identity politics is contesting. The cultural diversification of contemporary societies heightens the ethical pluralism inherent in late-modernity.

Two examples examined in this thesis illustrate some of the problems of conventional conceptions of public reason. The first thing aboriginal citizens do in their discussion with non-aboriginal Canadians is to explain, often in a narrative form, why such and such a claim is anchored in their worldview and pre-colonial history, and how certain meaning-giving values and practices were disrupted by colonialism. Ethico-cultural considerations are always entangled with moral arguments in their public speech-acts. To paraphrase Bernard Williams, they deliberate from what they are (1993: 200). Such a rhetorical strategy sheds light on the sources and basic motives of their claims of justice. In addition, it provides non-aboriginal citizens with a standpoint to reflect on the norms that they often uncritically accept as impartial.

Another example is supplied by the British Muslims who felt alienated from the public sphere during the "Rushdie Affair." According to Bikhu Parekh, the framework of public discussion that was burdened with the mandate of re-establishing cooperation was, instead of being dialogically worked out, saturated with liberalism. British Muslims' more or less pronounced illiteracy in the prevailing language of deliberation deprived them of an authentic

political voice and corroded their willingness to carry out the demanding task of public reasoning (2000: 35).

These two examples support the thesis that social integration hinges more on a vibrant agonistic and intercultural civic sphere than on an aseptic form of public reason (Connolly 1999). In both cases, imposing the rules of public reason as they are generally understood not only amount to an impoverishment of civic life, but it may also foster injustice and political alienation.

In sum, both legitimacy and stability must be freed from the grips of consensualism. This, I suggested, entails adding an agonistic edge to our conceptions of public reason and deliberative democracy.[205]

3. Struggles for Recognition and Disclosure

A stretching and opening of the boundaries of public reason invites, *inter alia*, a politicization of culture and identity. In reaction to this trend, an increasing number of political theorists have highlighted the concrete or potential problems raised by such a politicization. With these critical perspectives in mind, I drew two main observations from the study of contemporary struggles for recognition contained in Section 2. First, cultures are characterised by continuity as much as by change. Cultural change channelled through the appropriation of external influences does not necessarily dilute the claim to distinctness. That Inuit, for instance, have "gone from the ice age to cyberspace since the 1950s" does not alter in the slightest their self-

[205] As it is typical in political philosophy, I zeroed in on the differences between the approach advocated for here and the dominant positions more or less influenced by Habermas' and Rawls' work. In a sense, this is a family quarrel among democrats who wish to emphasise different aspects of the democratic experience. Although this is rarely acknowledged by political philosophers who go on steadfastly defending this or that "model" or "theory" of democracy, all actually existing democratic modes of governance embody, in a sort of reflective disequilibrium, parcels of the conceptions of democracy discussed by philosophers and social scientists. In other words, late-modern democratic regimes need to be, to different degrees, simultaneously representative, aggregative, functionalist, procedural, deliberative, republican and agonistic. Only at the cost of an incredible sociological naiveté could we think, or hope, that a singular model of democracy would come to exhaust the meaning and possible implementations of the democratic experience. I chose to give prominence to the agonistic aspect because I felt that that deep pluralism, democracy and disagreement have not yet been articulated in a satisfying way. "Models" and "theories" of democracy are useful, as they reveal with much acuteness some aspects of the democratic form of life, but they tend to overshadow the broader picture of democratic politics.

interpretation as a distinct culture nor their will to govern themselves as an autonomous people (Aatami 2002: 225). Moreover, the struggle for recognition of aboriginal peoples provides no evidence that identity politics is logically underwritten by essentialist conceptions of identity. Most aboriginal peoples ground their struggle for recognition in their prior status as sovereign peoples and in the always renewed will to govern themselves freely, rather than in the self-defeating claim that aboriginal identity is either static and/or fully identical to itself. This is not to say that aboriginal leaders never found their political claims on exclusivist conceptions identity and belonging, as the frequent exclusion of aboriginal women reveals, but rather that such identity-essentialism is not ingrained in the logic of identity politics. Identity politics, as an instantiation of the wider game of democratic politics, engender public deliberation and political disagreements between the members of a given people. Struggles for recognition carried out through the exclusion of internal minorities provoke struggles of disclosure from dissenters (granted that they can voice their dissent). Far from disclosing monolithic pictures of aboriginal identities, the negotiations with the Nisga'a, Crees and Innu revealed both overlaps and divergences in the visions of men and women, traditionalists and non-traditionalists, Aboriginals of different generations, Aboriginals living on- and off-reserves, and so forth. The hypothesis I advanced is that such public deliberations held under non-ideal conditions play a community-building and community-sustaining role despite of the fact that they have brought to life enduring political disagreements. Struggles for recognition are given impetus to by a pre-existing identity (a form of collective self-awareness) that precedes the actual struggle, but internal and external public deliberation has a transformative effect on the prior identity.

Second, struggles for recognition must be understood both in terms of *telos* and process. They are oriented toward the attainment of given results (self-government power,

land retrocession, socio-economic rights, multicultural accommodations, transformation of the social imaginary), but the process—the activity of *struggling for*—must be assessed in its own terms. Even when they fail to deliver the intended results, struggles for recognition (1) set into motion processes of will- and opinion-formation within minority groups, and (2) interrupt the prevailing norms of action-coordination and public regulation. In Habermas' terms, struggles for recognition produce "practical conflicts" which, in turn, engender public discussions over the basic terms of being-with. Since gaining voice and visibility is the first step toward the democratic transformation of a shared political community, struggles for recognition are also struggles of disclosure. In that sense, they must be included within the array of democratic practices oriented towards the transformation of the prevailing codes of recognition and inclusion.

4. Political Philosophy in Context

It might be remarked that my account of multicultural democracy arguably makes sense in the Canadian context, but that it has little application, if any, elsewhere. I concede that the Canadian debate over the recognition and accommodation, or lack thereof, of the demands of Quebecers, aboriginal peoples, ethno-cultural communities and internal minorities has had a deep impact on my thinking. This is, of course, no great revelation. The activity of theorizing is not fully overdetermined by suprastructural conditions, but neither is it free-floating. It is commonplace to note that Habermas' discourse ethics and constitutional patriotism cannot be fully understood without any reference to the twentieth-century German history. The later Rawls explicitly recognizes that he is thinking against the backdrop of American political culture. There is no mystery as to why Canadian, Quebec and Aboriginal thinkers have developed a strong scholarship on such as themes federalism, multiculturalism, language-policies, aboriginal rights and the like.

The influence of lifeworld embodiment on thought can be a handicap if one embarks upon the task of producing a theory that claims universal validity. Language-games can very rarely be perfectly superposed. But the approach that guided me throughout the thesis was not driven by such an ambition. As I tried to convey, this approach has a phenomenological dimension and a critical edge. On the one hand, it seeks to shed light on, and recover some of the meaning of, concrete social fields made of practices, discourses and patterns of interactions. On the other hand, it analyses and criticizes the theoretical and practical solutions or prescriptions sketched out to address the empirical problems that erupt in practice. In doing so, it tries to reduce the gap between theoretical reflections and the rough ground of practice, it participates to the philosophical dialogue with alternative approaches and, in the best cases, it dissipates some fog, clears some misunderstandings away and plays a role in the public reasoning process. This approach has some very distinguished ancestors and practionners, but it still needs, I believe, to be formalized further, tested in diverse contexts, and compared, contrasted and combined with other approaches. As a future research program, I thus plan to study in more depth, and draw connections between the work of those thinkers who have laid out some of the main orientations of this approach—and hope that this will bring further light on its theoretical strengths and limits. Moving to a more empirical level, I will also tackle other political and, hopefully, ethical problems, and will explore different contexts of interaction. Finally, I will resume with the survey of alternative theoretical approaches so as to contribute to the ongoing critical dialogue that perhaps best embodies what political philosophy aims to be.

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