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Cultural Rights and Deliberative Policy. Beyond Habermas' "Between Facts and Norms"

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Abstract

ABSTRACT: A framework derived from Jürgen Habermas' *Between Facts and Norms* is utilized to address the question of how claims for minority rights that emerge from ethical-political discourses may receive public recognition. The major difficulty in this regard turns upon discrepancies between the interpretations of minority cultural needs by the members of a given community and interpretations of the same needs on the part of those outside of the community in question. The discussion includes a critical analysis of proposed resolutions of this problem put forward in *Between Facts and Norms*, in other works of Habermas, and in the various publications of James Bohman, Jorge Valadez, Michael Rabinder James, and Monique Deveaux. I argue that the best way to assess the cogency of discourses across cultural "barriers" does not involve minimizing requirements for their deliberativeness, as the latter four of these authors tend to accept, but rather strictly differentiating between the procedure and substance of the deliberation.

Keywords

minority policy, interpretations of needs, ethical-political discourse, moral discourse, public sphere, public deliberation, legitimacy, counterpublics

INTRODUCTION

The present discussion aims to outline an approach to the design of minority policies which would enhance the possibility that they be regarded as legitimate by all parties affected.

The types of policies that I have in mind concern community identities – particularly in respect to education, linguistics, the media, the arts, and religion – and there are a number of dilemmas that typically arise in this regard. For example, should the language of instruction at school be the mother tongue of minority students, and if not, should minority languages be taught in some form? Should school curricula reflect the cultures and histories of minorities, and if so, to what extent? Should alternative place names in regions where there has historically been a large minority group have official status? Should the respective minority language be accorded official status in such regions? Should media which are run exclusively by people belonging to a certain minority, cover primarily the problems of this minority, and possibly function in the minority language be granted operating licenses? Should public manifestations of religious identity be tolerated, such as the wearing of headscarves in public institutions by Muslim women?

Public policies in this respect often encounter the problem that they may be regarded both as too restrictive by the minority populations affected and as too permissive by the majority. The reason for this state of affairs is that there usually are discrepancies between how members of a given community and outsiders understand the *cultural needs* of that community. As a result, minority policies are rarely accepted as legitimate by all parties affected. The question for which an answer is sought in the present discussion is *How can there be a convergence between the assessments of minority cultural needs from both within and outside minority communities?*

CONCEPTUAL FRAMEWORK OF REFERENCE

The framework of my approach to this problem utilizes the two-track model of deliberative politics developed by Jürgen Habermas (Habermas 1996). More specifically, my intent is to explore ways in which Habermas' model of deliberative democracy can be applied to the designing of minority policies. I consider the main issue in this regard to be how claims for certain minority rights that originate from the lifeworld of the respective community may receive *public recognition*. If the latter occurs, the transmission of these claims to the institutional level of the public sphere and the initiation of appropriate policy responses can take place in the manner described by Habermas in *Between Facts and Norms*.

A number of commentators have stated – and I share their opinion – that cultural differences often hinder this type of recognition (see, for example, Bohman 2000, Valadez 2001, James 2004, 2006). In such cases, the public at large does not recognize as credible the presentations of the cultural needs of

minority communities that are based on the interpretations that these needs receive in the lifeworld of the respective communities themselves. Outsiders may in fact qualify such interpretations as misconceived, exaggerated, manipulative, and so forth. And insofar as there is no third party or arbitrator capable of reconciling the differing positions in such controversies, the methodology of deliberative democracy apparently cannot be utilized to legitimate minority policies in a manner that would please all affected parties.

In his description of the mechanism of policy legitimization in *Between Facts and Norms*, Habermas presents civil society as a social environment for the functioning of the public sphere. From this perspective, argumentative debates that take place within political and legal institutions are not the only debates that can be regarded as public.¹ This qualification also applies to debates that take place within and among informal associations, social movements, professional organizations, intellectual circles, mass media, and other social entities not involved in the exercise of political power which nevertheless deal with issues of some importance for everyone.

Habermas refers to the domains in which non-public issues are discussed as "lifeworld,"² using a category initially developed in phenomenological philosophy. Civil society "transmits" influences from the lifeworld to those institutions of representative democracy in which decisions binding for all are taken. Insofar as civil society "hosts" the public sphere, it is capable of fulfilling the function of transforming signals coming from culturally proliferated interactions that take place within the lifeworld into plans and models for the just regulation of relations among all citizens independently of the cultural specificities of their beliefs and interests.

It is the public sphere which, "as a network for communicating information and points of view (that is, opinions expressing affirmative or negative attitudes)," filters and synthesizes the streams of communication in such a way that they "coalesce into bundles of topically specified public opinions" (Habermas 1996, p. 360). Habermas regards the public sphere as a self-regulating network of communication streams that forms the opinions and wills of citizens in an argumentative way. This enables him to discern within it an additional capacity to transform the diverse messages, contributions, and claims which originate in the lifeworld into unified forms that regulate social processes in the equal interest of all parties affected. It is through the public sphere that culture-specific arguments are transformed into arguments that are generally accessible to everyone.

As a result of the public sphere's functioning, public opinion is formed about various issues. It may be described as comprising a recapitulation of the

¹ The narrow interpretation of "public" is exemplified by John Rawls' conception of public reason (see Rawls 1997).

² These are realms of culturally-grounded understanding and intersubjectively shared practices (See Habermas 1996, p. 14).

argumentative debates that take place informally and as the ultimate instrument for influencing debate and decision-making within the institutions of representative democracy. Habermas states in this regard that “In this sense, public opinion represents political potentials that can be used for influencing the voting behavior of citizens or the will-formation in parliamentary bodies, administrative agencies and courts.” (Ibid., p. 363). Public opinion thus reveals to the government and political elites "what the public of citizens would accept as legitimate decisions in a given case" (Habermas 2006, p. 418).

In Habermas' model, the civic public sphere restricts the choices available to political and legal institutions when it legitimizes certain norms insofar as the legislative adoption of these norms is predetermined, so to speak, by the public deliberations that have taken place at the informal level. The meaning of his two-track metaphor concerning deliberative politics is that the latter is worked out within both civil society and formal institutions (see Habermas 1996, p. 304). Other metaphors that Habermas uses in this regard include "weak" and "strong" publics, which he in fact owes to Nancy Fraser (ibid., pp. 307, 550), and "siege". He states that “Communicative power ... influences the premises of judgment and decision making in the political system without intending to conquer the system itself. It thus aims to assert its imperatives in the only language the besieged fortress understands: it takes responsibility for the pool of reasons that administrative power can handle instrumentally but cannot ignore, given its juridical structure.” (ibid., p. 486).

How can the influence of public opinion on the institutions of democratic societies be explained? Why do the latter tend to comply with the former? A key formulation which Jon Elster puts forward in his "Introduction" to *Deliberative Democracy*, namely, "the civilizing force of hypocrisy", (Elster 1998, p. 12) casts light on this issue. That is to say that the interest to preserve – or rather the concern not to lose – the legitimacy of one's own political conduct in the eyes of the public, who eventually comprise the electorate, is the source of what Habermas terms communicative power. He remarks that "Not influence per se, but influence transformed into communicative power, legitimates political decisions." (Habermas 1996, p. 371).

In a more recent publication Habermas specifies two conditions necessary for the mass media to play a legitimizing role in the public sphere. He observes that “Mediated political communication in the public sphere can facilitate deliberative legitimation processes in complex societies only if a self-regulating media system gains independence from its social environments, and if anonymous audiences grant feedback between an informed elite discourse and a responsive civil society.” (Habermas 2006, p. 411)

How does Habermas regard the transmission of influences from the lifeworld to legal and political institutions in more specific terms? First of all, the starting point may be any historically produced complex of circumstances in which people live, with all the accompanying "contingency of given traditions and forms of life" and "pluralism of existing subcultures, worldviews and interest positions". (Habermas 1996, p. 324) It must be noted,

however, that not all situations of this type are capable of generating "signals" that can fit unproblematically into the argumentative communication streams of the public sphere. Habermas is not optimistic in this respect about the role of "dogmatic worldviews and rigid patterns of socialization" (ibid., p. 325). A necessary condition for a given particular sphere of the lifeworld to comprise a source of such signals is that "the problems at hand are sensitively perceived, adequately described, and productively answered in the light of a reflexive, post-traditional transmission of culture" (ibid., p. 324). That is to say that the public sphere is capable of articulating and organizing in generally comprehensible forms only subject matter that is generated in post-traditional forms of the lifeworld, namely, where people are able to relate self-reflexively to their own cultural realities.

This restriction, which is clearly similar to Rawls' idea of "reasonable comprehensive doctrines," (Rawls 1993) has been subject to much criticism, particularly by authors concerned with gender and racial issues. They claim that such an approach is unjust in respect to communities and categories of people who are culturally predisposed to a type of communication that is more expressive, emotional, and rhetorical rather than dispassionate, impersonal, and argumentative (see, for example, Young 1997, Williams 2000, Huspek 2007). Insofar as Habermas' model excludes lifeworld forms of this type from the formation of public opinion, they would be able to exert no influence upon the institutions of representative democracy.

However, there have been very different interpretations of the fact that many minority communities do not conform to Habermas' criteria concerning what a lifeworld should be in order to produce claims that can be a matter of public deliberation. For example, Christian Rostbol, in contrast to such scholars as Iris Young, Melissa Williams, and Michael Huspek, regards the contingent character of the factors which in most cases shape the self-understanding of the members of cultural communities not as something to be reckoned with, but rather as a challenge for deliberative democracy. He observes that "Issues such as self-deception, adaptive preference formation, manipulation, ideological domination, and the like may all be contributing factors to the way in which people understand what is good for them" (Rostbol 2008, p. 156). Therefore, an important task of deliberative democrats is to encourage and provoke processes of self-reflection also outside the public sphere (ibid., p. 220).

THE CONCEPTUAL CHALLENGE

Regardless of the weight of such criticism, *Between Facts and Norms* offers an impressive account of how signals from non-public domains can be amplified and transmitted by the public sphere in a way which makes them capable of exerting substantial influence upon the policies designed and implemented by the institutions of representative democracy. Habermas apparently sees no problem with the transition between the ethical-political discourses through

which members of communities define their specific cultural needs and the moral discourses which prevail in the public sphere. I maintain, however, that there *IS* a problem in this regard, namely, *How can arguments generated in culturally specific domains be regarded as valid in the public sphere as well?* The fact that in many instances they refer to the lifeworlds of certain communities that are not shared by the vast majority of participants in the public sphere would seem to constitute a serious obstacle to the process Habermas describes.

Furthermore, the universalistic moral attitudes that are presupposed by participation in public deliberation do not eliminate this problem.³ Even if those who fight for cultural minority rights seek to promote their cause in publicly deliberative moral discourses and adopt an entirely communicative attitude – that is, if they are prepared to work for a solution which is in the best interest of all parties involved – they cannot derive the reasons they put forward from their own culture-specific experiences. How can I convince someone that something really matters in my lifeworld if it does not matter in his/hers, regardless of whether or not both of us are reasonable, self-reflective human beings? The discrepancy between interpreting needs "from within" and "from without" the lifeworld of a given community cannot be overcome merely by adopting a self-reflective attitude by everyone involved, because the latter attitude is a necessary but not sufficient condition to balance in a just way the interests of the arguing parties. In order to exercise "intersubjective recognition", to use Habermas' term from his "Religious Tolerance—The Pacemaker for Cultural Rights" (Habermas 2004), the parties also must be aware *what* they are to recognize.

This problem is of the same type as that discussed by John Rawls in his theory of political liberalism. It is in fact the issue addressed in his famous "proviso": "[R]easonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussions at any time, provided that in due course proper political reasons – and not reasons given solely by comprehensive doctrines – are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support." (Rawls 1997, p. 784).

If claims for certain public policies presented by, for example, representatives of minority communities are not to be naively accepted by the general public at face value, then their plausibility can be evaluated only on the basis of the reasons presented to support them. But if these reasons are based on culturally specific considerations, they cannot be regarded as valid within the context of *public* deliberation. For example, let us imagine that a claim is presented by formal or informal leaders of an ethnic minority that its mother tongue be made the language of instruction for the school children who

³ Habermas refers to the attitudes in question as comprising "the moral viewpoint of equal respect for each person and equal consideration for the interests of all." (See Habermas 1996, p. 97)

belong to this community. An apparently legitimate reason in support of such a claim would be that instruction in their mother tongue is for these students a necessary condition for the preservation and development of their cultural identity, and the protection of such identities is guaranteed by international conventions, which are binding for the state in question. This argumentation, however, cannot be really convincing for the general public, because it is based on a statement which cannot itself be verified – namely, that the mother tongue matters a lot for the people who belong to this ethnic group. How can an external “observer” know that it is really of such importance for them? Maybe the whole story has been made up by some ambitious community leaders in order to promote their political influence. Or maybe this is a transient emotional reaction of some of the community members to recent media publications which denigrate their ethnic culture. And, of course, it is not to be expected that all subgroups and/or individuals who share this identity have the same attitude to their mother tongue. Its importance for them depends on various circumstances – the history of this part of the country’s population, their traditions, the cultural “distance” between them and the majority, the motivations of the different individuals to integrate in the mainstream society and their estimations of their chances to do so, etc. Most of these factors are a matter of these people’s self-understanding and their role cannot be evaluated “from without”. So, how can the legitimacy of minority cultural claims be assessed by the general public?

A radical solution of this problem would be to opt for certain forms of intercultural understanding capable of providing the public with insight into the lifeworld and cultural needs of “others”. Seyla Benhabib, for example, has developed an impressive theory in this respect concerning “complex cultural dialogue” (Benhabib 2002). Besides, various practices of intercultural dialogue have emerged in the United States, including mediating groups, contact points, and safe spaces, whereby people of different races meet and communicate across racial lines (see Streich 2002, p. 137). Numerous similar initiatives can also be found throughout the world. To the best of my knowledge, however, there have been no reported instances to date in which such dialogical initiatives have had any substantial influence on the formal public sphere in the sense this term is used by Rawls and Habermas. A possible explanation for this could be that this type of communication rarely takes place in a discursively convincing form.

Habermas does not deny that such a problem exists in his comments on Rawls’ view concerning the role that religion can play in the public sphere. He objects only to the requirement that the reasons, which support a given claim that is being introduced into the public sphere from a non-public source (e. g. from the positions of a religious community) should be translated from a culture-specific into an universally accessible language before this claim has left the non-public domain. Habermas agrees with certain critics of Rawls that it is not morally justified in respect to the participation of religious communities in public discourses to place the entire burden of translation onto

the members of the communities in question.⁴ “The liberal state must not transform the requisite *institutional* separation of religion and politics into an undue *mental and psychological* burden for all those citizens who follow a faith. It must well expect them to recognize the principle that any binding legislative, juridical or administrative decision must remain impartial with regard to competing world views, but it must not expect them to split their identity in public and private components as long as they participate in public debates and contribute to the formation of public opinions.” (Habermas 2005, p.5)

Since Habermas regards the public sphere as functioning in a two-track fashion, he can allow for less demanding requirements for claims that originate from non-public domains. He claims that they may enter into public circulation in their authentic forms as supported by culture-specific reasons. Although they need to be translated into generally accessible language before they enter “the institutionalized decision-making process at the parliamentary, court, governmental and administrative levels” (Habermas 2008, p. 8), they can be discussed in any mode within the *informal* public sphere. This means that the task of such translation constitutes a challenge shared by both those who put forward such claims as well as the general public, whereby it should be a cooperative undertaking and an element of complementary learning processes. (ibid., p. 9)

However, Habermas provides no specific explanation in his recent works of how this can take place. Although he states that both “a shift from the traditional to a more reflexive form of religious consciousness” (ibid., p. 8) on the part of religious communities as well as a reciprocal process of revision of the secularists’ attitudes toward their religious fellow citizens are necessary conditions for such translation, he goes into no further detail. Habermas presents a small number of examples of what he has in mind, one of which indicates a possible way to translate the monotheistic conception that human beings are sacred insofar they have been created by God into the universally accessible idea that they have an inherent dignity and the right to self-determination. Such a translation might win, for instance, public support for an argument against granting parents the right to intervene into the genome of their yet unborn child, even if this position has been generated within a religious cultural context (see Habermas 2003, p. 114).

This requirement reminds us very much of Rawls’ “proviso”, the difference between him and Habermas being only that according to the latter’s opinion such translations should take place in the informal public sphere and not in non-public domains. But an important question that both authors appear to overlook still remains open, namely, what should be done if genuine culture-specific needs of members of a given community, identity group

⁴ An example of such criticism is that of Nicholas Wolterstorff. (See Audi and Wolterstorff 1997, p. 105)

(Gutmann 2003), or category of human beings are of such a type that there is no possibility for them to be convincingly expressed in universally accessible terms other than by the trivial formulation that "if people really need something, it ought to be provided to them."⁵

Insofar as a proper investigation of the alleged incommensurability of cultural claims is beyond the scope of the present discussion,⁶ I will restrict the examination to the issue of how it may be possible for me to convince someone that something matters to me if it does not also matter to him/her⁷. Briefly stated, how can someone know whether or not I am telling the truth in such situations? And insofar as I accept the notion that there are limits to the translatability of particularistic claims into universalistic ones, I will now consider certain more concrete ideas in this vein which have been proposed by other scholars working within the same paradigm.

SOLUTIONS PROPOSED

We will first consider certain prominent interpretations of the problem in order to obtain a more detailed account of its character. For example, Thomas McCarthy refers to Habermas' publications on discourse ethics as he points to the need for a "common measure by which to assess the relative weights of reasons articulated in different evaluative languages" (McCarthy 1992, p. 64). In a similar vein, William Rehg asks how it would be possible to convince someone that s/he needs a country house and replies, with a hint of irony, that this can be done only by referring to such shared values as "peace and quiet," "freedom from the city's congestion," "environmental beauty," and so forth (Rehg 1994, p. 49). Joel Anderson claims in a comment concerning a formulation of the so called "U" principle of discourse ethics⁸ that a joint assessment of the consequences of the general observance of a given norm is

⁵ Cultural communities differ not only in worldviews and values, but also in their experiences. The inability of non-members to understand adequately the needs of group members is one of the chief arguments which Anne Phillips presents in favor of the "politics of presence" (Phillips 1995). For example, the importance of the mother tongue for the members of ethnic minorities varies largely from community to community, depending on the latter's unique histories and concrete social environments, so that it is impossible to justify the language-related cultural needs of all these people in universal terms.

⁶ Seyla Benhabib offers an impressive summary of the incommensurability-debate in her *The Claims of Culture* (Benhabib 2002, pp. 135-138). However, I do not agree with her claim that the incommensurability thesis is based on an essentialist ascription of unitary consciousness to identity groups (p. 137) insofar as incommensurabilities manifest themselves in communication between individuals as well.

⁷ In fact in the last part of this article I am addressing both of these challenges concerning the justification of claims for minority rights.

⁸ "For a norm to be valid, the consequences and side effects that its general observance can be expected to have for the satisfaction of the particular interests of each person affected must be such that all affected can accept them freely." (see Habermas 1990, p.120)

not possible if there is no agreement "about how to interpret the needs, desires, feelings, and interests affected by acting in accordance with that norm" (Anderson 2001, p. 202).

In order to provide a more specific basis for further discussion, I will now briefly present proposals that have been put forward by Bohman, Valadez, James, and Deveaux regarding ways in which the problem of the public recognition of the legitimacy of minority claims can be resolved (Bohman 2000; Bohman 2003; Bohman and Richardson 2009; Valadez 2001; James 2004; Deveaux 2006). They exemplify the tendency to seek such a solution at the expense of minimizing the requirements for the deliberativeness of the discourses through which claims of this sort are justified before the general public. In my opinion this approach compromises the legitimacy of the public policies which are influenced – according to Habermas' model – by such debates, and this is the reason why I am proposing an alternative solution.

In his *Public Deliberation*, James Bohman presents a minimalist approach to public deliberation as a means for negotiating agreements that would be regarded as legitimate by all parties involved, even if they do not share the same cultural values and attitudes. He discusses a less demanding view of the reasonableness of an argument – not as referring to reasons which can be understood and eventually accepted by any citizens as free and equal, but as based on a respectful attitude of the participants to each other. "What is reasonable is not the shared content of political values but the mutual recognition of the deliberative liberties of others, the requirements of dialogue, and the openness of one's own beliefs to revision." (Bohman 2000, p. 86)

Bohman argues against Habermas' insistence that a consensus reached through argument must rest upon identical reasons accepted by all parties involved, and that legitimacy follows from consensus, while parties who do not agree upon identical principles can merely attain no more than compromise (ibid., p. 88). Bohman puts forward a different notion and evaluation of compromise such that moral compromise may at times be the only means for reaching an agreement that all parties affected can regard as legitimate. This is the case when the conflict to be resolved is profound, such as those originating from substantial cultural differences. An agreement accepted by the participants for *different reasons* can then serve as a viable means for dealing with intercultural controversies in a publicly deliberative way.

Bohman describes the process of reaching such an agreement as one of cooperative modification among participants of the conceptual framework of deliberation. He remarks that "[T]hey modify their conflicting interpretations of the framework so that each can recognize the other's moral values and standards as part of it. The framework is then common enough for each party to continue to cooperate and deliberate with the other. Nonetheless, it is still not already assumed to be the *same* framework, as would be true for an impartial agreement; in this way it remains plural." (ibid., p. 91)

Another element of Bohman's methodology for coping with deep conflicts is a deliberative form of toleration that is not only exercised but also justified and thus open to challenge. (See Bohman 2003, p. 95) Bohman terms this "reflexive toleration", and he defines it as "the communicative attitude of taking the reasons of others seriously and recognizing them as the addressees of the justificatory principles of toleration" (ibid., p. 102). A more recent article that Bohman co-authored with Henry Richardson further relaxes requirements for the legitimacy of political processes by replacing the rather demanding condition that "each of the participants aims to provide the others with reasons that all can accept" with the less imposing statement that "participants engage forthrightly with the others' arguments and respond open mindedly to them." (Bohman and Richardson 2009, p. 273) The latter would suffice even if a comprehensive agreement remains out of reach (ibid.).

Jorge Valadez presents his conception of public deliberation in his book *Deliberative Democracy, Political Legitimacy and Self-Determination in Multicultural Societies*. Valadez claims that it is not necessary to substantially modify the classical deliberative-democratic model of decision-making in order to be able to apply it in multicultural environment, although he does not deny that it is difficult to obtain argumentative communication across cultural boundaries. He also points out that argumentative communication is hindered not only by cultural incommensurabilities, but also by "significant and persistent cultural group differences in socioeconomic and political power". (Valadez 2001, p. 6.)⁹

Valadez nevertheless maintains that intercultural public deliberation can still be made possible if two innovations are introduced. The first is to ease requirements concerning the *results* of public deliberation insofar as we should not expect it to always lead to consensus in multicultural situations. He argues that in "the more difficult cases of intercultural disagreement, it will suffice that participants believe they have equitably influenced the deliberative process and agree to continue to cooperate in good faith in future deliberations" (ibid., p. 5).¹⁰

Valadez terms his second proposal "epistemological egalitarianism," by which he means a complex of measures that should help compensate for the inequalities in communicational capacities that result from inequalities in socio-economical and political status. These measures should also facilitate communication between people with different cultural identities. The most important of these is equal access to the epistemological resources necessary for effective participation in public deliberation, including the adaptation of public deliberation to multicultural environments. Chief among these

⁹ At this venture Valadez joins in critiques against the standard view of deliberative democracy that we find in Nancy Fraser (Fraser 1989, Fraser 1997) and Iris Young (Young, 1997).

¹⁰ Valadez thus agrees to a great extent with Bohman's views, which he refers to in his further considerations (see Bohman 2000, p.138).

resources are information technologies, education aimed at developing the critical thinking necessary for the analysis and evaluation of information, and the social and material means required for the exchange of information (ibid., p. 6). Others include "the expansion of deliberative forums to include brief biographical and cultural narratives, exercises in empathetic imagination, and other means by which participants can gain greater mutual affective understanding" (ibid., p.7).

Michael Rabinder James introduces the notion of "plural polity" as a means for conceptualizing the method of deliberative decision-making in a new way so that it becomes applicable to multicultural environments.¹¹ He does not use traditional terminology because he strictly follows a constructionist approach to cultural identity. The terms "plural deliberation" and "complex legitimacy" play central roles in his theory. James maintains that in a *plural polity* only *complex legitimacy* is possible, and that "*plural deliberation*" provides the framework for assessing the latter. Whether or not a given deliberation is plural in character can be determined in each specific case by means of four criteria, namely, "the scope of deliberation, the relationship between understanding and criticism, the link between deliberation and decision-making, and conditions governing the deliberative and aggregative fairness of institutions and processes" (James 2004, p. 52).

It is interesting to note that James presents plural deliberation as compatible with agonistic as well as activist challenges to existing institutions or processes in his effort to open the model of deliberative democracy to cultural diversity. He maintains that such challenges can be legitimate reactions in cases where one or more of the four criteria he presents have not been met (ibid., p. 81).

Monique Deveaux is even more prepared than Valadez and James to accept a relaxation of the criteria for public deliberation. She proposes in her *Gender and Justice in Multicultural Liberal States* that public deliberation be combined with negotiation, bargaining, and compromise whenever it is necessary to do so, primarily in situations of cultural conflict. I understand her to suggest that *win-win* and *win-lose* types of approaches be applied side by side, or, in Habermas' terms, that communicative and strategic action be performed together. Deveaux maintains that if certain procedural criteria are met, a collective decision taken in this type of eclectic manner can in fact be legitimate for all those who would be affected by it. That is to say that negotiation, bargaining, and compromise, on the one hand, and public deliberation, on the other, can be mutually complementary. Deveaux observes that "In the context of deliberations which strive to give equal political voice to participants, and in which participants can openly challenge the rationale (and purpose) behind cultural assertions and make claims about the benefits and harms of social practices, strategies of negotiation and compromise can

¹¹ In his book *Deliberative Democracy and the Plural Polity* (see James 2004).

signal the recognition that stakeholders have valid concerns, differences, and interests which are nonetheless irresolvable at the level of moral agreement” (Deveaux 2006, p. 111).

In addition, Deveaux sees no reason why we should deny the possibility that decisions which have been made in a purely strategic way may later become morally justified. “[S]ome interest-based agreements and compromises can come to take on a settled normative status over time: the decision to reform African customary law so as to permit women to inherit property, even if forged out a balancing of interests, may eventually (for many) come to enjoy normative acceptance, and indeed, to be viewed as more just than previous arrangements.” (ibid., p. 112)

A common feature of all four of these conceptions concerning the implementation of public deliberation in a multicultural environment is that the authors seek to resolve the problem of argumentative communication across the barrier of cultural differences by stretching the criteria for public deliberation. This is by no means an isolated tendency in the development of the theory of deliberative democracy. Numerous authors have advocated an "expanded understanding of deliberation" (Mansbridge et al. 2010, p. 67) in order to address the challenges of cultural diversity as well as many other difficulties associated with the practical implementation of the theoretical model of deliberative democracy. Some insist that a more inclusive approach should be taken concerning self-interest and power (Mansbridge et al. 2010), while others argue in favor of non-discursive forms of communication, such as rhetoric and story-telling. (Baechtiger et al. 2010)

But although there is undeniably a need for more realistic models of deliberative democracy, I believe that the potential of the classical model presented in *Between Facts and Norms* has not yet been exhausted. Moreover, the forms of public deliberation that do not fit into the narrower normative boundaries of this model have yet to demonstrate their capacity to produce legitimate agreements. As a result, I shall pursue a very different track than those represented by the four alternative views we have just discussed in dealing with challenges to the theory of deliberative democracy that ensue from cultural diversity.

MY HYPOTHESIS

As stated above, the main obstacle to the application of Habermas' model of deliberative democracy in multicultural environments is the difficulty of legitimizing the cultural needs of minorities in a form which is convincing for the general public. Attempting to do so through the use of arguments that refer to certain traits of a *particular* domain of the lifeworld will not bring about public recognition of the needs in question because the public sphere functions predominantly in a *universalistic* way.

How then can members of minority communities justify their claims that political and legal institutions should provide them with certain conditions

which from their point of view are necessary for the reproduction in time of their cultural identities? I argue that an answer to this question can be found by exploring opportunities for legitimizing minority cultural needs through the respective *ethical-political discourse*, provided that the latter is conducted in such a way, that this legitimization can also receive unrestricted *public recognition*.

This may at first glance seem to be impossible in light of the fact that it is accepted within the theory of public deliberation that a collective decision which has been made on a substantive basis – that is, one supported by reasons that refer to the beliefs and interests shared by the people involved – can have no binding effect on people who do not belong to this circle. In order to demonstrate that this *is* in fact possible, I shall begin by drawing attention to certain elements of the conception of ethical-political discourse presented in *Between Facts and Norms*.

In contrast to pragmatic and moral discourse, this type of discourse, which deals with the good life, collective identity, and the interpretation of needs, constitutes a means for the "hermeneutic self-understanding" of groups (Habermas 1996, p. 163). Habermas regards ethical-political discourses as being *twofold* in character. On the one hand, they can be self-reflexive to a certain extent insofar as they are not based upon a fundamentalist mentality (ibid., p. 167). As such, they enable groups to *critically* appropriate their own traditions (ibid., p. 163). On the other hand, however, they cannot be completely dissociated from the context of the respective domain of the lifeworld. Habermas states that the "roles of participant in argumentation and member of historical community overlap" as group self-understanding is attained, and that "arguments meet up with the striving of an authentic form of life". (ibid.) He further argues that "Reason and will reciprocally determine each other in ethical discourses, for these discourses remain embedded in the context they thematize". (ibid.)

It is evident that Habermas regards ethical-political discourses as substantive, that is, participants can communicate among themselves in an argumentative manner insofar as they are able to refer to shared beliefs and interests. However, it seems to me quite possible that discourses of this type can be conducted according to the criteria of public deliberation, of which the most important, in addition to rationality, are freedom from coercion, the equality of all participants, and openness to all who would be affected by any decisions take (ibid., pp. 306-307).

As was noted, Habermas maintains that the topics of ethical-political discourse properly include a community's self-understanding, the ideal of its members for a good life, and the community's interpretation of its needs. On the basis of this position, I would like to raise the following question: *Can an ethical-normative framework for the activities of constructing and reconstructing a community's identity be negotiated by means of ethical-political discourses conducted in accordance with the criteria for public*

deliberation?¹² And if so, would this not legitimate the cultural needs of the community as well?

If such a legitimization is possible, it would rest not upon substantive but rather upon *procedural* grounds. In respect to Habermas' model of the public sphere, an ethical-political discourse can be regarded as an instance of public deliberation if it meets the four types of criteria mentioned above. The nature of these criteria is such that it is possible both for participants in the discourse (who share the beliefs and interests being elucidated and articulated) and for external (public) observers to *empirically* determine from any viewpoint whether they have been met in any particular case. This could consequently provide a means to overcome the difficulty of argumentative communication across the barrier of cultural differences, which is the issue of concern in the present discussion.

Returning to the example about the claims concerning the status of an ethnic minority's mother tongue at school, let us imagine that these claims are a product of a debate within the community in question, which is rational and free, its outcome depends on the quality of the arguments used, and not on the authority of the participants, and besides, it is open to all who can prove that they would be affected by the decision to be taken. From the viewpoint of the community members the cultural claims which have been formulated in this way should be regarded as an adequate expression of a real cultural need of theirs. Yes, the diversity of the opinions on this issue within the community, as well the complexity of the conditions which influence its identity's reproduction in time *do matter*, but if a rational, free, equal and inclusive debate has produced a consensus in the community about the role of these people's mother tongue in their life, they should accept this result as legitimate.

And what about the general public, i. e. the "external observers" who do not share the lifeworld of that minority? Of course, they cannot evaluate the cogency of the arguments which have been exchanged, because the latter refer to the specific experiences and sensitivities of the community's members. However, the "outsiders" can assess the procedural quality of the discourse – how rational, free, equal and inclusive it is. Here we have to do with empirically accessible parameters of a debate. And if these requirements are met, this is a guarantee that the discourse has not been manipulated and the consensus which has been produced is genuine. In other words, the claims in question are a legitimate expression of some people's understanding of their cultural needs.

This series of considerations is obviously not unproblematic. A serious difficulty would arise if we could not answer the simple question of how the

¹² My view is that the constructivist approach to group identity is consistent with Habermas' understanding of ethical-political discourse.

interests of society are to be represented in a given ethical-political discourse. Demands that minority cultural needs be satisfied in fact comprise demands that certain public policies be implemented, and the content and scope of such policies are a matter of importance not only for minority's members, but also for society at large. Whether and what amount of material resources will be utilized for such purposes, whether the public administration will accept additional serious obligations, such as the introduction of official bilingualism in a region of substantial minority population, whether and to what extent the country's cultural space could be fragmented if exclusively minority media are allowed to function, and whether minority educational institutions will be established are all questions that concern a given society as a whole.

Therefore, society's interests should somehow be represented in the public deliberation through which – in the form of an ethical-political discourse – the normative framework for the reproduction-in-time of a minority identity is articulated. There is no doubt that society as a whole is one of the parties potentially affected by the outcome of such deliberations. If decisions concerning the normative framework in question are taken behind the back, so to speak, of any such party, they cannot claim legitimacy as results of public deliberation.¹³

It may appear that this presents us with a new form of the very problem we have been trying to solve: How can someone participate in a public deliberation in which substantive matters are being discussed without sharing the beliefs and interests of the rest of the participants? Stated otherwise, how can one assess the convincing power of arguments that refer to beliefs and interests which are alien to her/him as an outsider?¹⁴

I maintain that this problem can be resolved if the very members of minority communities represent the interests of society within the ethical-political discourses through which minority identities are constructed and reconstructed. Although they obviously participate in such discourses as insiders, that is, as participants in public deliberations who share beliefs and interests with their fellow minority members, this need not preclude their participation in another role as well, namely, as citizens whose best interests involve the good of society as a whole. This would be an extreme case of what R. Goodin terms "deliberation within," i.e. a case in which a participant does not merely imaginatively put him/herself into some other's place, (see Goodin 2003, p. 61) but rather conducts a dialogue between his/her own cultural and civic selves.

Such a dual behavior of the persons who belong to some kind of minority is prescribed by Habermas himself as a necessary condition for

¹³ In such case the ethical-political minority discourse would be a typical instance of the so called "enclave deliberations" (see Mansbridge 2006, Sunstein 2009, Karpowits et al. 2009).

¹⁴ This does not primarily involve the procedural correctness of the public deliberation – which I have argued above can be evaluated "from without" – but rather the substantive issue that is the subject of deliberation.

enjoying cultural rights. “Citizens are equally empowered to develop what is for them their cultural identity and might appear to others as cultural idiosyncrasies, but only under the condition that all of them (across boundaries) understand themselves to be citizens of one and the same political community.” (Habermas 2004, p.18). However, without any criteria by which we can measure the grade to which this very demanding normative requirement is being met in real life situations, it is not practically applicable. And if we leave to the good will and personal judgment of the individual member of a minority community to decide which cultural rights are compatible with the integrity of the society at large, and which not, there is little hope that such criteria be worked out.

Besides, in my opinion, it would be helpful in this respect to try to explain why the historical and current practices demonstrate that the cultural and civic elements are rarely balanced in the self-understanding of the persons who belong to minority groups. These people are, with certain exceptions,¹⁵ citizens of the country in which they live. Obviously it is in the interest of any such individual that not only her/his community has the best conditions possible for the reproduction of its identity, but also that society as a whole prospers as well. It is clearly the case that the members of a minority community can not benefit from any right which that community might enjoy if the country as a whole has been reduced to ruin. History presents us with numerous examples of counterproductive struggles for racial, ethnic, and religious rights which have achieved Pyrrhic victories. That is to say that they in fact led to a degrading of the conditions of the very people whose good was their aim precisely because of the disruptions they caused in the broader social order.

The best solution would rather involve a balance between the rights of the minority and the interests of society. If someone can profit from any *unilateral advantage* a minority community may enjoy in terms of maximizing its cultural autonomy at the expense of the integrity of society, it is clearly not its "rank and file" members. Those who can in fact benefit from this state of affairs are typically community leaders who have thereby gained political importance and expanded opportunities to personally profit from their prerogatives. This is particularly the case if the advancement of minority rights is accompanied by measures to provide political guarantees for their observance, which in turn improves prospects for minority leaders to be integrated into the political elite of the country.

So, once more, why do we not observe – at least not often –cases of balanced relations between a minority and society at large in the world around us? The reason may well be that these relations are usually of the win–lose type, the competitiveness of which is easily internalized in the conduct of

¹⁵ Such exceptions principally involve immigrants who do not have citizenship in the host country.

individuals who "play the game." This is clearly demonstrated by the hierarchical, though typically informal, organization of intra-communal relations. Consequently, loyalty to society as a whole and loyalty to one's own community (the latter usually takes the form of a defensive mentality), are mutually exclusive in such situations.

My view is that the situation will be radically different when the relations within the minority community, and between it and society as a whole, are regulated in a horizontal, not vertical, dimension, that is, by the power of the better argument rather than by mostly political means. This can be achieved through the introduction of deliberative democracy as a normative framework for dealing with minority policies, which would generate a transition to a win-win type of relations. The latter would in turn make it possible for one and the same person to act simultaneously as a community member who cares about the good of his/her fellow members and as a citizen of society at large who has the general interest at heart.

That is to say that any member of a minority group would then be able to participate in the ethical-political discourses that define the group's cultural needs as someone who works *both* in the interest of her/his collective identity *and* in the general interest.¹⁶ No one would have the opportunity to benefit personally from an unbalanced promotion of the community's cultural autonomy at the expense of society as a whole, e.g. by entering the ranks of the national political elite as one of the leaders of his/her community. Furthermore, no one would then be subject to manipulation by fellow members who have such aspirations. The shift of interaction between the community and society as a whole from the vertical to the horizontal dimension, which minimizes the role of community leadership and thereby restricts opportunities to benefit in the manner described, would make a very important difference in respect to the problem under consideration in the present discussion.¹⁷

I regard this as a promising approach to the issue of the public recognition of the cultural needs of minority communities. Let us imagine that

¹⁶ Ian O'Flynn has developed a similar idea concerning the application of the methodology of public deliberation in order to attain a complementarity of particularistic and universalistic loyalties, although he and I differ in our views concerning the role that should be played by power relations. He states, for example, that "The question, therefore, is whether consociational institutions can be designed so that political leaders are effectively required to think of themselves not simply as the representatives of their own ethnic group, but also as sincere and faithful representatives of the public interest" (O'Flynn 2009, p. 9). See also his *Deliberative Democracy and Divided Societies* (O'Flynn 2006).

¹⁷ Such a shift can clearly take place only gradually insofar as it takes time for public-deliberative attitudes and skills to develop within minority groups. Time is also required to raise awareness among the members of such communities that their interests as minorities and as members of society at large are interdependent. I regard these as realistic objectives that could first be attained in large autochthonous minorities, such as those in Central and Eastern Europe.

such needs are discussed in a publicly deliberative ethical-political discourse within a given community.¹⁸ Let us further assume that the participants in this discourse reach a consensus that their community requires certain conditions – in the current situation – in order to be able to reproduce its identity further in time.¹⁹ I maintain that if this ethical discourse fully meets the criteria for public deliberation, then the agreement will be legitimate in an absolute sense – not only for those who participate in the discourse – because it will have been reached by means of rational, free, equal, and inclusive communication on the part of *all* who would be affected by its implementation. It will therefore be legitimate on procedural grounds insofar as its procedural correctness could have been and can be checked by anyone.

When justified in this way, the cultural needs of the minority community will have to be recognized as legitimate by the general public and thus become the proper subject matter of moral discourses in the public sphere. The structures of civil society will thereby become capable both of legitimizing public policies and of exerting "communicative pressure" on legal and political institutions in order to ensure that these policies will be professionally designed and implemented.

Finally, it should be noted that many authors who explore how the model of deliberative democracy can be applied to the field of minority policies have overlooked the possible results of the sort that I have just discussed, namely, those that would result from the very transfer of interaction between a minority community and society as a whole from the vertical (power laden) to the horizontal (communicative) dimension. As I have sought to demonstrate, such results may well turn out to be of decisive importance for the public recognition of minority cultural needs.

What would the practical dimensions of such a solution be? My view is that this would involve nothing less than promoting the development of minority public spheres of the type that Fraser terms "subaltern counterpublics" (Fraser 1997, p. 81). It is possible, in my opinion, for such "microcosmic" public spheres to become the arenas for ethical-political discourses concerning the identities and cultural needs of the respective communities.

¹⁸ It should be noted that such a discourse would bear the characteristics both of public and non-public communication – being a case of penetration of the public sphere into non-public domains.

¹⁹ This type of consensus concerning the cultural needs of a minority group does not necessarily entail an essentialist notion of collective identity. Even if we assume that the construction and reconstruction of identity involves internal pluralism, contestation of narratives, and resignification of practices (Benhabib 2002, p. 13), I see no reason why ethical-political discourses within the community should not possess the capacity to attain a degree of consensus – possibly by means of intra-cultural dialogue – concerning the conditions necessary to further these processes in the concrete situation.

Fraser uses the example of late twentieth century feminist counterpublics to show how such discourses can take place by means of "a variegated array of journals, bookstores, publishing companies, film and video distribution networks, lecture series, research centers, academic programs, conferences, conventions, festivals, and local meeting places" (ibid.). However, there is a significant difference between the model of minority public spheres that I propose as a means to overcome the cultural gap in public deliberations concerning minority policies and the model followed by the feminist, gay/lesbian, and African-American counterpublics, which functions more or less successfully today, especially in the United States. In contrast to the latter model, I regard minority public spheres not necessarily as training grounds where people belonging to categories and groups of citizens subject to discrimination can prepare themselves for battle in the public arena, but also as having the potential to become stages on which these people can demonstrate to the public at large what really matters to them. The function of the present counterpublics, which Fraser refers to, is mostly to improve the positions of discriminated groups in the struggles in the public sphere, "...where groups with unequal discursive (and non-discursive) resources compete to establish as hegemonic their respective interpretations of legitimate social needs". (Fraser 1989, p. 166) I would rather recommend a development of minority public spheres, which would have the capacity to legitimize culturally specific claims as being a matter of genuine consensus among all parties whom they concern – a legitimization which is achieved not in a competitive, but in an entirely communicative manner.

Consequently, I do not seek to help the micro-publics and the macro-public find a common language by minimizing the requirements for deliberativeness in public communication. On the contrary, it is especially important for the model I propose that ethical discourses in minority public spheres take place in such a way that they leave no room for doubt on the part of external observers that they are procedurally correct, that is, that their results are agreed upon in a rational, inclusive, free, and equal manner by all parties affected. Any suspicion among the general public that minority claims may result from strategic manipulation by community leaders (or factions), "false consciousness," or other factors that render them unworthy of public recognition can thus be prevented.²⁰

²⁰ This clearly presupposes a certain development within minority public that enables them to become genuine arenas of public deliberation. Unlike Fraser, Young, Williams, and Huspek, I maintain that it is not so difficult to abide by the rules of free, argumentative, equal, and inclusive communication whatever one's cultural tradition may be. This is a position I share with such writers as Benhabib and Rostbol. In addition, the functioning of minority public spheres entails a pluralism of the "sociocultural means of interpretation and communication" (Fraser 1989, p. 164). Such pluralism allows no room for the types of concerns presented by Fraser and others, who claim that if participants in a publicly deliberative discourse have unequal access to the discursive resources used – which might well be the case in a minority-majority debate – then the legitimacy of the outcome would be compromised (Fraser 1989).

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