EQUALITY AND DEMOCRATIC SOCIETIES

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Why should I surrender my private liberties and rights to collective interests? This question has long been fundamental to political thought, particularly since the Enlightenment. Any just political order must in some way manage tensions between members' public obligations and their individual private liberties and interests. Political theorists have explicated various models of the ways polities understand this tension. Jürgen Habermas argues, for example, that while Lockean liberalism interprets human rights, under the rule of law, as the basic expression of moral self-determination, Aristotelian civic republicanism adopts popular sovereignty as the basic expression of communal self-realization (1996:99; 1998a:258). In liberal systems citizens fear the tyranny of the majority and emphasize the human rights of all citizens, while civic republican traditions prioritize civic self-organization such that human rights are binding only as elements of a consciously appropriated tradition (Michelman 1988:1499ff.). Actual socio-economic conditions, however, can cause a shift in focus. Times of material abundance and relative prosperity often shift political systems towards the promotion and securing of private liberties; times of material shortage or political chaos tend to tilt the balance in favor of public obligations to ensure the welfare and security of citizens.

Some political thinkers, such as Max Horkheimer, Niklaus Luhmann, and Werner Becker, argue that the causes of these shifts can be explained solely in socio-economic terms. Habermas characterizes such models generally as those that tend toward the "materialization" of law (1998a: 262). Such models tend to emphasize the primacy of welfare rights for the citizenry. Other theorists, however, tend to eschew the notion that this shifting balance is explainable by mate-

rial or historical factors. Instead they conceptualize the relative differences between liberty and obligation in a more abstract sense. They develop models based on rational choice considerations, reasonableness standards, principles of autonomy, or contract theories. If one were to take a sample of at least some of the better known of these contemporary theorists (e.g., John Rawls, Robert Nozick, T.M. Scanlon), one would be compelled to conclude that for the most part they bestow a highly qualified conceptual priority on private liberties over public obligations. They insist that, *ceteris paribus*, individual freedoms ought not be sacrificed in the interest of promoting an organized, wealthy, or homogenous society. The material well being of individuals generally is secondary to their autonomy.

I shall take as basic for any political theory of democracy, however, the presumption of equality among all of its citizens. This is obviously the principle behind the "one man one vote" principle, the staple of all modern democracies. Given this presumption of equality, each citizen is numerically one, and thus unique, among the many of the same citizenry. As might be expected, the materialist and non-materialist strains of political theory evince a predictable disagreement about what counts as democratic equality.

A classic materialist about equality is Marx. One might think that, as a committed socialist, he would have embraced a notion of abstract equality of all citizens. But instead, he characterized equality as the most bourgeois of concepts: "during the time that the aristocracy was dominant, the concepts honour, loyalty, etc., were dominant, during the dominance of the bourgeoisie, the concepts freedom, equality" (4:60–61). Political equality is nothing but an abstraction, conceiving citizens under a universal self-con-

sciousness (3:312). Moreover, he argues that, like any other practical concept, equality is merely an idea the ruling class imposes on the lower class. Marx turns instead to the phenomenon of human labor to find a material notion of equality. There he discovers a "homogenous human labour-power" operative in all forms of production (35:48). The mass of human labor power is made up of innumerable individual units:

> Each of these units is the same as any other, so far as it has the character of the average labor power of society, and takes effect as such; that is, so far as it requires for producing a commodity, no more than is needed on an average, no more than is socially necessary. (35:49)

Labor can be delineated not qualitatively, but only quantitatively in the actual time of its duration.[1] But it is not immediately clear what Marx means by the term "homogenous" [*unterscheidlos*] here. How does he account for what seem to be undeniable differences among the abilities and productivities of individual workers?[2] He is more bent on determining average labor expenditure for any given product under certain conditions than on examining just what this uniform labor power is. But Marx's critique of abstract equality—however tarnished by his appeal to uniform labor power—ought to at least temper our endorsement of democracies that champion equality merely on the basis of the conferral of equal opportunity to engage in political or economic activities, such as voting, or participation in the public sphere or private market.

But while materialists tend to emphasize some kind of actual equality standard, nonmaterialists appeal to idealized notions of equality. In these models, we usually find some set of rights that each citizen has simply by virtue of its membership as a citizen. The ideal quality of these rights stems from the fact that each citizen is a rights holder even when the rights are either pointless (such as a right to assembly when one has no need for it) or are temporarily or conditionally denied (such as a temporary revoking of some of the right to freedom of the press in times of war). In other words, it is usually understood that the rights can be, or are, equally distributed as opportunities even when they are in fact unevenly exercised in actual situations of treatment.[3]

In what follows, I shall critically investigate some recent claims about equality in democratic theories. I shall, for sake of brevity, forgo any analysis of materialist notions—though they deserve considerable attention. Instead I shall concentrate only on idealized notions. I shall first criticize a recent idealized model offered by Richard Rorty and defended in great part by Robert Brandom. Then I shall examine a rival view that is provided by Jürgen Habermas. But I shall argue that Habermas's model, while superior on several counts to Rorty's, is nonetheless equally afflicted with a conceptual incoherence regarding the status of equal membership in a democracy. I shall conclude by suggesting a metaphysical view of such status that avoids the incoherence found in both idealized views of democratic equality.

I

In a recently published series of essays on Richard Rorty's work, Robert Brandom confesses that he and Rorty share an important political ideal. It is derived from a fundamental reduction of morality to politics:

> What matters about us *morally*, and so ultimately, *politically*, is not ultimately to be understood in terms of goals available from the inevitably reductive perspective of the naturalist: paradigmatically the avoidance of mammalian pain. It is the capacity each of us discursive creatures has to say things that no one else has ever said, things furthermore that would never have been said if we did not say them. . . . Our

moral worth is our dignity as potential con-
tributors to the Conversation. (2000, 178)

One is prompted to ask, however, both to
what extent we have equal access to this
"Conversation" and whether its topics are of
concern to all participants. As for the first,
the pragmatist Rorty does lay out the mini-
mal necessary conditions of access to it. It
basically involves a kind of education into
the mores of one's particular society. As for
the second, Brandom admits that some of the
topics are conducted in idioms that derive
from entirely different discourses. The pur-
poses they serve, as well as the norms they
answer, can in fact be "incommensurable"
(2000: 179). Thus a Conversation neither de-
mands the participation of all, aims neces-
sarily for a consensus, nor need demonstrate
its applicability to actual social or political
actions.

Rorty has developed this view for several
years on the basis of a naturalistic critique of
discursive views of democracy. For him, dis-
cursive views assume that the Conversation
needs a supra-Conversational guidance or
closure principle, such as a notion of truth or
normative rightness. But he claims "when
you turn from encounters with the non-hu-
man, non-linguistic part of your environ-
ment to encounters with the human, lan-
guage-using, arguing part, there is no
transition that needs explanation or media-
tion" (2000b: 57). Similarly, the passage
from one action-context to another raises no
difficulties that could be solved by a concept
of truth or justification. As we shall see be-
low, Habermas assumes that the truth-seek-
ing nature of collective discussion estab-
lishes a source of legitimacy not only for
norms, even those that are in some situations
coercive, but also for the rational equality of
all participants. But Rorty roundly dismisses
Habermas's distinction between agreements
arrived at through mere persuasion
(*überreden*) and those arrived at through ra-
tional conviction (*überzeugen*), claiming

that neither furnishes norms whose validity
is guaranteed over extended domains. In
other words, truth claims are themselves in-
evitably context dependent. We can listen to
arguments that we know to be convincing—
yet not be persuaded. Thus Rorty thinks
Habermas's idealizations are just "one more
relic of the idea that truth consists in corre-
spondence to the intrinsic nature of things, a
nature which somehow precedes and under-
lies all descriptive vocabularies" (2000b:
60).

Having rejected any possibility of a dis-
cursively established truth and, *mutatis mu-
tandis*, a political equality standard derived
from some form of context transcendence,
Rorty turns to a weaker notion of democratic
argumentation derived from practical atti-
tudes. He admits that although argumenta-
tion is mere linguistic causal manipulation,
at times it is "highly desirable" (2000a: 59).
He has made clear already, however, that no
fundamental distinction stands between hu-
man and non-human desires. Instead of aim-
ing for ideals, we need to liberate ourselves
from what we regret about the past. Rorty
concludes that in fact moral progress is re-
ally a "progress of sentiments" (2000b: 62)
expressed through the development of new
vocabularies. Since he equates morality and
politics, democracy is *ipso facto* also subject
to progress over time –though even this con-
viction stems only from his culture at this
given time.

Brandom affirms Rorty's emphasis on the
importance of constant innovation in under-
standing how we are to act. We need to have
norms that generate a novelty that trans-
forms them. This is accomplished by the de-
velopment of "new vocabularies." More-
over, Brandom thinks that, in addition to
Rorty, Habermas himself is an influential
practitioner of this ideal. While embracing,
perhaps a bit reluctantly, Brandom's charac-
terization of the partisans of the Conversa-
tion model, Rorty claims that both Brandom
and Habermas leave themselves open to "ac-

cusations of pseudo-aristocratic condescension and ivory-tower aestheticism" (2000a: 189). To avoid this, Rorty argues that progress in this process of new vocabulary creation is only retrospective: political thought and action should be motivated more by fears of regressing to the past than of reaching a future ideal as Habermas enjoins. What we need is a sensitization to our past cruelty and barbarism.[4]

II

Unlike Rorty, Habermas claims that what matters about us politically is to be free from the reductive perspective of the naturalist. So although rightly characterized by both Rorty and Brandom as an advocate for the Conversation model, Habermas qualifies its essentially private activity by the necessary constraint of an ideal-guided discourse aiming it towards collective normative action. He thus eschews the neo-Romantic view of freedom in which Rorty and Brandom traffic. For Habermas the development of "new vocabularies" is only half the story. He argues that the public tradition-sustaining and the private tradition-transforming practices that Rorty pits against one another are actually two aspects of all discursive activity. Habermas conceives of the relation between public responsibilities and private rights on the basis of each member's autonomy as simultaneously a public and private entity.[5] The autonomous person is not a moral self-legislator, but rather, more abstractly and in a "neutral" way, a bearer of procedurally guaranteed rights within a system of rights (1996: 118–21). To make this work, though, Habermas has to sever the close relationship between morality and politics that Rorty's model forges.

To overcome Rorty's one-sided private view of the Conversation, Habermas must show how the neutral proceduralism of his democratic discursive forms of communication can in fact guarantee the non-procedural, or substantive, realization of human

freedom in concrete circumstances. Habermas explicates the fundamental commitments of his political theory by an account of the specifically linguistic practices that structure any form of discursive activity. These discursive practices are guided by his discourse principle [D]:

> Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses. (1990:66; 1996:107; 1998a: 41).

Action norms are justified if and only if equal consideration is given to the interests of those who are involved. The principle of democracy, in turn, results from a corresponding specification for those actions norms that appear in legal form. Thus one can comply with discursively justified legal statutes with a Kantian attitude of respect for the results not of an individual, but a common will formation. It follows then that the discourse principle assumes the shape of a principle of democracy within such a freely established idealized contract.

If analyzed in these discourse theoretic terms, an internal connection is forged between human rights and popular sovereignty. On the side of rights, each bearer must exercise first and foremost a "communicative freedom" (1996:119). This freedom bestows on all participants the possibility of engaging in the communal effort to reach mutual understanding with others about validity claims that aim at intersubjective recognition. On the side of popular sovereignty, each participant has illocutionary, intersubjective obligations. Yet some of the obligations are suspended by legally protected liberties. One can, for example, legitimately drop out of communicative action: one does not have to give others an account of or publicly acceptable reasons for all her action plans.[6] Habermas thus rejects a Kantian justification in which laws are subordinated to morality and the legislator merely enacts them. When subjects actually

choose to recognize each other reciprocally in their role of addressees of laws, they therewith freely grant one another a status on the basis of which they can claim and defend rights and bring these rights to bear against one another as obligations. At this juncture, private and public autonomy are co-determinative. Both forms give rise to and are shaped only through public discursive processes of opinion and will formation.

Habermas rejects empiricist explanations of this co-determination. For example, Werner Becker claims that legitimacy stems from a majority vote reached in elections that are free, equal, and secret. This acquires its plausibility from a specifically modern worldview and a self-understanding grounded, as Habermas characterizes the claim, in ethical subjectivism. Ethical subjectivism takes the Judeo-Christian understanding of the equality of each individual before God and transforms it into the fundamental moral and political equality of all individuals. Moreover, it replaces the transcendent origin of obligatory commands with an immanent validity; that is, it considers the validity of norms to be anchored solely in the subject's own will. On these premises, no majoritarian validity claim can be grounded by appeals to the common good, forecasts of collective utility, or practical reason, since all of these would require objective standards. Minorities can appeal only to correctives based on a fair balance among the interests of all groups. But Habermas thinks that this solution to the problems of minorities remains anchored firmly in the interests of elites only.[7] It undermines minority participation. For Habermas, we reach the point where "something that looks plausible from the observer perspective can no longer be translated into an argument that looks plausible to participants in the same way" (1996: 294). Habermas thinks that empiricist theories of democracy with normative intentions inevitably fall into a performative self-contradiction. They cannot but fail to align a subjective with an objective standpoint.

Habermas claims that legitimate law does establish equality. Under their private autonomy, citizens are treated equally; under their public equality, they are authors of the legal order that ultimately decides on the criteria of equal treatment. Factual equality is gauged by the observable social effects that legal regulations have for those affected; legal equality refers to the power of those affected to decide freely according to their own preferences within the legal framework.[8] The boundary between these two autonomies constantly shifts. It is stabilized only when "the normative intuition that private and public autonomy reciprocally presuppose each other informs public dispute over the criteria for securing the equal autonomy of private persons, that is, criteria that specify what material preconditions of legal equality are required at a given time" (1996: 417). Habermas thus develops a theory of equality that is both idealized and material.

It should be evident that Habermas draws extensively from Kantian idealized notions of autonomy. Kant argued that only through the realm of ends are individual differences overcome. But this is a conditional attainment. "If we abstract from the personal differences of rational beings and thus from all content of their private ends, we can think of a whole of all ends in systematic connection, a whole of rational beings as ends in themselves as well as of the particular ends which each may set for himself."[9] A rational being belongs to the realm of ends as a member only "when he gives universal laws in it while also himself subject to these laws."[10] For Kant we are entitled to this status merely by being rational. But not only do we not always conceive of ourselves this way, we don't always conceive of other humans in the same way either. Habermas sees political membership as conditioned by a similar kind participation in processes of mutual recognition and discursive argumentation. More-

over, he claims that Western democracies have to a large extent succeeded in actually instantiating this ideal.[11]

III

At this juncture we find ourselves in a conundrum with regard to how to configure an idealized notion of democratic equality. The Rorty/Brandom position gives us a way to understand a balance of equality and difference in terms of different kinds of liberating conversations to which all are assumed to have an equal opportunity of access. Habermas, instead, seeks a discursive form of argument that terminates in norms consented to in principle by all participants. But he too predicates equality on the basis of the equal opportunity of access to a conversation that in turn sets its own terms of participation. Semantically viewed, both views characterize equality adverbially: we determine the norms or practices that bind us *equally* (1998a: 254). The problem is that the nominal status of each individual member of the polity as substantively co-equal with all others remains underdetermined and, I shall argue, ultimately incoherent.

At least three modes of analysis need to be employed with regard to one's status as a member of a democratic polity. First, there are specifically epistemological questions of how the status is to be known or recognized either by a member itself or other members. These are questions of acknowledgement or attribution of status. Second, we have the pragmatic issues of what follows from one's status as a member. For example, which rights is one entitled to as a member? But the third involves—for lack of a better term – the metaphysical question as to what equal status is. Is it a state or a process? What are its causes, if any? Is it inherited or earned? Can it be lost? It should be clear that our analysis so far has been concerned only with epistemological and pragmatic issues. Though important, these issues give rise to

metaphysical problems they themselves cannot answer.

My suggestion is that questions involving the status of membership in a democratic polity are prior to considerations of members' participation or function. Equality in particular involves the nature of one's status as a member of a democracy. Democratic equality cannot be based solely on either subgroup identities or the possession of certain qualitative properties. It requires grounds that precede, in a principled sense, a member's entitlement to any specific form of participation in the public sphere. One can argue that a certain metaphysical conferral of equal citizenship is bestowed from geographical considerations alone: anyone born in a certain geographical area is a citizen with equal rights. But such an ostensibly thin criterion of membership conferral actually, one can argue, lends credibility to the stronger claim I want to defend: to have a notion of equality, membership in a democracy must be qualitatively *criterialess* .

How could one conceive an essentially criterialess status? One could consider Kant's idea of a rational being. For him, rationality essentially expresses the key component of human nature as such. But one can then ask what the criteria of rationality are. Kant thought he provided an answer, although most of his successors, particularly Hegel, did not. Rationality criteria often come down to functional considerations colored by what is already considered rational in the polis. Sometimes they are modeled on instrumental rationality, such as in a rational choice theory in which the criterion is a certain kind of strategic self-interest. A non-Kantian model, on the other hand, might forego rationality considerations in favor of material criteria, such as property ownership or birthright. But these material criteria can seem quite arbitrary, since we find that many disputes about citizenship involve deciding exactly what territorial criteria are sufficient.

To be a member of a democratic society, any member *a* must have the status of being

related to all other members *b, c, d*...such that they in turn have the same status only by virtue of being related to member *a* and to each other. It is to have a status only by having dependence on others' statuses: others whose statuses are equally dependent on one's own. It is a dependency not just on any other member in a possible sense, but on every other member in an actual sense. Thus it is actualizable as a principle. Most democratic theorists since Hobbes have formulated status in a monadic way: one has one's status in principle without any intrinsic relation to others' statuses. Rights emerge primarily in order to preserve this pre-given monadic status. The position I am defending posits status as dialectically and radically equal: I cannot have status unless I am related reciprocally to others who achieve their statuses only by being related to mine.

This dependency model of equal status is not functionalistic. Functional dependencies, even rights, are in principle reducible to, and thus substitutable by, other functionalities. One wonders even if Habermas's idea of norm justification could be accomplished without any actual confrontation with other agents—but merely by regulation on the basis of algorithms of everyone's interests. Functionalist theories that acknowledge the possibility of the substitution of well being for rights must introduce lexical orderings of rights. Rawls's theory does so (Rawls 1971:61). In fact, some have argued that advances in modern technology and societal wealth have reduced markedly our intersubjective interdependence and thus for need for rights as such. But metaphysical status is based not upon standards of productive output, age, argumentation capability, or the ability or motivation to contribute to a Conversation. Nor is it based on one's status as a member of a mutually recognizing sub group, such as would be suggested by certain forms of identity politics. Rather, it is based upon the sheer ineliminable reciprocal interdependence of each member as such.

Several objections can be raised against such a briefly sketched metaphysical view of equality. Such a numerical notion of equality seems at best simplistic or at worst the most abstract consideration yet presented here.

First, one could object that since this metaphysical theory involves an idealized conferral of status, it inadvertently masks a functional scheme. Otherwise it is simply unclear as to how democratic status, and thus democratic societies, come about in the first place. But my claim is only that it is a conferral that has no functional equivalences. Such status conferral simply has no possibility of substitution by anything else.

Second, a critic could object that the problem of the self-understanding of members themselves soon surfaces. If most people in modern democracies fail to see themselves as members of their polities in this metaphysical sense, then how can one argue for its plausibility? This kind of question often arises in philosophical analyses of ethical, social, and political phenomena. It seems that we are forced to conclude either that these people are simply mistaken not to understand themselves in this way, or that they don't live in anything that is in fact a democracy. But my response is to see this metaphysical claim neither as an explanation nor as a description of their status, but only as a precondition for its coherence. My claim is thus conditioned: *if* a democracy is to exist, its members must have this equal interdependent status.

Third, a critic can wonder what actually matters about this metaphysical claim. Does it change the nature of democracy itself in any significant way? Principally it would seem to make every democratic member equally interdependent on any member of any democratic society. So doesn't this undercut the possibility of there existing more than one democratic society? This is indeed a consequence that one implicitly runs into

in almost any analysis of democracy or equality. It is arguable that we are in fact evolving into a single globalized economic world community, whether we want to or not. But while I would suggest that indeed my conception of democracy does possibly make the idea of multiple democracies incoherent, I won't provide any support for that assertion here. Moreover, I acknowledge that both communitarians and liberals alike are wary of this possibility. Charles Taylor, for example, claims that we have to give up any notion of a single "unitary space" for the public sphere and argues instead in favor of "nested public spheres" (1995:280). Habermas thinks that while morality can be universal, political systems cannot. Yet Habermas also thinks that a cosmopolitan order is in fact replacing the traditional nation state (cf. 1998b: 161–67).

John Dewey also argued for a metaphysical kind of principle for democracy. He argued that "democracy is neither a form of government nor a social expediency, but a metaphysic of the relation of man and his experience in nature."[12] But Dewey claims that this "metaphysic" must be new; it cannot be a metaphysics of presence such as has traditionally undergirded highly inegalitarian European societies. Rather this metaphysic must involve a non-dualistic way of thinking about reality and knowledge that informs a pragmatist, constructivist approach to democratic participation. It is a way of thinking that refrains from forming necessary laws of science or history. Such a view seems to a large extent consistent with the kind of proceduralism Habermas envisages.

Effectively all I am suggesting is an inversion in the order in which Habermas understands the relation between democratic equality and membership status. Much like Rawls, he claims that a citizen's first basic right results from the elaboration of the right to the greatest possible measure of equal individual liberties. This entails, as a corollary, the basic rights that result from the politically autonomous elaboration of the status of a member in a voluntary association of consociates under law.[13] These assertions ground the relations among autonomy, proceduralism, and positive law. Though ostensibly buttressing his codetermination of public and private autonomy, this lexical ordering betrays a conceptual priority for the private liberties that make democratic status incoherent. To put freedom before equal status begs the question of the substantial underpinnings of what one is free from or free to do. I am arguing that we can make no sense of freedom as such without the notion of a criterialess, interdependent status for the agents of democratic activities. We do, indeed, confer status in the real order. But it is only a recognition of a precondition of a nonfunctional order of things. However, this is not to impugn the fact that Habermas clearly understands that argumentation is an enlargement of an intersubjective perspective at the outset (1995: 107). But he thinks that while the moral universe extends to the protection of the integrity of fully individuated persons, the legal community, always localized in space and time, protects the integrity of its members precisely insofar as they acquire the artificial status as rights bearers (1998a: 256). In other words, law compensates for the overreach of a universalistic morality. But while for Habermas there is no question that the moral order is highly abstract, his admission that the legal order also treats agents artificially leaves his entire proceduralist theory without a concrete ground.

The position I am defending is no way hostile to a proceduralist view of law. It only tries to make it coherent. In a democracy, status precedes function. Brandom, in a similar way, appeals to status considerations within a system of normativity generally. He argues that the linchpin of a normative system is not merely agent attitudes towards norms or objective measures of the norms' consequences, but the attribution of agent status (commitment or entitlement) relative to agent beliefs. These statuses are deontic

primitives. He claims "there were no commitments before people started treating each other as committed" (1994: 161). Moreover these statuses are held to be unique, and not reducible to any objective determination by any other agent or set of agents. Yet they are subject to pragmatic reliability standards. I submit merely that citizens have a primitive status of membership that implicates the status of all other members of the civil community. Such is the equality standard requisite for democratic activities; its not just the *post facto* measure of them.

The upshot of this essay is to provide an alternative to functionalistic ideal notions of democratic equality. Rorty and Habermas alike are right to insist on a participatory ideal of democracy. But their notion of participation is misplaced: we are participants *because* of our status, not vice versa. Actually, support for the general position I am defending here might be found, ironically, in an ethicist like Peter Singer. The prior issue for Singer is not so much what rights are or how they are distributed and maintained equally, but who has the status of having them. Thus the debate that Singer has provoked, I submit, bears more on the nature of democratic equality than the debate over the freedoms and autonomies derivative from discourse or a Conversation.

WORKS CITED

Becker, Werner (1982). *Die Freiheit die wir meinen.* Munich.

Benhabib, Seyla (1992). "Models of Public Space." In *Habermas and the Public Sphere*. Ed. C Calhoun. Cambridge: MIT Press, pp. 73–98.

Brandom, Robert (2000). "Vocabularies of Pragmatism: Synthesizing Naturalism and Historicism." In *Rorty and His Critics*. Ed. R. Brandom. Oxford: Blackwell, pp. 156–82.

———. (1994). *Making it Explicit*. Cambridge: Harvard University Press.

Cook, Deborah (2001). "The Two Faces of Liberal Democracy in Habermas." *Philosophy Today* (Spring 2001): 95–104.

Habermas, Jürgen (1998a). *The Inclusion of the Other.* Trans. C. Cronin and P. De Greiff. Cambridge: MIT Press.

———. (1998b). "Remarks on Legitimation." *Philosophy and Social Criticism* 24:2–3: 159ff.

———. (1996). *Between Facts and Norms*. Trans. W. Rehg. Cambridge: MIT Press.

———. (1995). "Reconciliation Through the Public Use of Reason: Remarks on John Rawls's *Political Liberalism*." *The Journal of Philosophy* 92:3. pp. 109ff.

———. (1990). *Moral Consciousness and Communicative Action*. Trans. C. Lenhardt and S. Nicholsen. Cambridge: MIT Press.

Kant, Immanuel (1997). *Critique of Practical Reason*. Cambridge: Cambridge University Press.

———. (1959). *Foundations of the Metaphysics of Morals*. New York: Bobbs Merrill.

Michelman, Frank (1988). "Law's Republic." *Yale Law Journal* 97. pp. 1499ff.

Marx, Karl (1975–1996). *Collected Works*. New York: International Publishers [reference in text given by volume number only].

Rawls, John (1971). *A Theory of Justice*. New York: Oxford University Press.

Rorty, Richard (2000a). "Response to Brandom. In *Rorty and His Critics*, pp. 183–90.

———. (2000b). "Response to Jürgen Habermas." In *Rorty and His Critics*, pp. 56–64.

———. (1999). *Philosophy and Social Hope*. New York: Penguin Books.

Taylor, Charles (1995). "Liberal Politics and the Public Sphere." In *Philosophical Arguments*. Cambridge: Harvard University Press, pp. 257–89.

ENDNOTES

1. Marx (35:199). This labor power is in turn crystallized into products. Moreover, labor power can absorb other labor power through training or education (35:182; 35:208). This alone *pro tanto* explains the distinction between skilled and unskilled labor.

2. He does later qualify this, speaking of the simple labor power in "every *ordinary* [emphasis mine] individuals" (35:54). It's also subject to "intensification" (ibid.).

3. For example, inasmuch as each member has a right to a basic right of welfare, this equality is maintained even when one person actually lacks exactly the same level of actual wealth that another in his or her society has.

4. But Brandom counters that if these communal norms are modeled on linguistic norms, the future itself is, as it were, changed. For the constraint of a linguistic norm provides a distinctive kind of freedom. It proves freedom "to *do* things one could not only not do before, but could not even *want* to do" (2000: 178). By binding ourselves to the shared norms of a public vocabulary, we are not limited to pursue shared public goals. In fact we can engage in private endeavors that open up new vocabularies in the context of the Conversation.

5. Habermas's emphasis on the importance of self-understanding comes primarily from his criticisms of Luhmann's systems theory. See Habermas (1996: 46–51).

6. Habermas (1996:120). Instead, law must offer its adherents the free option of "foregoing the exercise of the communicative freedom and not taking a position on the legitimacy claim of law, that is, the option of giving up the performative attitude to law in a particular case in favor of the objectivating attitude of an actor who freely decides on the basis of utility calculations" (1996:121). This kind of emphasis on the autonomy of the private domain has prompted some, like Seyla Benhabib, to claim that Habermas relegates questions of the good life to this sphere, leaving traditionally female concerns to a private domain that remains essentially inaccessible to discursive analysis. See Benhabib (1992:89–90) and also Cook (2001:98–101).

7. (1996:293). Charles Taylor takes a similar view of the problem of minorities. Majorities "can't account for the degree to which a political society functions as a community" (1995: 276). Yet he solves the problem by arguing that minorities "can have a sense that they are heard because they know themselves to be valued in a certain way, even when some particular demands are not met" (1996:277).

8. Habermas (1996: 415). In the *Second Critique*, Kant uses the term "personality," to express that "capacity of a being subject to special laws—namely pure practical laws given by his own reason" that in turns frees us from the mechanism of nature (5:87). Thus a human being, belonging to both the intelligible and sensible world, is subject to the laws he formulates. Only by personality are human beings ends in themselves.

9. Kant (1959: 51). In the *Second Critique*, published by Kant three years later, he refers to it as the "whole of all ends" (5:87).

10. Kant (1959: 52). Kant does note, though, that one can also belong to it "as a sovereign" when one is subject to the will of no other.

11. Such an assertion has drawn criticism. Deborah Cook argues that Habermas has effectively abandoned his earlier claim that the colonization thesis—particularly involving its resultant decline in social solidarity — effectively forecloses upon democratic processes. Now he argues that existing democracies more or less provide citizens with resources for self-empowerment. See Cook (2001: 100-101).

12. See John Dewey, "Maeterlinck's Philosophy of Life," in *The Middle Works of John Dewey* (Carbondale IL: Southern Illinois University Press, 1978), vol. VI., in Rorty (1999: 25–26).

13. Habermas (1996:122). The other basic rights that follow these two are: 3) those that result from the actionability of rights and elaboration of legal protection, 4) those that give members access to political forums, and 5) rights to welfare.

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