

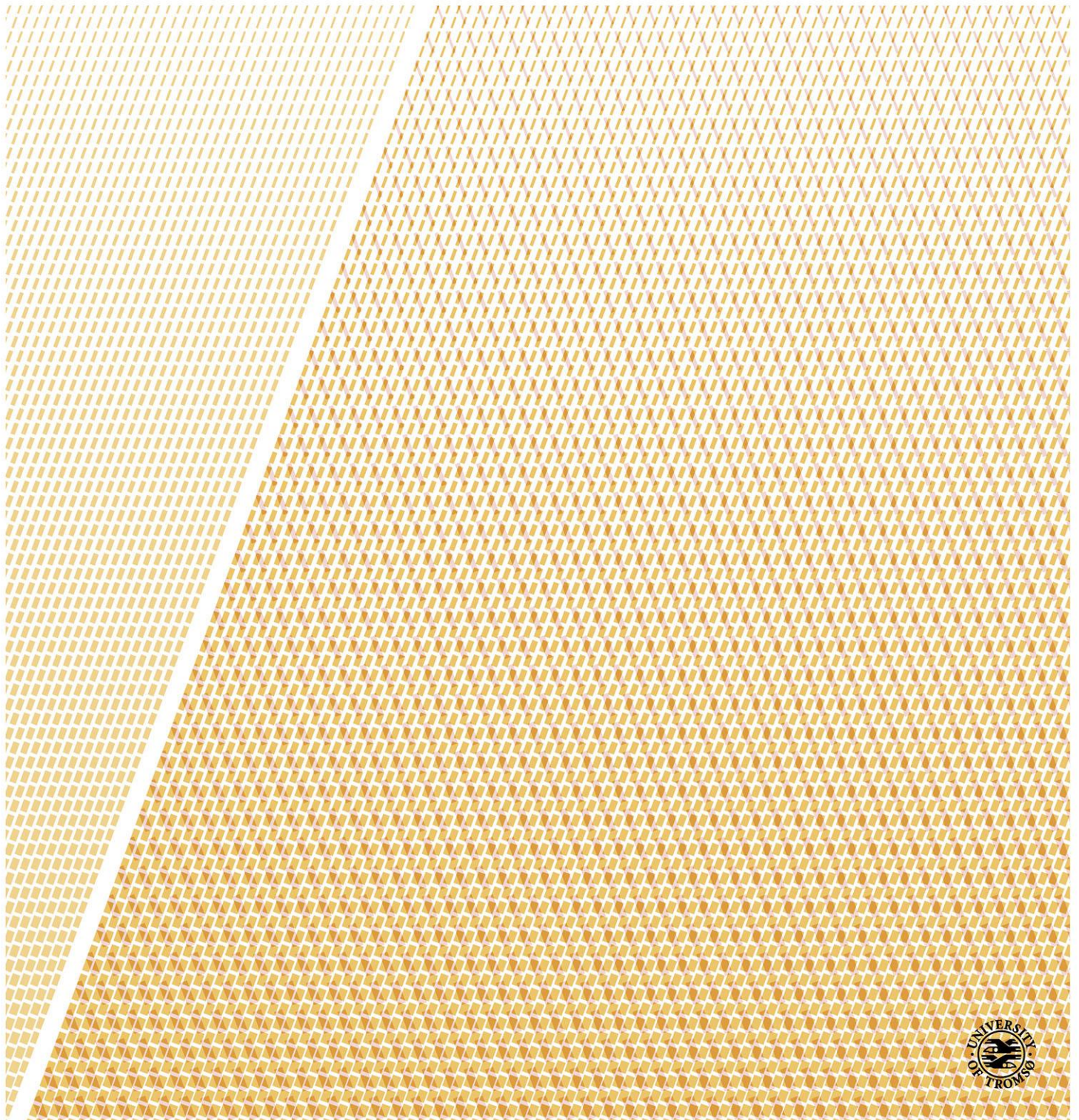
Department of Philosophy

The Claims of Freedom

Habermas' Deliberative Multiculturalism and the Right to Free Speech

—
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INTRODUCTION

1 Research question and theoretical framework

This thesis analyzes and discusses Jürgen Habermas' political philosophy, focusing in particular on normative debates related to cultural diversity and conflict. I compare and supplement Habermas with other theorists and positions, but my critical reading of Habermas is the common thread that runs through the whole work.

Habermas himself has not developed a self-standing theory of multiculturalism. However, he has applied his deliberative democratic theory to issues of multiculturalism, including debates about cultural rights and exemptions, nationalism and xenophobia, the inclusion (or exclusion) of cultural minorities in constitutional democracies, intercultural recognition and tolerance, secularism and religion in the public sphere, 'Islam in Europe', and more. When reconstructing Habermas' normative response to these and related issues, I shall therefore speak of Habermas' 'deliberative multiculturalism'.

In addition to reading and discussing Habermas' theoretical framework, I apply it to a specific question which Habermas has not paid systematic attention to himself, namely *how we should justify and use free speech in culturally diverse democracies*. I regard this question as the overall research question, which the present work attempts to answer. The first part of this question (how to justify free speech) pertains to how we should justify constitutional free speech as political philosophers, and includes sub-questions related to the legal limits of free speech and the permissibility or non-permissibility of hate speech (i.e. racist speech), religious offence and blasphemy. The second part (how to use free speech) pertains to the citizens' use of free speech in culturally diverse contexts, and thus transcends the focus on legality. This question includes sub-questions related to intercultural recognition and respect, self-restraint in political debates, the use of religious reasons in the public sphere, political inclusion and intercultural solidarity. In short, the first question asks why we should have a legal right to free speech and how extensive this right should be; the second question asks how we should use this right as responsible members of a multicultural polity.

Of course, Habermas does provide a complex model for the justification of basic constitutional rights, including free speech, and he does provide a moral theory based on a vision of the "ideal speech situation" (2008, 44) in which participants address each other as free and equal participants in ongoing moral deliberation. However, these general theories do not focus in particular on free speech, nor do they address current free speech controversies as they are played out in academia and the political public sphere, i.e. debates about hate speech regulation, blasphemy and

religious offence. By applying Habermas' model to these and similar questions, I hope to contribute with insights to ongoing discussions about free speech and multiculturalism, but also to contribute to the reception of Habermas' work as such. Before I go into more detail concerning my take on Habermas and the case of free speech, I shall say something general about the deliberative approach, deliberative multiculturalism and the relationship between deliberation and constitutional rights.

Deliberative democracy is a strand of contemporary political philosophy that puts a special emphasis on the public discussion of matters of common concern, that is, on democratic deliberation.¹ As opposed to aggregative or "vote-centric" models according to which majority rule is the core principle of democratic government, deliberative democracy is "talk-centric" (Kymlicka 2002, 290) in the sense that democratic institutions and practices are understood as embodiments of an on-going discussion between citizens who are – ideally – free and equal. On this account, public deliberation is seen as the primary medium through which legitimate law is produced, learning processes and mutual understandings emerge, dominance and repression are criticized, minorities empowered and included, solidarity is enhanced, etc. As Simone Chambers notes, deliberative democrats are not just concerned with our right to say what we want, but also with the *quality* of what we say, the socio-economic *conditions* that affect our ability to speak and be heard, and the *attitudes and behaviors* that are required of the communicating subjects:

Deliberative democratic theory critically investigates the quality, substance, and rationality of the arguments and reasons brought to defend public policy and law. It studies and evaluates the institutions, forums, venues, and public spaces available for deliberative justification and accountability. It looks at the social, economic, political and historic conditions necessary for healthy deliberation as well as the attitudes, behaviors and beliefs required of the participants (Chambers 2003, 309).

Theorists of deliberative democracy have responded to issues of multiculturalism in different ways, based on different interpretations of the ideal of deliberative democracy. In spite of differences and disagreements in these responses, it seems fair to speak of a specific deliberative approach to multiculturalism, or what I shall refer to as 'deliberative multiculturalism'. The most central component of deliberative multiculturalism is the attempt to overcome a merely (or overly) rights based approach to cultural diversity and conflict. Legal rights are not regarded as unimportant or

¹ See for example: Bohman, James 1996; Bohman, James & Rehg, William (eds.) 1997; Cooke, Maeve 2000; Dryzek, John S. 2000; Elster, Jon (ed.) 1998; Fishkin, James S. 1991; Gutman, Amy & Thompson, Dennis 2004; Habermas, Jürgen 1998; Rostbøll, Christian F 2008.

dispensable, but they must be subjected to ongoing public discussion by those who are affected by them – the citizens. There are at least three reasons for this.

First, given that cultural and religious diversity gives rise to disagreements and conflicts over the correct understanding and application of liberal rights, it is important that the political implementation of these rights is *democratically legitimate*. If a democratic majority defines the content and limits of basic rights without communicating with minorities, then the system of rights cannot claim to express the ‘will of the people’ in any meaningful sense. Minorities can therefore rightfully complain about a legitimacy deficit. On the deliberative account, therefore, cultural minorities must be able to see themselves as participants in a public debate about legitimate law, and not only as ‘addressees’ (Habermas) of the law.

Second, in addition to legitimacy, democratic deliberation is required to produce *stability* in culturally diverse societies. Through public discussion, listening and speaking, disagreeing citizens include each other in the ongoing project of making a constitution that everybody can accept and live with, given their particular interests and beliefs. Without such inclusion, it is difficult to see how members of different identity groups and cultural traditions can cultivate the mutual trust and solidarity that is required in order to solve disagreements and conflicts in a non-violent way.

Third, in addition to legitimacy and stability, it is assumed that public debates about rights and liberties and their appropriate use can spark a *learning process* among the affected parties. Hearing the views of others, but also listening to criticisms of our own views, may enlighten us about inconsistencies or unjustified assumptions in our thinking, and help us transcend particular biases and prejudices, something Cooke refers to as the “educative power of the process of public deliberation” (Cooke 2000, 947).

I focus on Habermas’ particular variant of deliberative multiculturalism because I regard it as particularly promising, but also as particularly problematic. What is particularly promising, I argue, is Habermas’ normative conception of *freedom*. The complexity of this conception points to three crucial (interrelated but analytically distinct) ways in which human beings can be free (or dominated), namely as a *reflexive being*, as a *political participant*, and as a *private person* with specific interests and beliefs. Furthermore, Habermas successfully demonstrates that human freedom is not merely about legal protections and immunities vis-à-vis the state or other citizens, but also about the way in which citizens communicate and interact in the public sphere: freedom is not just a ‘negative’ right, but also a ‘positive’ achievement of active citizens who recognize each other as free and equal (or equally free). Put differently, ‘the claims of freedom’ – as I call the normative requirements that follow from Habermas’ conception of freedom – are not just negative rights claims, but also positive claims about the duties and responsibilities we have as speakers and

listeners in the public sphere. Considering the fragilities and vulnerabilities of democratic co-operation in multicultural societies, I seek to demonstrate the fruitfulness of Habermas' conception of freedom from different perspectives throughout the work.

On the other hand, as mentioned, Habermas' model is burdened with specific problems and impasses. I shall address different claims Habermas makes that I consider to be problematic: claims about the extent to which modern societies are 'rationalized' and modern life forms 'reflexive'; about the power of rational argumentation to transform worldviews and rigid identities; about the difference in 'mentality' between religious and non-religious citizens; about Christianity as a fully modernized and liberal religion, and more. However, when it comes to issues of free speech and multiculturalism, I focus in particular on three problems, and explain how I believe they can be overcome or avoided.

First, what I call *exaggerated proceduralism* refers to Habermas' tendency to overemphasize the formal features of the process of deliberation, and, correspondingly, to downplay the more substantial norms and principles that inform (or should inform) a normative theory of freedom and justice. This tendency produces different kinds of problems in Habermas' model, in particular what I refer to as a 'normative deficit' and as 'democratic relativism'. As I shall argue, the normative deficit arises when we try to justify constitutional free speech merely in terms of its constitutive role in democratic will- and opinion-formation. The link between democracy and free speech is necessary but not sufficient to philosophically defend free speech as an extensive legal right. A robust justification of free speech, I argue, must be justified according to a moral conception of the human person. On my account, this conception implies substantial claims about the ability and equal right of persons to exercise freedom: reflexively, politically, and personally. The problem with democratic relativism arises when we take seriously Habermas' claim that his model imposes no substantial content on the democratic procedure, but leaves it up to the citizens themselves to interpret liberal rights in a 'culturally sensitive' way. Unless the democratic procedure is premised on extensive free speech guarantees, I argue, we potentially allow democratic majorities to restrict speech about culture and religion in problematic ways.

Second, I argue that Habermas' appeal to *rational consensus* continues to create problems for him, in particular when it comes to issues of multiculturalism and liberal tolerance. Understood as a requirement for the validity of legal norms, rational consensus is simply not attainable in deeply diverse societies. Using the case of blasphemy and religious offence as an example, I emphasize that there is – and will continue to be – considerable disagreement about the legal implementation and regulation of the right to free speech. Another problem with rational consensus is that it implies the counter-intuitive claim that rationally disputed norms are illegitimate. For example, if consensus is required

before legal rights and regulations are valid, then any given law that prohibits religiously offensive speech would be invalid, but so would any law that protects such speech. In other words, if we insist that rational consensus makes laws valid, we may have to arrive at the strange conclusion that none or very few of the laws we obey are valid. I agree with Habermas that some agreement on basic norms of cooperation is needed in multicultural democracies. On my account, what must be agreed upon is the right and capacity of each person to exercise freedom: as a reflexive being, as a political participant, and as a private person. Different from Habermas, however, I believe that an *overlapping* consensus is sufficient: an agreement on the *same* principles, but for *different* reasons.

Third, I take issue with specific claims Habermas makes about the role of *religious reasons* in public deliberation, in particular with his proposal to formally exclude such reasons from parliamentary debates while including them without restriction in informal political discussions. I argue that the requirement of formal exclusion is too strong: it restricts the free speech of believers according to a controversial and partly flawed understanding of the difference between ‘the secular’ and ‘the religious’. On the other hand, the uncritical inclusion of religious reasons in informal debates is too weak. Respecting others as free and equal, I argue, requires some self-restraint on behalf of believers as well as non-believers, i.e. that we attempt to justify our political positions in a mutually understandable and non-sectarian language – *also* in the informal public sphere(s).

2 Islam in Europe: Between rigid secularism and radical multiculturalism

The main examples I use in my discussions are taken from the European context, and related in one way or another to Islam and Muslims. In Europe, as Sune Lægaard notes, the term multiculturalism is often used (implicitly or explicitly) to refer to debates about Islam and Muslims:

The predominant focus of Euro-multiculturalism is not on questions of language [as for example in Canada], but on culture in another sense, namely as traditions, e.g. forms of dress, supposed underlying values, e.g. views about gender roles and the family, and practices, e.g. of Halal butchering. And these issues are increasingly framed as a matter of religion, either directly as religiously justified claims, or indirectly as associated with groups that are identified in religious terms, mainly as Muslims. In fact, in many European countries, multiculturalism is primarily a label for debates about integration of Muslims (Lægaard 2014, 41).

The focus on Islam is even more explicit when it comes to debates about free speech – from the Rushdie controversy to the attacks on the French magazine *Charlie Hebdo* in 2015. It could be argued that this focus – which is also my focus – reinforces a problematic tendency in Western public discourse to conceive of Islam as problem, and Muslims as a group that deserves more critical

attention than other groups. Yet another discussion of Islam and free speech may contribute to fears or stereotypes related to a minority that is already exposed to a lot of negative attention in the public sphere(s). I understand this concern, but I also believe it is unnecessary in this case. First, the themes I discuss are themes that also Muslim citizens and scholars take seriously. The problems I focus on (i.e. the problem of defining free speech and its moral and legal limits) have not been invented by Western critics of Islam, but are conceived of as real problems or topics of debate also by Muslim spokespersons, some of whom I include in my own discussions. Second, in terms of normative bias, the critical conclusions I draw are not directed in particular against Muslim positions or claims. While I do defend the juridical right to offend religion, I also appeal to moral attitudes of mutual respect and communication, and I provide a critical analysis of hate speech and stigmatization targeting Muslim citizens. On this basis, I do not see myself as participating in a ‘problematizing’ or ‘othering’ discourse about Islam and Muslims.

Habermas regards the case of Islam in Europe as a theme or problem field that should interest political philosophers, and he refers to public debates about Islam as a ‘cultural war’ or “Kulturkampf“ (2008b, 25). As examples of this ideological war, he mentions the controversies over the recommendation by the Archbishop of Canterbury that British legislature adopts parts of Sharia family law (something Habermas rejects), the Danish cartoon controversy and the murder of Theo Van Gogh:

These debates have assumed a sharper tone since the terrorist attacks of 9/11. In the Netherlands the murder of Theo van Gogh kindled a passionate public discourse, as did the affair with the Mohammad cartoons in Denmark. These debates assumed a quality of their own; their ripples have spread beyond national borders to unleash a European-wide debate. I am interested in the background assumptions that render this discussion on ‘Islam in Europe’ so explosive (2008b, 21)

Habermas mentions two ‘background assumptions’ that are relevant for understanding the ‘explosiveness’ of the debates about Islam in Europe, namely what he describes as ‘militant secularism’ and ‘radical multiculturalism’. According to him, we need a third alternative or middle way between these two opposed poles in the debate. Habermas understands militant secularism as an ideology or comprehensive doctrine that goes far beyond the principle of the separation of church and state, and the imperative of neutral political institutions (both of which Habermas defends). Rigid secularism stands for a “rigid and exclusive secularist self-understanding of modernity” (2008, 138): its proponents advocate the “uncompromising inclusion of minorities in the existing political framework and accuse their opponents of a ‘multiculturalist betrayal’ of the core values of the Enlightenment” (2008b, 24). This variant of secularism is rigid or even ‘militant’ because it insists

on the universal validity of a particular interpretation ‘Enlightenment values’ and denies the need for ongoing public deliberation about these values. Furthermore, its defenders tend to be hostile to religion in general, and to Islam in particular, arguing that religious belief is a strictly private matter that has no place in public and political life. By this, they adopt a rigidly negative and uncompromising attitude to the public dimensions of religion, and to religious believers (in particular Muslims) *as* believers.

One should of course be careful with applying abstract views like these to concrete persons. Nevertheless, it could be argued that some well-known defenders of free speech come close to a secularist position in Habermas’ sense. As Christian Rostbøll has demonstrated in his discussions of the Danish cartoon controversy, many defenders of *Jyllands-Posten*’s ‘Muhammad cartoons’ refused to listen to and deliberate with Muslims (Rostbøll 2009, 2010). Some of these defenders based their defense on anti-immigration and anti-Islam positions, and some argued that Islam needs a process of ‘privatization’ and ‘enlightenment’ similar to the one undergone by the Danish Lutheran Church. Consider also the position taken by Fredrik Stjernfeldt and Jens-Martin Eriksen in their discussion of the Danish controversy (Eriksen & Stjernfelt 2008). Referring to the European enlightenment as their ideological heritage, the authors argue against anyone who adds a ‘but’ to the defense of free speech, as in the following statement: ‘I am for free speech *but* I believe it should be used in a respectful way’ (Eriksen & Stjernfelt 2008, 354-355). By adding any terms or conditions for a ‘proper’ use of free speech, they argue, we compromise the right to free speech itself and fail to stand up for those who are exposed to threats or violence from (Muslim) extremists.

As mentioned, Habermas characterizes the ideological counterpart of rigid secularism as ‘radical multiculturalism’. As understood by Habermas, radical multiculturalism is premised on the untenable assumption that cultural traditions are incommensurable discursive universes, each of which interprets the world according to its own separate standards of rationality, truth and morality:

The radical reading of multiculturalism often relies on the notion of the so-called ‘incommensurability’ of world views, discourses or conceptual schemes. From this contextualist perspective, cultural ways of life appear as semantically closed universes, each of which keeps the lid on its own standards of rationality and truth claims. Therefore, each culture is supposed to exist for itself as a semantically sealed whole, cut off from dialogues with other cultures (2008b, 25).

Based on this premise, radical multiculturalists do not recognize any universal, transcultural standards of legitimacy. In particular, they regard any insistence on the universal validity of democracy and human rights as an act of Western hegemony, intended to dominate non-Western cultures, thus eradicating their otherness and radical difference.

Habermas does not refer to any specific proponents of radical multiculturalism, and some may argue that it has no real followers. However, as I shall argue, Habermas' understanding of radical multiculturalism describes quite well the position taken by some poststructuralist and postcolonial thinkers, in particular by Talal Asad and (his former student) Saba Mahmood. Whereas the secularists are preoccupied with defending liberal freedoms against Islam, Asad and Mahmood are preoccupied with defending Islam against assumed 'secular liberal' ideologies and political practices. Inspired by Foucault and postcolonialism, Asad and Mahmood understand Islam as a counter-discourse to hegemonic secular liberal normativity. For them, furthermore, the deliberate use of free speech to insult Muslims and mock Islam is a paradigmatic example of the secular liberal 'disciplining' (in Foucault's sense) of Muslim subjects in Western nation states. The secular liberal understanding of free speech, they argue, is not only based on epistemic and moral premises that are alien to Muslims and Islam; it is also one of the main weapons used by "Euro-Americans" (Asad 2003, 115) to politically discipline and govern the Muslim minority.

My discussions in this thesis are inspired by – and elaborate on – Habermas' invitation to transcend the dichotomy between rigid secularism and radical multiculturalism. Like Habermas, I reject the urge to defend the values of the enlightenment *against* religion and multiculturalism: "[t]he universalist claim of the political Enlightenment does not contradict the particularistic sensibilities of a correctly understood multiculturalism" (2008b, 23). Unlike the rigid secularists, I do not believe that religion (or specific religions) pose an inherent threat to liberal democracy or the 'values of the enlightenment'. Of course, fundamentalist and intolerant religious groups do challenge democratic self-rule based on constitutional liberties, but so do secular forms of radicalism, nationalism, and inegalitarianism. In the spirit of Habermas' recent writings on religion in the public sphere (e.g. Habermas 2008 and 2012), my approach considers it self-evident that citizens who draw on religious vocabularies, experiences or traditions may contribute with valuable insights and perspectives to public and political life. Furthermore, unlike the secularist claim that newcomers and minorities need to accept 'our' enlightenment values without questioning or critique, my Habermasian approach invites everybody to participate in ongoing debates about the interpretation and political implementation of these values. For example, even though I unequivocally defend the juridical right to offend and criticize religion, I also stress the importance of establishing an inclusive and respectful debate about the proper way to use this right in multicultural societies. In that sense, I do add a modifier to the defense of free speech. The legal right to free speech must be protected and all kinds of violence and threats rejected – *but* – it is vital in a deliberative democracy that citizens use this right in a way that is conducive to free and equal citizenship, mutual trust and solidarity, inclusion of cultural minorities, as well as to inter-group learning and mutual perspective taking.

At the same time, like Habermas, also I refuse the radical multiculturalist urge to divide human beings into antagonistic cultural-religious groups that are unable to communicate and learn from each other. I defend the universal validity of basic human rights and liberties, and of democratic self-rule. My justification of free speech is based on a general claim about the right and capacity of the *human person* to exercise freedom: reflexively, politically and personally. In my view, radical multiculturalists such as Asad and Mahmood blind themselves to mechanisms of power and dominance *within* minority groups. Their exclusive focus on the protection of non-Western minorities against secular liberal power makes them unable to analyze internal cultural repression committed in the name of tradition and orthodoxy. I agree with Asad and Mahmood that the right to free speech is sometimes misused as an alibi to stigmatize or offend Muslims. However, I do not agree that ‘Western freedom’ is to blame for this abuse as such. On the contrary, on a fuller and more adequate conception of ‘the claims of freedom’ that confront citizens of a liberal democracy, hate speech, stereotyping and stigmatization appear as impediments to freedom, not expressions of it. As Habermas puts it, the only way of overcoming Eurocentric prejudice and xenophobia is by way of a stronger commitment to the European legacy itself:

[Europe] must use one of its strengths, namely its potential for self-criticism, its power of self-transformation, in order to relativize itself far more radically vis-à-vis the others, the strangers, the misunderstood. That’s the opposite of Eurocentrism. But we can overcome Eurocentrism only out of the better spirit of Europe (2003, 50).

3 Structure and overview

The thesis is divided into five main parts. Each part is further divided into a number of chapters and subsections. **Part I** gives a general introduction to Habermas’ deliberative model, focusing on *Between Facts and Norms* and subsequent works. **Part II** reconstructs Habermas’ theory in terms of a normative concern with three analytically distinct (but interrelated) types of human freedom, which I refer to as ‘reflexive freedom’, ‘political freedom’ and ‘personal freedom’. *Reflexive freedom* refers to our ability, *qua* rational beings, to reflect upon questions of truth as well as questions of normative rightness or justice. It is in virtue of this ability that we are able to take a critical or reflexive stance towards the worldviews and traditions in which we have been brought up, as well as to those norms and ideologies that prevail in our society. *Political freedom*, furthermore, refers to the ability of democratic citizens to participate in the making of the laws they obey. We are politically dominated when somehow excluded from, or marginalized in, the democratic process. *Personal freedom*,

finally, refers to the ability to live our lives according to our own interests and beliefs, that is, to act as we believe it is good or right for us to act as individual persons.

Part II also demonstrates the relevance of Habermas' tripartite conception of freedom for his deliberative multiculturalism. As we shall see, Habermas appeals to reflexive freedom as well as personal freedom ('or private autonomy') in order to distance to himself from Charles Taylor's 'strong multiculturalism'. Furthermore, he appeals to the 'co-originality' or mutually constitutive nature of personal and political freedom in order to distance himself from a 'rigid liberalism' that is blind to cultural difference. Overall, I argue that Habermas' deliberative multiculturalism provides a fruitful, critical framework for analyzing different kinds of *cultural domination*: the domination of cultural minorities by majorities or by the state, but also the domination of minority members by their own communities.

Part III develops a Habermasian justification of constitutional free speech, based on the three types of freedom introduced in part II. I begin with a discussion of two problems in Habermas' model: his exaggerated proceduralism and his appeal to rational consensus (see the first section of this introduction). I demonstrate the relevance of these problems for the deliberative justification of free speech, and explain how I attempt to avoid them. Having clarified my general approach to the issue of justification, I proceed to discuss the legal limits of free speech, focusing first on hate speech understood as group defamation, and then on religious offence and blasphemy. I argue that restrictions on the first type of speech (i.e. on racist speech) are compatible with deliberative democratic ideals, but not restrictions on the second type (i.e. on religious satire or ridicule). As an example of a type of 'speech' that may be problematic but which should not be prohibited, I shortly address the so-called 'Danish cartoons'.

Part IV moves from justifying free speech as a constitutional right to discussing its proper use in culturally diverse democracies. I demonstrate that the Habermasian conception of freedom requires a public use of free speech that is consistent with reciprocal relations of mutual recognition (or respect), and I discuss in further detail than Habermas what such recognition implies. Habermas' vision of freedom, I argue, points towards a political culture that is not permeated by structural misrecognition – say, mutual stereotyping and demonization – of particular citizens *qua* their cultural or religious attachments. It also requires citizens to orient themselves towards a political vocabulary that is shareable across cultural and religious divides, and not premised on sectarian beliefs or comprehensive cultural or religious doctrines. Part IV includes a discussion of an essay by Sindre Bangstad and Arne Johan Vetlesen in which they argue that Habermas' model presupposes a naïve view of how the public sphere, which neglects the 'dark sides' of free speech and free speech ideology. It also includes a comparative discussion of Habermas' and Axel Honneth's normative

theories of recognition, and a discussion of Yolande Jansens' claim that Habermas himself 'spreads prejudices' about Islam and Muslims. Finally, it includes a critical discussion of Habermas' distinction between secular and religious reasons, and his proposal to formally exclude the latter from parliamentary debates, while including them without restriction in informal political debates. My finishing discussion of the role of religious reasons in public deliberation addresses two critics of Habermas, Maeve Cooke and Lasse Thomassen, and their attempt to overcome what they see as a biased and exclusivist secularism in his work.

Part V examines specific claims in Talal Asad and Saba Mahmood, and tries to respond to these claims from a Habermasian and deliberative democratic perspective. Asad and Mahmood share a deep skepticism towards 'secular liberal' ideologies and political practices, and a corresponding concern with the ability of Muslims to resist Westernization and secular dominance. Asad and Mahmood explicitly target 'Euro-American' conceptions of freedom and free speech, and Asad combines his critique of 'Western' free speech with a critique of Habermas' conception of the public sphere (as Asad understands it). I argue that these criticisms are based on untenable generalizations about 'Westerners' and 'Muslims', as well as on particular misgivings about liberal democracy in general, and Habermas' theory in particular.

4 Methodological considerations

I regard my own approach as rather uncontroversial within contemporary normative political philosophy. First, I *analyze* one classic work (Habermas' work), presenting a systematic reading of this work in terms of a normative theory of freedom. Second, I *compare* Habermas position with alternative positions and views. For example, I compare Habermas' understanding of equal recognition with Axel Honneth's, I compare his conception of the public sphere with Talal Asad's, and I compare his notion of religious faith with Saba Mahmood's. Third, I *critically discuss* various arguments and claims – in Habermas as well as in other theoreticians and positions. In several places, I take active part in theoretical disputes, defending particular views or positions, and criticizing others. I defend Habermas against some critics (e.g. Jansen (2011), Bangstad & Vetlesen (2011), Cooke (2006, 2007), Thomassen (2006), Asad (2003, 2009), but I also articulate my own criticisms and reservations. Fourth, as already mentioned, I *apply* the theoretical insights and arguments to issues of free speech and multiculturalism. In my view, normative political philosophy should be able to connect in some way to 'empirical reality', for example by explaining why the questions it poses are relevant for societal problems or challenges, or by discussing 'real world' implications at the level of policy, human interaction, institutional design, law-making, etc. If we are

not able to do this, we run the risk of isolating political philosophy from ongoing debates in the political public sphere, and we make it difficult to cooperate fruitfully with empirically oriented disciplines, such as sociology, psychology, law, religious studies, anthropology, and political science. I have therefore tried to couple the more abstract discussion of deliberative democracy to particular cases and examples.

The concrete examples and cases I refer to – say, the French ‘*affaire du foulard*’ or the Danish ‘*cartoon controversy*’ – are not fully analyzed in any empirical sense, or according to any specific social scientific method. For example, instead of giving a detailed analysis of the Danish cartoon controversy, from the publication of the cartoons in 2005 to the major national and international reactions and episodes in 2006, and – finally – the subsequent public and academic debates, I proceed directly to normative discussions about the morality and legality of free speech, religious offense and the right to ridicule. Sometimes, of course, the empirical context is relevant for the normative arguments; for example, I argue that the Danish cartoons should not just be evaluated as an isolated phenomenon, but also as part of the political culture in Denmark which misrecognition of Muslims had taken on a systemic character.

In spite of my claim to proceed in an ‘uncontroversial’ manner, methodologically speaking, my approach does conflict to some extent with Habermas’ strong proceduralism. I shall say more about this in part III.1, but a few points are relevant here. Habermas sometimes insists that he merely *reconstructs* the norms that are effective in modern democracies, meaning that he contributes with no moral argumentation himself, and takes no part in moral controversies (say, moral controversies over the proper use of free speech). This is in line with Habermas’ strong proceduralism, which takes for granted only the most basic premises of democratic will- and opinion-formation, such as the absence of force and the equal inclusion of all participants, but refuses to say anything about the concrete norms that deliberating citizens should agree on. On this background, Habermas claims that his model is “morally freestanding” since avoids any moral content that is not already implicit in the procedure of communication (2008, 80).

By contrast, I regard myself (in a theoretical sense) as a *participant in moral argumentation*. I argue that the deliberative ideal has a substantive moral basis, and I regard the present work as a defense and elaboration of that basis. More specifically, my justification of free speech, as well as my understanding of its proper use, is ultimately based on a moral conception of the human person and its capacity and right to exercise freedom – reflexively, politically, and personally. I propose this conception as a contribution to the inter- and intracultural dialogue on freedom, human rights and multiculturalism, but I do not regard it as morally freestanding or entirely uncontroversial.

However, as I shall also argue, my theoretical self-understanding corresponds better with other and less procedural aspects of Habermas' work, in particular with his more recent focus on the moral dimension of human rights, and his insistence that basic rights must be justified according to a moral understanding of the 'basic interests' of human persons *qua* persons (see part III.1). I

I HABERMAS' DELIBERATIVE MODEL

Part I presents an overview of arguments and theoretical premises in Habermas' theory of deliberative democracy, focusing mainly on his mature political philosophy as developed in *Between Facts and Norms* and subsequent works. First, I present Habermas' understanding of deliberation as rational discourse (chapter 1). Second, I consider the main tenets of Habermasian deliberative democracy: the different types of discourse and bargaining, the distinction between formal and informal spheres of deliberation (and their mutual relation), the distinction between aggregative and deliberative democracy, the theory of the functional need for the rule of law in modern mass democracies, the notions of constitutional patriotism and political culture, and the appeal to political virtues and basic recognitive attitudes (chapter 2).

1 Deliberation as rational discourse

1.1 Discursive rationality

Habermas' discourse theory of rationality draws on insights from American pragmatism and the speech act theories of J.L. Austin and John Searle. It is *formal* in that the sense that it does not focus on the content or substance of rationality, i.e. on the truth of particular knowledge claims, but on rationality as a basic capability that is shared by all speaking and acting human beings: "rationality has less to do with the possession of knowledge than with how speaking and acting subjects *acquire and use knowledge*" (Habermas 1984, 8). Furthermore, it is *pragmatic* in that it goes beyond semantic and syntactic analyses of meaning and grammar and examines how competent language users actually engage in interaction and communication: how does language work as a vehicle of social integration? How can language users solve conflicts and disagreements by discursive means?

As human beings, we relate to ourselves, others, and the external world through linguistically mediated validity claims: we live our lives in reliance on claims about who we are and who we should be, what is true or false, what is morally right and wrong, what it is wise to do in particular situations, etc. Such claims, one could say, are the invisible lines along which everyday interaction normally proceed. Whenever two or more persons co-ordinate their actions without the use of violence or manipulation, Habermas speaks of 'communicative action'. Communicative action is based on intersubjective understandings and shared interpretations of particular situations, and is made possible by the orientation towards validity claims inherent in human language. Most of the time, in our daily lives, we do not require others to justify the claims they make or rely on. Typically, we either accept the raised claim immediately, or assume that the speaker *could* give us a good

reason, if required: “A speech act offer has a coordinating effect because the speaker, by raising a validity claim, concomitantly takes on a sufficiently credible guarantee to vindicate the claim with the right kind of reasons, should this be necessary” (Habermas 1998, 18).

However, whenever human beings interact, disagreements, misunderstandings and conflicts emerge, say, conflicts related to controversial action norms or epistemic claims. The risk of conflict increases dramatically among citizens in the multicultural public sphere, but even among people we know and trust there are situations in which we think they are mistaken, irrational, prejudiced, unfair, deceiving themselves, etc. These are the situations in which deliberation is called for, at least if we wish to deal with our disagreements in a way that is *non-violent* and oriented towards finding the *best possible solution*, say, the epistemically or morally more correct one.

When we deliberate with others, we deal argumentatively with contested validity claims, say, claims to moral rightness or epistemic truth. Thus, deliberation differs from the mere statement of personal preferences in virtue of its communicative and reflexive character: we explain to others *why* we believe that ‘X is true’ or ‘Y is wrong’, and we attempt to give reasons that the other can recognize as valid for her. We may therefore define deliberation broadly as “communication this induces reflection on preferences, values and interests in a non-coercive fashion” (Mansbridge et al. 2010, 65).²

Habermas’ understanding of deliberation rests on a particular conception of ‘rational discourse’. This conception is supposed to articulate what we normally, as everyday language users, understand by discussion or by argumentation. According to Habermas, the very idea of rational discourse is normative in the sense that it implies four basic ideals or ‘idealizations’:

- (a) inclusivity: no one who could make a relevant contribution may be prevented from participating;
- (b) equal distribution of communicative freedoms: Everyone has an equal opportunity to make contributions;
- (c) truthfulness: the participants must mean what they say; and
- (d) absence of contingent external constraints or constraints inherent to the structure of communication: the yes/no positions of participants on criticizable validity claims should be motivated only by the power of cogent reasons to convince (2008, 82).

The first point (inclusivity) requires that all ‘relevant’ discussants are included in a particular discussion. If we attempt to solve a moral dispute without including all affected parties, or an epistemic dispute without including all with relevant information, we cannot sincerely claim that we are aiming for a *rational* solution, that is, a solution based on an open examination of the most convincing reasons available (including reasons that are based on interpretations of empirical

² The authors note that this definition is ‘adapted’ from John Dryzek (2000, 76).

evidence). If we exclude anyone who could make a contribution, say, a scientist whose research could be relevant to a particular scientific dispute, then we potentially exclude relevant insights, perspectives or evidence and thus compromise the rationality of the discourse. The second point (equal distribution of communicative freedoms) requires equal opportunities of communication for those who are included. Some participants may get to talk much more than others. The discussion may be premised on argumentative rules or practices that are only known to, or accepted by, some participants. Some participants may face systematic disadvantages or discrimination. In such cases, our opportunities to participate and make a contribution are not equally distributed, which means that, again, we cannot expect the outcome to be rational because factors external to the free flow of argumentation have influenced the outcome. The third point (truthfulness) requires honesty of the participants: unless they say what they actually mean and disclose what they actually know, the rationality of the discussion is distorted. A scientific dispute, for example, becomes irrational if some scientists manipulate or fake results.

The first part of the last requirement is straightforward. An *external constraint* on argumentation (on the ‘the yes/no positions of participants’) can be defined as any kind of outside interference with what a speaker has to say: threats, prohibitions, sanctions, violence and the like. Thus, according to this definition, a discussion about the efficiency of a particular policy, or the fairness of a particular law, does not deserve the label ‘rational’ as long as any participants face violence or sanctions, say jail or fining, for expressing their genuine views. The second part of the last requirement is less straightforward. What does ‘constraints inherent to the structure of communication’ mean? As I understand Habermas, he means that the discursive procedure can be distorted not only by external constraints such as prohibitions or threats, but also by our own ‘internal’ beliefs and interests: we may be so caught up in prejudice, ideology and sectarian thinking that we are unable to assess arguments in a remotely self-critical and objective way. This could make us incapable of participating in deliberation and deliberative learning processes. A discussion that is geared towards the rational content of arguments presupposes some minimal capacity on behalf of the participants to critically examine the validity of these arguments – their own as well as others’. I will refer to the exercise of this capacity as *reflexive freedom* (see the following section).

Habermas’ appeal to rational discourse does not mean that he is blind to the fact of dominance and exclusion in the democratic public sphere. Habermas knows that, as a matter of empirical fact, strategy, ideology, and structural exclusion permeate human interaction and communication:

After all, people engaged in discourse are aware, among other things, that the circle of participants is highly selective, that one side enjoys greater communicative latitude than the other, that one person or another remains prejudiced concerning this topic or that, that people on occasion behave strategically, or that ‘yes’ and ‘no’ positions are often determined by motives other than a better understanding of the issue (2008, 50).

Habermas therefore characterizes the four presuppositions as “counterfactual assumptions” (Ibid., 50), meaning they may never be fully realized in any particular speech situation. Nevertheless, the remarkable thing about these assumptions is that we cannot have a meaningful discussion *without* them. In order for me to have a rational discussion with you, I *must* assume that you will not attack me if I disagree, that we are both being honest, that we shall both have the opportunity to speak and be heard, that none of us are manipulated or ideologically deluded, and so forth. We intuitively know that threats, exclusion and deception contradict the performative meaning of the practice of argumentation, namely that “the ‘unforced force of the better argument’ is supposed to have the final say” (Ibid., 82). Thus, even though the four presuppositions may not be fully met in particular cases, they nevertheless confront us with a “weak transcendental necessity” (1998, 5): whenever we take the practice of argumentation seriously, they *command* us – as rationally accountable persons – to include relevant contributors, recognize compelling arguments and evidence, remain sincere, refrain from threats, etc. Thus, anyone who ‘argues against’ the presuppositions commits a performative self-contradiction because she argues against the rules that are constitutive for argumentation as such: “[t]he (weak) transcendental presuppositions of argumentation (...) cannot be systematically violated without destroying the game of argumentation as such (2008, 83).

1.2 Learning processes

According to Habermas, it is the weak transcendental necessity inherent in ‘the game of argumentation’, which enables competent language users to *learn something new*. The development of an increasingly differentiated body of knowledge about the world, in addition to the development from a group-centered and hierarchal to a universalist-egalitarian morality like the one that underpins the modern idea of equal human rights, are understood by Habermas as cognitive learning processes in which competent language users, situated in particular political and socio-historical contexts, have forced each other – *through argumentation* – to examine and revise deeply entrenched epistemic and moral certainties.

To explain how argumentation sparks learning, Habermas says that argumentation is a “practice that can critically turn against its own results and thus *transcend itself*” (1998, 5). Put differently, argumentation makes possible an “innerworldly transcendence” (Ibid., 5) in the sense that it *begins* within the human lifeworld and its settled convictions, and then moves *beyond* these

convictions by making the participants aware of at least some of their own blind spots, errors, inconsistencies, and unexamined prejudices. Habermas articulates the same point by saying that the normative idealizations that are built into the practice of argumentation propel a learning process that is geared towards the ‘decentering’ of cognitive perspectives:

The normative content of the game of argumentation represents a rationality potential that can only be realized in the epistemic dimension of testing validity claims. Specifically, it can only be realized in such a way that the publicness, equal rights, truthfulness, and noncoercion presupposed in the practice of argumentation set the standards for a *self-correcting learning process*. For the demanding form of communication represented by rational discourse compels participants to decenter their cognitive perspectives progressively as they mobilize all relevant reasons and information (2008, 84, emphasis added).

On the one hand, cognitive perspectives are narrow and egocentric in the sense that they revolve around the particular interests and beliefs we have, and the particular communities we identify with. On the other hand, participating in deliberation may ‘gently’ force us to reflect upon these perspectives, revise them, and expand them: “different communities can develop a more inclusive perspective by transcending their own universe of discourse” (Habermas & Taylor 2011, 66). Put differently, it is through public deliberation – not through solitary introspection – that we are able to integrate new insights and perspectives into our own worldviews, and thus to overcome our most rigid understandings of self, world and other. Deliberation has this transcending force because of its critical orientation towards validity claims. Validity claims are always made, accepted or rejected within particular historical and socio-cultural contexts by particular human beings with limited knowledge, finite timeframes, and restricted possibilities to evaluate evidence and arguments. Validity claims are therefore inherently fallible and revisable, and the mere fact that a claim is commonly accepted never guarantee its future survival: “what is accepted as rational here and now can turn out to be false under more favorable epistemic condition, before a different public, or when confronted with future objections” (2008, 75).

On the other hand, validity claims transcend the facticity of the here and now, that is, they point “beyond all provincial standards that are locally accepted and established” (1998, 18) because they postulate that something is *unconditionally* valid, at least when it comes to epistemic claims about the ‘objective world’ and moral claims about justice and the ‘social world’. When someone claims that climate change is man-made, or that torture is morally wrong, she typically does not mean this as a claim that has validity only for *us, here and now*; rather, she makes a universal claim about truth or morality, and she commits herself to defend it *as* a universal claim. By this, she forces

herself and her opponents into considerations that – if all goes well – take the form of a learning process. Private or idiosyncratic expressions of likes and dislikes do not have this capacity.

2 Deliberative democracy

If we agree with Habermas that human reasoning is fallible and contextual, but also a vehicle of learning and ‘transcendence from within’, in particular when we deliberate *together*, then the idea of a deliberative democracy should appeal to us. According to this ideal, the core of democracy is neither the principle of majority rule nor the protection of individual rights, but the public discussion of matters of common concern. Without such discussion, we cannot expect political outcomes to be rational in the sense that they are based on the best reasons available. Also, without a well-functioning democratic public sphere, we cannot expect citizens of different social and cultural backgrounds to come to a mutual understanding – or even a tolerable compromise – in political disputes.

2.1 Discourses

According to Habermas, there is a complex historical-sociological relation between modernization, pluralization and deliberative democracy. He analyzes modern societies in terms of a social-evolutionary processes in which the need for communication has risen drastically alongside with the decline of traditional religious and metaphysical worldviews: “the need for achieving understanding is met less and less by a reservoir of traditionally certified interpretations immune from criticism; (...) the need for consensus must be met more and more frequently by risky, because rationally motivated, agreement” (1984, 340). In other words, we are no longer united around a sacred, unquestionable worldview, but faced with the difficult task of *generating* our own bond or unification. On the one hand, this situation opens up the door for more *unconstrained speech* about beliefs, norms and values that were previously regarded as ‘immune to criticism’, including religious beliefs and doctrines. On the other hand, the increasing pluralization and secularization of modern societies produces a functional need for communicative speech, that is, speech with a capacity to unite the citizens around shared standards of interpretation and norms of interaction.

On Habermas’ account, the democratic public sphere consists of different types of discourse, including scientific, religious, and aesthetic. However, the most central discourses are *moral*, *ethical-political* and *pragmatic*. Moral discourses concern the universal validity of action norms and aim at the “impartial evaluation of action conflicts” (1998, 97). In modern democracies, conflicts over action norms constantly arise, but – in principle – no one can claim a special status on the basis of

ethnicity, religion, gender, wealth, social position, etc. This means that moral discourses must aim to resolve such conflicts in an impartial way, that is, through deliberation oriented at norms that are acceptable to *all*. Moral discourse must transcend local loyalties and solidarities because it concerns the fairness of particular action norms for *any* affected human being: “[w]ith moral questions, humanity or a presupposed republic of world citizens constitutes the reference system for justifying regulations that lie in the equal interest of all” (Ibid., 108). In that sense, participating in moral discourse is a cognitively demanding exercise: in order to orient ourselves towards norms that are fair to everybody, participants must attempt to take each-others perspectives and consider disputed norms in the eyes of the other(s). At the same time, there is a peculiar dialectic between universality and particularity built into moral learning processes. On the one hand, they aim at *universal* acceptance by all concerned. On the other hand, they concern the concrete needs and wants of *particular* subjects: “[moral] norms regulate legitimate chances for the satisfaction of needs and wants; and interpreted needs/wants are a piece of inner nature to which each subject, if she is truthful with herself, has privileged access” (1986, 172).³ In other words, a plausible moral argument must connect a defended norm to a language of needs, wants, and foreseeable consequences in order to appeal to everyone’s self-understandings and interpretations of needs.

Ethical-political discourse concerns the more particularistic question of who ‘we’ are as a political community. What does it mean to be German, Danish or Polish? What is our identity, what is *good for us*, given our particular history and circumstances? For Habermas, ethical-political discourse is a form of critical-hermeneutical self-reflection within the context of a historical value community that reconsiders its identity in new circumstances and from new perspectives. As participants in ethical-political discourse, we ask ourselves “who we are and would like to be as citizens” (1998, 160). This question cannot only be answered through a mutual appropriation of given traditions, life orientations and “deeply held values” (Ibid., 160). What is particularly important in multicultural societies is that *all* citizens, and not just a dominant majority, are invited to participate in these debates about the identity of the political community. However, such inclusion becomes difficult in a political culture permeated by fear, or dominated by a rigid national identity that refuses to reflect upon itself:

Discourses for achieving self-understanding require that the cultural traditions formative of one’s own identity be dealt with in a way that is at once anxiety free, reflexive and open to learning. In the present context, it is especially important that there be no non-participants in the process of self-assurance (...). All must be able to take part in the discourse, if not necessarily in the same way (Ibid., 182).

³ My translation.

Pragmatic discourse, finally, concerns the best or most efficient way to realize settled political goals. In pragmatic discourse, empirical knowledge (say, about the causes of unemployment or about climate change) is related to given preferences and ends (say, the end of reducing unemployment or combatting global warming): “[t]he rationally justified choice of techniques or strategies of action calls for the comparison and weighings that the actor, supported by observations and prognoses, can carry out from the standpoint of efficiency or other decision rules” (Ibid., 159). Moral, ethical and pragmatic discourse are of course difficult and sometimes impossible to distinguish in practice, for the political theorist as well as for the participants themselves. However, the important point is that, for Habermas, political deliberation draws on all three components, and not just on one.

2.2 Bargaining

Despite his emphasis on rational discourse, Habermas does not hold the utopian view that political conflicts can be resolved through (moral, ethical-political or pragmatic) discourse alone. The political public sphere is a place where rational argumentation takes place (or should take place), as well as a place where different interests and values sometimes oppose each other in a way that makes a discursive solution impossible. In addition to discourse, therefore, there is a need for bargaining and compromise formation among disagreeing parties who are still willing to cooperate: “[t]his is the case, namely, whenever it turns out that all the proposed regulations touch on the diverse interests in respectively different ways without any generalizable interest or clear priority of some one value being able to vindicate itself” (Ibid., 165). As participants in bargaining processes, say, in wage negotiations or in the negotiation of financial contracts, the parties are strategically oriented towards their own success, not towards the common good. However, in order to preserve a general sense of the legitimacy of the bargaining processes and processes of compromise formation, there must be some basic agreement about the rules or procedures that regulate them: we must “come to some understanding of the normative regulation of strategic action” (1998, 26). Habermas can therefore say that fair compromises do not stand on their own because their ‘procedural conditions’ must be justified in a moral discourse. Put differently, in the absence of any moral discourse about the conditions for legitimate bargaining, a strategic compromise between a hegemonic majority and a minority is unlikely to “enjoy the presumption of fairness” (Ibid., 167).

To sum up, Habermasian deliberative democracy includes different, mutually interrelated types of discourse. This variation allows for strategic power struggles and the pursuit of self-interest, but it also requires citizens to orient themselves deliberatively towards the common good (or the general interest), in particular when it comes to moral and ethical-political disputes. If the citizens

are unable or unwilling to orient themselves deliberatively towards the common good, then they cannot produce the minimum degree of mutual understanding and solidarity that multicultural societies need in order to function well.

2.3 Public spheres

In a certain sense, there are many *public spheres*. For example, what Nancy Fraser refers to as “subaltern counterpublics” (1990, 67) are parallel discursive arenas in which members of historically repressed groups – workers, women, peoples of color, gays and lesbians, or members of misrecognized cultural minorities – articulate counter-discourses to prevailing norms and values in the mainstream political culture. Even though critics continue to attack Habermas for operating with only *one* national public sphere (for example Asad 2003, 183; Bangstad & Vetlesen 2011), this is clearly a misunderstanding. Habermas’ model does take into account “the co-existence of competing public spheres (...) [and the] dynamics of those processes of communication that are excluded from the dominant public sphere” (Habermas 1992a, 424 – 425).⁴

Habermas furthermore thinks that it is meaningful to speak of two qualitatively different *types* of public sphere, which he refers to as the formal (or strong) and the informal (or weak) spheres respectively. The formal public sphere(s) consists of deliberation within the state and its formally organized institutions, first and foremost in parliamentary debates, but also in ministries, courts and administrations. These formal decision-making domains are under pressure to make binding political decisions, that is, to find a cooperative solution to practical-political questions

The notion of the informal public sphere, by contrast, refers to deliberation in the “anarchic” forums of civil society, including non-governmental organizations, social movements, the media, and political debates outside the organized political parties (1998, 307). Citizens’ deliberations in these arenas form a “network of overlapping, subcultural publics having fluid temporal, social and substantive boundaries” (Ibid., 307). This network is pluralistic and resists organization as a whole because it consists of channels of communication that develop more or less spontaneously: “[t]he currents of public communication are channeled by mass media and flow through different publics that develop informally inside organizations” (Ibid., 307).

According to Habermas, informal political deliberation is mainly geared towards the identification and discussion of problems emerging from lifeworld experience. Here, violated interests, threatened identities, hidden cognitive perspectives, and suppressed experiences of injustice can be discovered and articulated more fully, without time pressure and the obligation to make a

⁴ See also my discussion of Asad’s critique of Habermas in part V.1.5.

binding decision. Habermas therefore characterizes the informal (or weak) public sphere as predominantly a “context of discovery” (Ibid., 307). The formal public sphere, on the other hand, is predominantly a “context of justification” because its main function is the public justification of binding laws, regulations, policies, and constitutional principles (Ibid., 307).

Importantly, Habermas stresses the need for democratic “sluices” (Ibid., 327) through which the communicative power produced in the informal public spheres may influence the administrative power of the state. When such influence is exercised, communicative power becomes “jurisgenerative” (Ibid., 147), that is, it transcends its non-binding and informal character and exercises a real influence on the law. Drawing on Hannah Arendt, Habermas conceives of communicative power as a power that no one really ‘possesses’: “[p]ower springs up between men when they act together, and it vanishes when they disperse” (Arendt, quoted in Habermas 1998, 147). In contrast to Weber’s understanding of power as the ability to make someone do something they would prefer not to do, communicative power is understood by Arendt and Habermas as a ‘common will’ formed in non-coercive communication. If arguments and information are allowed to flow freely in the public sphere, politically active citizens will work out a set of political convictions or “shared beliefs” (1998, 147). These beliefs, in turn, will build up into a resource of power that “the holders of administrative power should not ignore” (Ibid., 147).

As indicated by these formulations, Habermas seems to assume that communicative power is based on – or springs from – a discursively obtained *agreement* among the citizens. However, as I shall come back to in my discussions in part III.3, a population rarely – if ever – form a ‘common will’ about anything through dominance-free communication. The informal public sphere consists of fractions, groups, conflicts, power relations, arguments, and – if all goes well – learning processes, agreements, compromises and mutual understandings, but there is no tangible ‘communicate power’ based on the contributions of all, ready to be incorporated into the administrative bodies of the state. It would therefore make more sense to speak of communicative *power formations* than communicative *power*.

2.4 Deliberative versus aggregative democracy

We can bring out the distinctiveness of the deliberative approach by comparing it with the ‘aggregative’ approaches, which emphasize voting and majority rule, sometimes in combination with expert panels and cost-benefit analyses, as in welfare economics. What defines aggregative models is that they see the expressed preferences of the population as central material for democratic decision-making. On the aggregative account, political preferences do not need to be justified publicly, by deliberating citizens. Preferences are simply there as *pre-political facts*, and what the political

process should do is to count or ‘aggregate’ them so that policies and laws can be based on them, either directly through voting or indirectly by means of representative voting in parliament (eventually mediated by bureaucrats and experts). Thus, as Gutman and Thompson note, “aggregative conceptions pay little or no attention to the reasons that citizens or their representatives give or fail to give” (Gutman & Thompson 2004, 15).

Of course, deliberative democracy cannot do without aggregative elements. (Kymlicka 2002, 292; Gutman & Thompson 2004, 15 – 21; Mansbridge et al. 2010, 64). Binding decisions must be made, policies must be implemented, responsibilities must be distributed, and the votes must be counted. However, on Habermas’ account, voting is not regarded as the essence of democracy, but as a mere pause in an ongoing discussion: “the decision reached by the majority only represents a caesura in an ongoing discussion” (1998, 179). We need this pause in order to be able to make decisions and distribute power. However, what interests deliberative democrats is what happens *before* the votes are counted. In itself, voting is incapable of uniting members of different identity groups through shared interpretations of situations and mutually accepted norms because it tends to confirm the immediate interests and beliefs of the majority. Voting simply outnumbers minorities without giving them an opportunity to persuade their opponents and influence the political process. Habermas therefore says that “the principle of majority voting runs up against its limits because the contingent composition of the citizenry prejudices the outcomes of a seemingly neutral procedure” (Habermas 2000, 144). Consider also the following passage from John Dewey, quoted at length by Habermas:

Majority rule, just as majority rule, is as foolish as its critics charge it with being. But it never is *merely* majority rule. The means by which a majority comes to be a majority is the more important thing: antecedent debates, modification of views to meet the opinion of minorities. The essential need, in other words, is the improvement of the methods and conditions of debate, discussion, and persuasion (Dewey 1954, 207; quoted in Habermas 1998, 304).

On a deliberative account, what counts for minorities, and the not yet included, is ‘voice’ rather than ‘vote’. Kymlicka therefore refers to the recent advances made by groups such as gays and lesbians, the deaf, or indigenous peoples, who account for less than 5 percent of the electorate (2002, 292). According to Kymlicka, these advances would have been impossible had not (representatives of) minorities managed to influence the majority’s political preferences through public argumentation. In a similar vein, Habermas stresses how women as well as sexual, cultural and religious minorities have defended themselves – and continue to do so – against oppression, marginalization, and discrimination through democratic participation and public ‘struggles for recognition’ (1998, 314; 2000, 203 – 236). Thus, the deliberative vision of political freedom reaches beyond the counting of

votes towards a political public sphere that is inclusive, open to learning and sensitive to the needs and interests of minorities and disadvantaged groups.

Of course, being included as a co-author of the law does not in any way guarantee that one's particular opinions will prevail or have a direct influence on political outcomes. However, if democratic minorities have spoken and been listened to, if their dignity has been preserved, if real attempts have been made to understand their perspectives and accommodate their interests, if they feel they might have a chance to persuade the majority at some point in the future, then they are more likely to accept laws or rights (including particular implementations of the right to free speech), even when they disagree with them. According to Kymlicka, “[m]any studies have shown that citizens will accept the legitimacy of collective decisions that go against them, but only if they think that their arguments and reasons have been given a fair hearing, and that others have taken seriously what they have to say” (2002, 291). Or as Habermas puts it: “[d]eliberative politics derives its legitimizing force from the *discursive structure* of an opinion- and will formation that can fulfill its social integrative function only because its citizens expects its results to have a reasonable quality” (1998, 304).

2.5 The rule of law

Habermas regards *the rule of law* as the medium through which communicative power is transformed into legitimate administrative power: “[the] flow of communication between public opinion-formation, institutionalized elections, and legislative decisions is meant to guarantee that influence and communicative power are transformed through legislation into administrative power” (1998, 298). Modern mass democracies cannot govern themselves *directly* through deliberation. It is impossible to deliberate about everything, and impossible that everyone deliberates: “[e]ven under favorable conditions, no complex society could ever correspond to the model of purely communicative relations” (Ibid., 326). Thus, in complex societies, there is no functional equivalent to the rule of law. The law must release the citizens from the burden of deliberation by creating a framework of legality in which they can follow their individual interests and life-plans without having to justify themselves to others (I *must* not use my right to free speech to engage public deliberation, but I *can*). At the same time, the law has a ‘dual’ character in the sense that it releases us from communication but also requires communication (Ibid., 31). On the one hand, the law guarantees a wide space of negative individual liberties; on the other hand, these liberties cannot be defined by experts or political elites, but must be worked out discursively by the citizens who are bound by them. This is of course a variant of the old idea that the law should emanate from the ‘will of the people’: those who are forced to obey the law must have a *say* in legal and political disputes.

To be politically dominated means to be forced to act according to public rules that one cannot accept as justified or reasonable. In that sense, a deliberative democratic order expresses the mutual recognition among citizens who regard each other as persons capable of self-legislation, and as co-legislators of a shared political community. Citizens who regard each other as free and equal co-legislators know that force needs to be publicly justified in a transparent way, and that those who disagree must be able to express dissent. In cases of disagreement, therefore, they will attempt to persuade one another with arguments, rather than threaten or force one another to comply.

Finally, Habermas is careful to distinguish legal from moral norms. On the one hand, law must not violate morality: “laws must in general be so constituted that they can be obeyed ‘out of respect for the law’” (2008, 81). On the other hand, the rule of law has the specific function of regulating the institutions of a particular political community, not the interpersonal relations of human beings at all times: at all times and everywhere: “[w]hereas the overwhelming force of morality embraces all areas of life and does not recognize any threshold between private conscience and public accountability, the law serves primarily to free private and autonomous domains of life from the arbitrary interference of public power” (Ibid., 90).

2.6 Multiculturalism, constitutional patriotism, and political culture

Habermas’ theory of deliberative democracy is also a theory of multiculturalism: it incorporates cultural pluralism as a basic fact of modern democracies (at a descriptive level), and it insists (on a normative level) that laws, policies and constitutional principles should not privilege one particular sub-group at the expense of other groups. Habermas considers his own position as ‘postmetaphysical’, meaning that it abstracts completely from ethical, religious and metaphysical assumptions, say, assumptions about the nature of reality, the good life, or man’s place in the universe. Unlike premodern philosophical thought, postmetaphysical thinking recognizes the ongoing competition between comprehensive worldviews and conceptions of the good, and claims *neutrality* as to their content.

Given the insistence on a culturally non-biased use of law and state power, Habermas says that multiculturalism requires a *neutral* vocabulary for law and politics: “the primary question that multiculturalism raises is the question of the ethical neutrality of law and politics” (1994, 122). Ethical questions, as we have seen, pertain to the goodness or badness of substantial values and identities, i.e., values related to “conceptions of the good life, or a life that is not misspent” (Ibid., 122). According to Habermas, any answer to such questions is contextual and based on ‘strong

evaluations', which are relative to particular persons or groups.⁵ However, 'ethical neutrality' does not imply that ethical commitments cannot play a role in formalized politics, i.e. in the interpretation of the law and the constitution. As we shall see, whether the introduction of ethical values is appropriate depends on their degree of generality, that is, their acceptability among members of diverse cultural and religious communities.

Habermas agrees with republican and communitarian thinkers that pluralist democracies need some minimum basis of mutual identification and solidarity across cultural and religious divides. A political community cannot function as an integrated unity unless the citizens identify with it, and develop some a sense of loyalty to it:

[T]he universalist principles of the constitutional democracy need to be somehow anchored in the political culture of each community. Constitutional principles can neither take shape in social practices nor become the driving force of the dynamic project of creating an association of free and equal persons until they are situated in the historical context of a nation of citizens in such a way that they link up with those citizens' motives and attitudes (1998, 499).

However, in contrast to republicans and communitarians (as Habermas reads them), Habermas argues that the necessary bond between the citizens should not be understood in terms of substantial values or identities. Instead, Habermas believes that the citizens can identify with their *constitution* as a concrete expression of who they are as political community, given their particular history, geography, experiences, and so forth. The notion of 'constitutional patriotism' therefore captures a democracy's functional need for a sense of solidarity among the citizens in the absence of pervasive ethnic, religious or kinship ties: "a constitutional patriotism (*Verfassungspatriotismus*) that heightens an awareness of both the diversity and the integrity of the different forms of life coexisting in a multicultural society" (1998, 500).

However, it is not completely clear how Habermas imagines the balance between multicultural neutrality and inclusiveness, on the one hand, and ethical particularity ('the historical context of a nation of citizens'), on the other. Habermas argues that multicultural neutrality is compatible with a historically self-conscious interpretation of the constitution, that is, with a sense of belonging and solidarity based on a narrative about who *we* are, given our particular history, identity, geography, etc. The political culture is "permeated by ethics" (Habermas 1994, 126), meaning that ethical questions are always interwoven with legal, moral and political discourses. Sometimes, he

⁵ This is the standard interpretation of Habermas' conception of ethical values. However, as I shall discuss in part IV.3.2, Habermas seems to have slightly modified this view in more recent works.

even formulates himself in ways that comes close to a communitarian understanding of the political community as a given value community, based on a shared identity:

[A] collective self-understanding can be authentic only within the horizon of an existing form of life (...). The corresponding [ethical] reasons *count as valid relative to the historical, culturally molded identity of the legal community*, and hence relative to the value-orientations, goals and interest positions of its members (1998, 156, emphasis added).

I call this the ‘closed interpretation’ because it prioritizes the existing value community and evaluates ethical reasons as valid (or invalid) relative to an existing ethical horizon. In my view, a political culture that deems some arguments ‘invalid’ merely because they contradict the assumed authenticity of an existing form of life is not liberal, but communitarian in the wrong way. Habermas is right to stress that ethical arguments can and do play a role in political debates; however, if the constitution is supposed to be a shared project which is able to unite members of different traditions and sub-cultures through a shared sense of patriotism, then the ‘validity’ of ethical arguments cannot be measured according to a pre-given ‘culturally molded identity’. Habermas’ reference to ‘existing forms of life’ could give the impression that he regards established cultural traditions as a given standard according to which ethical arguments must be measured before they play a role in law- and constitution making.

Given the problems with the closed interpretation, I shall defend an ‘open interpretation’ according to which ethical reasons do not count as valid relative to an existing cultural tradition, but rather relative to the principle of *equal citizenship*. As Habermas puts it,

[T]he theory of rights in no way forbids the citizens of a democratic constitutional state to assert a conception of the good in their general legal order, a conception they either already share or have come to agree on through political discussion. It does, however, forbid them to privilege one form of life at the expense of others within the nation (1994, 128).

Here, Habermas stresses that the public conception of the good can be *produced* through deliberation rather than merely discovered or passed on from generation to generation. On this account, ‘valid’ ethical argumentation must not correspond with historical values or identities but may just as well challenge or break with them. The open interpretation therefore defines ethical validity in terms of morality or justice, here understood in terms of free and equal citizenship: the constitution may reflect particular ethical orientations, but only on the premise that it does not ‘privilege one form of life at the expense of others within the nation’.

As I understand this requirement, it means citizens may refer to (or criticize) comprehensive ethical value systems when deliberating about law and politics, as long as their

arguments are compatible with free and equal (and multicultural) citizenship – in their *content* as well as their *form*. Content equality relates to the substantial views citizens propose, that is, the actual rights, laws and policies they endorse. By contrast, what I call ‘equality of form’ relates to the *way* in which citizens justify these views and the kinds of reasons they use. For example, on Habermas’ account, laws and policies cannot be publicly justified in a particular religious idiom even if their *content* is religiously neutral. In other words, a constitution that justifies religious freedom or free speech in terms of an interpretation of the Bible or the Quran is not compatible with the idea of equal multicultural citizenship and its corresponding idea of free and equal citizens (see my discussion in part IV.3).

Habermas sometimes analyses the necessary “unifying bond” (2008, 105) of a well-functioning democracy not in terms of ‘constitutional patriotism’, but in terms of a ‘liberal political culture’.⁶ The notion of a political culture refers broadly to the democratic practices and institutions of a particular political community, say, a particular nation state. A *liberal* political culture, furthermore, is characterized by relations of reciprocal recognition between diverse citizens: “[w]e describe a political culture as ‘liberal’ insofar as it is characterized by symmetrical relations of reciprocal recognition, including those between the members of different identity groups” (2008, 293).

The required form of recognition is not about culture or religion as such, but about citizens who regard each other as *equals*. When Habermas writes that mutual recognition can only be achieved through ‘debates over identity politics’, he does not mean that we have inegalitarian views before we participate in deliberation, or that we get persuaded about the equal status of others only through deliberation. What he means is that even though we typically consider ourselves true egalitarians and universalists, our universalism is always formed and articulated within particular cultural, religious and ethical traditions, and as such permeated with unexamined prejudices, group based interests, and more or less narrow identities and conceptions of the good. In order to approach a more truly universal universalism, therefore, we must engage in public debates about the correct interpretation of universal norms, policies and ‘identity politics’. In other words, a democratic realization of the ideal of equal recognition must be achieved through citizens’ exercise of political freedom.

⁶ Habermas may be right that, ultimately, political debates are always also debates about the constitution because they touch on constitutional essentials and principles in some way or another. I nevertheless prefer the expression of ‘liberal political culture’ before that of ‘constitutional patriotism’: many citizens may have little or no knowledge of what their constitution actually says, even though they participate actively in the political culture.

Habermas uses the terms ‘equal recognition’ and ‘equal respect’ interchangeably. He understands both terms in a rather abstract way, associating them not only with legal rights that protect everybody’s ‘individuality and otherness’, but also with more informal relations of solidarity and ‘nondiscriminating inclusion’:

In the strict sense, ‘universalism’ refers to the egalitarian individualism of a morality that demands mutual recognition, in the sense of equal respect and reciprocal consideration for everybody. Membership in this inclusive moral community, which is therefore open to all, promises not only solidarity and nondiscriminating inclusion, but at the same time equal rights for the protection of everybody’s individuality and otherness (2003, 42).

Habermas emphasizes that minorities and immigrants must be included in the political culture as free and equal, but they cannot be expected to assimilate the more substantial identities and values of the majority: “all that needs to be expected from immigrants is a willingness to enter into the political culture of their new homeland, without having to give up the cultural form of life of their origins by doing so” (1994, 139). By this, Habermas allows for considerable disintegration and fragmentation at the substantial level of beliefs and ways of life, but requires an abstract form of recognition among citizens who include each other in a shared *political* culture: “a multiculturalism that understands itself in the right way (...) calls for the integration of and the mutual recognition of their subcultural memberships within the framework of a shared political culture (2008, 270).

2.7 Political virtues and recognitive attitudes

Richard Bernstein has argued that Habermas’ deliberative model relies on quite demanding attitudes and virtues, which must be cultivated through what he calls a democratic form of life or *ethos*:

For democratic debate, ideally, requires a *willingness* to listen to and *evaluate* the opinions of one’s opponents, *respecting* the views of minorities, advancing arguments *in good faith* to support one’s convictions, and having the courage to change one’s mind when confronted with new evidence or better arguments. There is an *ethos* involved in the *practice* of democratic debate (Bernstein 1998, 291).

According to Bernstein, the practice of debate in a democracy presupposes something like a modernized version of the classic virtues: practical wisdom, justice, courage, and moderation. In a reply to Bernstein, Habermas agrees that “[a] political system based on the (...) rule of law is not self-contained but depends on ‘a liberal political culture’ and a population accustomed to freedom” (1998a, 184). Habermas’ reply implies that the idea of a liberal political culture in which citizens recognize each other as free and equal can accommodate the virtues and attitudes mentioned by Bernstein. However, Habermas also admits that such a culture does not produce itself but depends

partly on lifeworld resources, that is, on identities, beliefs, attitudes and norms that citizens have internalized *before* they enter the democratic public sphere as political opponents, say, in their families, friendships and personal relations, schools or workplaces, social environments, or cultural-religious subcultures. Already in *Between Facts and Norms*, he emphasized that “[d]eliberative politics is internally connected with contexts of a rationalized lifeworld that meets it halfway (...)” (1998, 302).

In *Between Facts and Norms*, however, Habermas more or less rejected the need for political virtues:

The success of deliberative politics depends not on a collectively acting citizenry but on the institutionalization of the corresponding procedures and conditions of communication, as well as the interplay of institutionalized deliberative processes and with informally developed public opinions (Ibid., 298).

By focusing on the institutionalization of rationality rather than on the capacities or virtues of the citizens, Habermas’ wanted to “[relieve] the citizens of the Rousseauian expectation of virtue (...) insofar as practical reason withdraws from the hearts and heads of collective actors (...)” (1998a, 385). This is a structural argument that “replaces the expectation of virtue with a supposition of rationality” (1998a, 386). However, as Rostbøll points out, this position rests on a failure to distinguish between an Aristotelian argument about the good life, on the one hand, and the need for political or *democratic* virtues, on the other. The Aristotelian argument, still defended by some republicans, is that political participation is a necessary element of the good life, perhaps even the highest good to be strived for.⁷ I agree with Rostbøll and Habermas that this ideal is untenable under the conditions of modern pluralism. For many citizens, the good life is associated with family, work, personal relations and private interests, and not primarily or exclusively with political participation. However, Rostbøll rightly argues that democratic virtues need not imply a perfectionist conception of the good, or a shared communitarian identity, but nevertheless requires particular ‘dispositions’ on the part of the participants:

Habermas seems to think that any talk of the need for virtues lead to communitarianism and perfectionism. This represents a failure of drawing an important distinction. Virtues need not be related to a shared conception of the good life or to a common identity but can be seen as a requirement of the practice of democracy and freedom. The communicative freedom that Habermas sees as the basis of legitimate democratic decision making clearly is an exercise concept of freedom – it as a freedom that one can enjoy only by exercising it – and thus requires certain dispositions on the parts of the participants (Rostbøll 2008, 163).

⁷ See the discussions in Kymlicka 2002, ch. 7.

In more recent writings, however, Habermas does recognize the need for democratic and “political virtues” (2008, 105), such as a willingness to listen to others, to orient oneself towards the common good, and to sometimes “make sacrifices in the common interest” (Ibid., 105). Such virtues express the kind of equal recognition (or equal respect) that is the basis of a liberal political culture. They are not goods to be produced and distributed by the state apparatus, but dispositions and attitudes developed by citizens *in practice*, that is, as participants in communicative interaction. On the one hand, Habermas writes, participation in a liberal political culture by itself cultivates political virtues: “They [political virtues] are a matter of socialization and habituation into the practices and attitudes of a liberal political culture” (Ibid., 105). On the other hand, a liberal political culture fundamentally depends on cultural-religious traditions that encourage their own members to participate in political life and that support the moral basis of free and equal citizenship: “[c]itizenship is ‘embedded’ in a civil society that is nourished by spontaneous and, if you will, ‘prepolitical’ sources” (Ibid., 105). For example, we must have cultivated an ability to reflect critically upon our own views, to tolerate views we disagree with, and to work towards higher-order agreements and compromises in the case of first-order disagreements, *before* we enter the democratic public sphere as free and co-deliberators.

Supplementing Habermas on this point, I would add that the family (or family-like relations) is one of the most central prepolitical sources of democratic citizenship. Within the family, the recognitive attitudes and capacities that are required for democratic participation are cultivated (or not cultivated) at an early age, and developed (or not developed) continuously over time. The family therefore has an enormous influence on our motivational and moral predispositions, that is, on the formation of our ‘second nature’ as individual persons. This is emphasized by Honneth, who argues that all the basic moral-psychological prerequisites for social and political cooperation are created in “intact, trusting, and egalitarian families (2014, 174). According to Honneth, “the modern family is on a path of normative development that allows it to train and practice democratic and cooperative forms of interaction better than ever before in its brief history” (Ibid., 174). Honneth therefore says that democratic communities can only sustain themselves as long as democratic virtues and recognitive attitudes are passed on to future generations at an early age:

In today’s [non-authoritarian, non-hierarchical] families, under favorable socio-economic circumstances, children experience early on what it means to participate as individuals in shared cooperation. By internalizing inner-family rules of recognition, they learn to set aside their egocentric interests once another member of the family is in need of their help and support. All the abilities and dispositions that belong to this kind of ‘cooperative individualism’ can be acquired in principle by participating in the binding practices of the family: The ability to develop the intellectual schema of

the generalized other from the perspective of which inner-family duties must be distributed in a fair and just manner; the willingness to actually accept the duties that are implicitly contained in one's own position and the deliberative negotiation of such responsibilities; finally, the tolerance required whenever members of the family cultivate lifestyles or preferences that fundamentally conflict with one's own (Ibid., 175).

So, the virtues and dispositions that are developed in the family (or family like relations) enable the individual to participate as an adult in political deliberation in a way that is both self-confident and oriented towards 'cooperative individualism', that is, towards a form of freedom that allows her to develop her individuality in a cooperative way, oriented towards mutual recognition.

By focusing in this section on political virtues and relations of recognition, I have also touched upon themes and concepts that are central to my discussions in part IV on the public use of free speech in multicultural democracies. First, however, I take a closer look at Habermas' deliberative multiculturalism, understood as a critical theory of freedom (part II), and I articulate a Habermasian justification of the right to free speech (part III).

II FREEDOM AND MULTICULTURALISM

Part II reconstructs Habermas' deliberative theory in terms of a critical, multidimensional theory of freedom, and demonstrates the relevance of this theory for Habermas' deliberative multiculturalism. Habermas' theory of freedom is multidimensional because it operates with three interrelated but analytically distinguishable dimensions of freedom: *reflexive*, *political* and *personal*. It is critical because it aims at emancipation from all forms of dominance and repression, such as the dominance exercised by cultural majorities over minorities, or the dominance exercised within minority groups by authoritarian defenders of tradition, honor and religious orthodoxy.⁸

1 Three types of freedom

1.1 Reflexive freedom

I understand reflexive freedom as the realization of a basic human capacity, namely the capacity to critically examine the norms and truth claims that frame our lives and determine our behavior in concrete cases. In addition to our capacity to orient ourselves according to validity claims, say, 'X is true', we have a second-order capacity to reflect upon the *validity* of these claims: is my belief that 'X is true' actually true? Are the standards of morality that I have been brought up to accept really justified?

Habermas himself does not use the term 'reflexive freedom', but we have already seen how his conception of rational discourse implies a capacity in human beings to reflect upon validity claims, a capacity that enables us to transcend a rigid or 'frozen' cognitive perspective and expand our lifeworld through communication with others. The emancipatory potential of the democratic process lies precisely in its capacity to liberate us from unexamined prejudices by enlightening us about alternative perspectives and views, and the things that can be said for or against them. Furthermore, in his writings on multiculturalism, Habermas repeatedly stresses the need for cultural traditions to become 'self-reflexive', and the right of individual persons to reflect self-critically upon their own traditions and worldviews (Habermas 1994).

On the one hand, reflexive freedom is something we presuppose in ourselves and in others whenever we interact on the basis of linguistically mediated validity claims. This is why Habermas sometimes adds a fifth 'pragmatic presupposition' for rational discourse to the four mentioned in part

⁸ My reading of the three principles of freedom is inspired by (but not completely identical with) Rostbøll's conception of 'deliberative freedom' (Rostbøll 2008), which also draws on Habermas. However, my specific application of the three principles to issues of multiculturalism, (mis)recognition, free speech and religion is for the most part based on my own reading. When I draw directly on Rostbøll, I attempt to make this explicit in the text.

I, namely *autonomy* or *accountability*: “communicatively acting individuals must commit themselves to pragmatic presuppositions of a counterfactual sort. That is, they must undertake certain idealizations – for example (...) [they must] assume that addressees are accountable, that is, autonomous and sincere with themselves and others” (1998, 5). Put differently, the mere act of communicating expresses the implicit assumption that those we communicate with are capable of understanding and evaluating reasons consistently and self-responsibly (they are not driven by random instincts and desires but receptive to reasons and their rational force (or the lack thereof)). In this basic sense, reflexive freedom refers to a shared human quality, namely “an agent’s general ability orient her action by validity claims” (Habermas 2008, 38), be these claims epistemic, ethical, moral, legal, expressive, aesthetic, cultural, or religious.

On the other hand, reflexive freedom is something we can have *more or less of*. Habermas stresses that – if all goes well – the outcome of communication and rational discourse is a less ‘self-centered’ and ‘closed’ worldview, and, correspondingly, a more ‘de-centered’ and ‘open’ one. A closed worldview is characterized by a lack of freedom in the sense that its holders can only consider a few options as real options in life, and only a few validity claims as candidates for truth. An open worldview, by contrast, is characterized by an awareness of fallibility among its holders, as well as a capacity to communicate with and learn from others. In that sense, a reflexive worldview is *rationalized* in the sense of being mediated by discursive rationality and the corresponding capacity for learning. If worldviews can be more or less reflexive, more or less capable of self-criticism and learning, then so can their holders, that is, human subjects.

If we could not reflect critically upon the worldviews, personal identities and social roles we are socialized into, then they would *determine* us completely. Of course, being free from complete determination does not mean that we are completely free. In Habermasian terms, the lifeworld is a context or horizon we share with others, but which can never be completely transparent to us, or reflected upon as a whole. When exercising our reflexive capacities, it is always the case that we focus on *aspects* of the lifeworld, and that we take some claims for granted, including claims we have come to hold more or less unconsciously, say, as members of a particular cultural or religious tradition. The notion of reflexive freedom does not describe a utopian state in which contingency, prejudice and pre-reflexive dispositions have vanished before the eyes of the fully self-transparent subject. Rather, it denotes the much more modest capacity to focus reflexively on *particular* assumptions and claims, say, claims inherent in the political culture in which we live, and to consider them in the light of new evidence or arguments. In that sense, reflexive freedom refers to what Habermas calls the ‘finite freedom’ of embodied, situated subjects:

As soon as we conceive the intentional social relations as communicatively mediated (...), we are no longer dealing with disembodied, omniscient beings who exist beyond the empirical realm and are capable of context-free action, but with finite, embodied actors who are socialized in concrete forms of life, situated in historical time and social space, and caught up in networks of communicative action. In fallibly interpreting a given situation, such actors must draw from resources supplied by their lifeworld and not under their control. (...) On the other hand, actors are not simply *at the mercy* of their lifeworld. For the lifeworld can in turn only reproduce itself through communicative action, and that means through processes of reaching understanding that depend on the actors' responding with yes or no to criticizable validity claims. *The normative fault line that appears with this ability to say no* marks the finite freedom of persons who have to be convinced whenever sheer force is not supposed to intervene (1998, 324).

Importantly, without the cognitive ability to reflect upon claims to epistemic truth and moral rightness – that is, without the *ability to say no* to reasons – we could not take a critical attitude to relations of domination and subordination in our society at large, or within particular sub-cultural environments. To the degree that domination is justified at all, it is typically justified through claims about how the world is, what characterizes specific groups or persons, and who deserves what. All forms of ideology and indoctrination exercise their more or less hidden domination by way of forming or influencing our assumptions and beliefs. It is through the exercise of our reflexive capacities that we become aware of those kinds of domination that work not primarily through 'external' hindrances – say, laws, threats or physical power – but through our own 'internal' acceptance of claims that serve particular interests. As Rostbøll notes, “not only external ‘physical’ obstacles – chains, imprisonment, enslavement – limit freedom but also such phenomena as manipulation, propaganda, and hegemonic domination that do not directly interfere with action but with desires and opinions” (Rostbøll 2008, 138-139). Furthermore, “[p]ressure for living a certain form of life comes not only from the state but also from mass culture, one’s parents, one’s religion, one’s partner, and also from one’s socio-economic condition” (Ibid., 166). Rostbøll therefore regards “[p]rocedural independence or the ability to think and decide for oneself” (Ibid., 167) as a precondition for living a non-dominated life, and for participating on equal terms in public and political affairs. Rostbøll also uses the term “internal autonomy” (Ibid., 136) to emphasize that we are dealing with a dimension of freedom that is not threatened directly by the external world, but by what he and Habermas calls “systematically distorted communication” (Habermas 1998, 16). According to Rostbøll, domination understood as ideology and indoctrination is hidden to the liberal theorist because liberalism is premised on a negative conception of freedom according to which I am free as long as no one directly interferes with my actions. For him, therefore, Habermas’ deliberative approach, but not Rawlsian political liberalism, addresses the need for a critical theory of internal autonomy or ‘reflexive freedom’ as I have called it:

Generally speaking, Rawls' view of freedom is indebted to a liberal tradition of toleration or accommodation (going back to Locke and Madison), while Habermas' stems from a critical tradition, in the lineage of Kant and Marx, that views freedom as a matter of enlightenment and emancipation from all forms of oppression, including those forms that originate from false consciousness. These different conceptions of freedom inform two very different understandings of the role and aim of deliberation: one of accommodating people with irreconcilable views and another of deliberation as a matter of *learning and emancipation* (Rostbøll 2008b, 708).

Immanuel Kant famously spoke about the “immaturity” that has become second nature “among such a large proportion of men”, namely the lack of will and courage to “think for themselves” (Kant 2004 [1784], 5). This lack, he argued, turns into domination because it is all too easy for others to set themselves up as “guardians” for those who are immature (Ibid., 5). However, what is important in relation to deliberative democracy is Kant's claim that it is difficult for an *individual* alone to liberate herself from this condition, whereas emancipation is unavoidable if the *public* is given freedom to critically discuss its own affairs: “There is more chance of an entire public enlightening itself. This is indeed almost inevitable, if only the public concerned is left in freedom” (Ibid., 5-6).⁹

Even though Habermas does not characterize anyone as immature, he is indebted to a Kantian understanding of enlightenment as emancipation from prejudice and uncritical thinking. Thus, in a critical comment on the difference between Rawlsian political liberalism and his own deliberative approach, he notes that “the democratic process is also a learning process, which gets blocked by a lacking sense of possibilities [fehlende Möglichkeitssinn]” (2012, 256).¹⁰ As I understand this claim, it means two things: on the one hand, the lack of reflexive freedom (the citizens' lacking capacity to reflect argumentatively upon validity claims) blocks the democratic process, that is, it blocks the forming of an enlightened political will through public deliberation. On the other hand, when the democratic process gets blocked or distorted, so does the reflexive freedom of the citizens: without a critical, well functioning public sphere, it becomes difficult or impossible for each of us to take an informed stance in matters of truth, morality, justice and the (common or individual) good. As Rostbøll notes, “I could not possibly form any political opinions without the information and advice I get from others, and I could not form any *enlightened* opinions without being challenged by others” (2008, 169). So reflexive freedom is related to democratic deliberation because the mutual exchange of reasons and arguments, questions and answers, is the primary medium through which we cultivate and exercise it, but also because deliberation requires some amount of reflexive freedom on behalf of the participants in order to work. If democratic deliberation is not simply about disclosing our pre-political *interests* but mainly about a mutual search for better *arguments*, then it also requires some

⁹ My translation.

¹⁰ My translation.

ability on behalf of the participants to take a critical look at (some of) their own beliefs and prejudices, and reflect upon the possible truth content of the claims made by others.

Another theorist who stresses the normative relevance of reflexivity and reflexive freedom is Cecile Laborde. In her study on the French hijab controversy, Laborde argues that all kinds of domination involve a denial of a person's (or group of persons') autonomy, that is, a denial of their ability for think for themselves and form their own opinion: "[w]hen we are dominated, we are either deprived of the ability to form our own perspective (we are indoctrinated, manipulated, socialized into submissive roles) or, if we possess the capacity, we are prevented from using it (we are silenced, humiliated, threatened)" (Laborde 2008, 154). Thus, Laborde understands autonomy as a basic human "capability" (Ibid., 155) that enables us to have "minimum discursive control" (Ibid., 155). For her, to have minimum discursive control is to be able to reflect upon one's own beliefs as well as upon power relations and the possibility that one is being manipulated: "[t]he capacity for ongoing rational reflection about one's beliefs and values is an effective way of detecting false or inadequately supported beliefs and identify the presence of inconsistent values, as well as being an important safeguard against exploitation and manipulation by others" (Ibid., 155). The reason why Laborde speaks about *minimum* discursive control is that we do not need to lead Socratic examined lives, that is, to maximize reflection through permanent questioning of our own beliefs and values, in order to be free in the sense that is relevant here. All we need is to have cultivated *enough* reflexive freedom to be able to reflect upon the legitimacy of those power structures and institutions that make claims on us, and to orient ourselves reflexively towards the common good in cases of political disagreement and conflict. As Laborde argues, this cultivation already takes place in public schools and education institutions, enabling what we may call civic education.

To sum up, the point of deliberation is not just to reach an agreement about the law and the constitution that all can accept, given their respective worldviews and interests, but also to liberate us from the narrowness of our own assumptions about the world, ourselves, and 'the other'. These assumptions may limit us in specific ways: they may appear to us as unchangeable facts even though they are fallible claims; they may cut us off from a range of possibilities or experiences in life because we have been lead to think that only one way of living is acceptable; or they may prevent us from entering into meaningful relationships with other people because we are trapped in stereotypical or fear-based illusions about what these people are like.

1.2 Political freedom

As already mentioned, reflexive freedom is internally related to democracy because democratic processes presuppose as well as produce reflexive freedom. However, the concern with political

freedom is not reducible to a concern with reflexive freedom – and vice-versa. Habermas therefore distinguishes between two “legitimacy components” of the democratic process: “[f]irst, the equal political participation of all citizens, which ensures that the addressees of the laws can also understand themselves to be the authors of these laws; and, second, the epistemic dimension of a deliberation that grounds the presumption of rationally acceptable outcomes” (2008, 212). Here, the inclusion of all citizens as co-authors of their own laws (which I refer to as political freedom) is not reduced to an instrument for the promotion of the ‘better argument’, that is, to its epistemic function in a cognitive learning process, but articulated as a legitimacy component in its own right, alongside the epistemic component (which refer to as reflexive freedom).

Political freedom is exercised in a democratic process that is ultimately oriented towards legitimate law making. On Habermas’ view, it is the democratic process as a whole – including the interactions between formal and informal bodies of deliberation – that allows us to consider positive (enacted) law as legitimate in the sense that it expresses the determinate and temporary outcome of an indeterminate process of public will- and opinion formation. We are politically free when we participate as authors or “co-legislators” (1998, 451) of the laws we obey, either directly or through representatives who speak in our name in the democratic public sphere. We are politically dominated when excluded from, or marginalized in, this process, that is, when forced to obey laws or political regulations over which we have no influence, with no real opportunity to affect the political process.

Habermas describes modern law as an action system fused with political power. The law enjoys a “presumption of legitimacy” (1998, 127) only to the extent that it is the outcome of a “discursive opinion- and will-formation that enables an exercise of political autonomy [or freedom] in accordance with political rights” (Ibid., 127). In order for the law to enjoy a presumption of legitimacy, the political rights of each citizen – such as the right to vote or to run for political office – must be effectively protected by the coercive sanctioning power of the state. Political rights, in order words, should be understood as an institutionalization of the ‘free floating’ potential of everyday communication. Such institutionalization is needed in order to protect the political process against contingencies such as unequally distributed social power or majoritarian discursive dominance:

Members of a legal community must be able to assume that in a free process of political opinion- and will-formation they themselves would also authorize the rules to which they are subject as addressees. To be sure, this process of legitimation must be included in the legal system. In view of the contingencies of formless, free-floating everyday communication, it is itself in need of legal institutionalization (Ibid., 38)

Political freedom is a variant of what Habermas ‘communicative freedom’, which implies that freedom is not just a matter of negative liberties but also of participating in discursive relations with

others. Cathrine Holst and Anders Molander, if I understand them correctly, downplay this ‘positive’ dimension of communicative freedom. Drawing partly on Habermas, Holst and Molander argue that what it means to be “free in a communicative sense” is to be able to say *no* to an utterance, which points to free speech as a “negative freedom” (Holst & Molander 2009, 44). I agree that the right to dissent or ‘say no’ is a central component in Habermas’ conception of freedom, and that this right is partly ‘negative’, understood as a right to speak without interference. However, Habermas’ conception of communicative freedom is not just negative, but also positive. If I am a member of a marginalized group that no one listens to, then it makes little sense to say that I am communicatively free, even though no one prevents me from ‘saying no’ in the public sphere. Communicative freedom presupposes that I am listened to and taken seriously as a participant in public discourse. In that sense, communicative (and political) freedom *presupposes* a right to free speech but also *transcends* it: it emerges only among subjects who respond discursively to each-other’s claims and utterances, and are oriented towards mutual understanding:

Communicative freedom exists only between actors who, adopting a performative attitude, want to reach an understanding with one another and expect one another to take positions on reciprocally raised validity claims. The fact that communicative freedom depends on an intersubjective relationship explains why this freedom is coupled with illocutionary obligations. One has the possibility of taking a yes or no position to a criticizable validity claim only if the other is willing to justify the claim raised by her speech act (1998, 119).

Habermas emphasizes that citizens’ political freedom is vulnerable to different kinds of inequalities, asymmetries, influences and distortions. The democratic procedure is vulnerable to “the repressive and exclusionary effects of unequally distributed social power, structural violence, and systematically distorted communication” (Ibid., 16). *Social power* refers to the “possibilities an actor has in social relationships to assert his own will and interests even against the will of others” (Ibid., 175), say, through financial pressure, advertising, media influence, ‘cultural capital’ or through the authority one has due to one’s social position or rank (for example based on one’s education or profession). Social power is something we have more or less of, compared to others, and something that can be used to influence the democratic process in many ways: “[b]usinesses, organizations, and pressure groups can, for example, transform their social power into political power (...) directly by influencing the administration or indirectly by manipulating public opinion” (Ibid., 175).

Habermas never really defines *structural violence*, but I think we may characterize it as any kind of systematic or institutionalized discrimination of particular segments of citizens, say, women, homosexuals, blacks, or religious minorities. *Systematically distorted communication*, finally, refers broadly to ‘internal constraints’ on communication, that is, ideologies, prejudices or sectarian views

that disturb the process of deliberation in a systematic way. Thus, on the Habermasian account I defend, working towards political freedom means working towards a real change in institutionalized patterns of unequal social power, structural violence, and systematic misrecognition.

1.3 Personal freedom

Habermas distinguishes between our roles as democratic citizens and our roles as private persons, corresponding to a distinction he makes between two kinds of autonomy or freedom: *public* and *private*. The previous section elaborated Habermas' notion of public autonomy, which I referred to as 'political freedom'. The present section deals with Habermas' notion of private autonomy, which I shall refer to as 'personal freedom'. I prefer the expression of personal freedom because it avoids the potential misunderstanding that private autonomy is 'private' in the sense of being detached from social bonds and relationships. 'Personal freedom' simply suggests that we have to do with the freedom of human persons to pursue non-political goals, alone or with others, without external interference. As I shall argue, however, this meaning of personal freedom has a negative as well as a positive component.

In its most basic and 'negative' sense, personal freedom refers to the ability of human subjects to act and make choices without external interference. This freedom is protected through modern law, which secures a private space of 'negative' opportunities and rights within which each person can pursue her individual goals and desires: "[m]odern law is constructed out of individual or 'subjective' rights that guarantee individual persons carefully circumscribed spaces of freedom, i.e. domains in which they can make free choices and pursue autonomous life plans" (Ibid., 90). Alongside the rights to life, property, freedom of conscience, freedom of movement, bodily integrity, freedom in the choice of one's vocation, the inviolability of one's home, and the right free assembly and association, the right to free speech is of course central among the classic negative liberties that modern states are required to respect and protect in their constitutions.

When forced to do or say things against our will, or when prevented from doing or saying things we desire to do or say, then our individual space of negative liberty is circumscribed, for example when we are physically threatened to remain silent in cases of political disagreement, or legally prevented from exercising our religious faith as we believe it should be exercised. In some cases, the external powers that limit our personal freedom are states or political institutions, in other cases, they are singular persons or groups, say, persons within the sub-cultural traditions in which we have been brought up. Of course, the mere fact that our personal liberties are circumscribed does not allow us to speak of dominance in a normatively relevant sense. The law does and should set limits for our behavior, namely when we behave in ways that are incompatible with the *equal* freedom of

others: “just those regulation are legitimate that satisfy the requirement that the rights of each be compatible with the equal right for all” (1998, 124).

For Habermas, the democratic constitutional state is supposed to leave it up to the citizens themselves to define what a good or successful human life is, and what it would be good for them to do (or say) in particular situations. Thus, it cannot define political participation as an ingredient of the good life, or expect citizens to care more about public matters than about their personal lives. Put differently, modern law releases citizens from the burden of public deliberation by allowing them to *withdraw* from communication and concentrate on the realization of private life-plans, such as the pursuit of a specific conception of the good, or the pursuit of material and economic interests, dictated by purposive rationality (1998, 120).

However, in my view, just like the category of political freedom, the category of personal freedom has a positive as well as a negative component. This provides me with another reason for using the term of ‘personal freedom’ instead of ‘private autonomy’: while private autonomy is mostly (and also by Habermas) conceived of in terms of negative rights (‘freedom from’), my understanding of personal freedom implies an additional concern with the subjects’ *actual ability to make use of negative liberties* (‘freedom to’). When it comes to issues of multiculturalism, this concern takes the form of a concern with what Habermas describes as the ‘positive freedom of the ethical person’, that is, the actual ability to realize a particular conception of the good in a conscious and self-responsible way. For Habermas, ethical freedom in this sense cannot be established by negative legal rights, but it nevertheless presupposes such rights:

[T]he principle of legal freedom directly *guarantees* the negatively defined latitude for the pursuit of one’s own interests. At the same time, however, it *enables* an autonomous conduct of life in the ethical sense of pursuing one’s own conception of the good, which is the sense associated with ‘independence’, ‘self-responsibility’, and the ‘free development’ of one’s personality. One realizes the positive freedom of the ethical person by consciously living out one’s individual life. Such freedom is manifested in those core private domains where, at the level of simple interactions, the life histories of members of an intersubjectively shared lifeworld are intertwined with common traditions. As ethical, this freedom escapes legal regulation, but it is made possible by legal freedom (1998, 399).

So just like political freedom, personal freedom needs legal protection but is not reducible to such protection. There may be economic, social, cultural or psychological reasons why an individual is unable to realize her conception of the good – that is, to her realize her personal freedom in a full sense – even though she has a legal right to do so. In part IV of this thesis, I discuss in further detail how the ethical freedom to pursue a conception of the good may be distorted through different forms of public misrecognition, group stigmatization, and hate speech. The point is that these distortions do

not necessarily attack the legal rights of the culturally embedded person, but rather attack the social and cognitive preconditions for her ability actively realize personal freedom in a successful way.

1.4 The co-originality of personal and political freedom

Habermas associates political freedom with classical republicanism, and personal freedom with classical liberalism. Republicanism, going back to Aristotle and continuing through renaissance humanism, regards freedom as the collective self-legislation of a political community: citizens are free as long as they actively determine their own laws in a political process. Republicanism therefore emphasizes political participation, democracy and the public exercise of political virtues (Ibid., 270). Because republicanism understands freedom as a public-political achievement, not as a private right, Habermas refers to the republican conception of freedom as “political freedom” (Ibid., 98) or “public autonomy” (Ibid., 104).

Classical liberalism, going back to Locke and the contract theoretical tradition, emphasizes citizens’ pre-political liberties *vis-à-vis* the state and other citizens: “[l]iberals have stressed the ‘liberties of the moderns’: liberty of belief and conscience, the protection of life, personal liberty, and property – in sum, the core of subjective private rights” (2000, 68). On this account, freedom means that each citizen has a ‘negative’ right to make personal choices and act according to her own preferences and beliefs without interference. Because liberal rights are possessed by individual subjects as ‘private’ or pre-political persons, and because they include a basic right to *withdraw* from political participation and concentrate on the pleasures and activities of personal life (family, friendships, work, personal self-realization, etc.), Habermas refers to the liberal conception of freedom as “private autonomy” (1998, 120).

One of the most central claims in Habermas’ political philosophy is that his discourse theory is finally able to integrate these two conceptions of freedom or autonomy – public and private – which have been competing for dominance in Western political thought. According to him, his model demonstrates that public and private autonomy are in fact mutually dependent and “co-original” (Ibid., 414), meaning that none of them is to be given priority because each constitute and presuppose the other. On the one hand, citizens can only make adequate use of their public autonomy if they are sufficiently independent as private persons. Being able to participate in the political process on fair and equal terms presupposes a wide spectrum of personal liberties and rights, including the right to life and property, free speech, freedom of conscience and belief, etc. On the other hand, defining and politically implementing private autonomy (and its limits) is always a controversial matter. For example, where does the right to free speech end and the right to be protected against hate speech, defamation and threats begin? Does religious freedom imply a right to

wear the hijab at work or in school, or a right to make one's children wear it? How do we balance the right of parents to religiously educate their children against the right of children to make up their own minds in matters of faith and conscience? According to the deliberative approach, such questions must be addressed by those affected – *the citizens* – in ongoing processes of democratic discussion and contestation. The co-originality of private and public autonomy is therefore given by the democratic procedure itself:

[The democratic process] must simultaneously secure the private and public autonomy of legal subjects. This is because individual private rights cannot even be adequately formulated, let alone politically implemented, if those affected have not first engaged in public discussions to clarify which features are relevant in treating typical cases as alike or different, and then mobilized communicative power for the consideration of their newly interpreted needs (Ibid., 450).

According to Habermas, the republican model rightly emphasizes public autonomy and political participation: “it preserves the radical democratic meaning of a society that organizes itself through the communicatively united citizens” (2000, 244). The liberal model, furthermore, rightly invokes the danger of tyrannical majorities and defends the inviolability of basic human rights. However, instead of seeing public and private autonomy as mutually constitutive and dependent, liberalism overemphasizes private autonomy at the expense of public autonomy, and republicanism does the opposite. According to Habermas, liberalism defends a moral understanding of human rights which has problematic implications for the exercise of political autonomy: “[t]he addressees of the law would not be able to understand themselves as its authors if the legislator were to discover human rights as pre-given moral facts that merely needed to be enacted by positive law” (1998, 454). Republicanism, by contrast, gives the idea of public autonomy an overly substantive interpretation in so far as popular sovereignty is viewed in terms of expressing the ethical self-understanding of the political community (the ‘ethical’ refers to substantive values and conceptions of ‘the good’): “[t]he mistake of the republican view consists in an ethical foreshortening of political discourse” (2000, 244). Habermas therefore proposes an interpretation of the relationship between private and public autonomy that avoids liberalism’s *moral* foreshortening – and republicanism’s *ethical* foreshortening – of the democratic process.

Habermas attempts to take a middle path between liberalism, on the one hand, and republicanism and communitarianism, on the other. He does this by arguing that the legitimacy of laws and rights consists neither in their correspondence with a set of predefined human rights (liberalism), nor in their correspondence with a pre-defined ethical-political identity (communitarianism and republicanism). Rather, the legitimacy of laws and rights consists in the *way* in which they have come about, namely as the result of a democratic process of opinion- and will-

formation. Habermas therefore argues that his model integrates public and private autonomy as equally primordial and important. Without private autonomy, the democratic process would be illegitimate because there would not *exist* a community of free and equal citizens who could deliberate. Without public autonomy, regulations of private autonomy would be *imposed* on the citizens in an undemocratic manner.

Habermas furthermore presents a model of basic rights that he claims gives equal weight to private and public autonomy. This model “should contain precisely the rights citizens must confer on one another if they want to legitimately regulate their life in common by means of positive law” (1998, 122). On the one hand, Habermas lists three abstract categories of personal freedom that he maintains are conceptually presupposed by the very idea of democratic self-rule. These categories are listed as 1, 2 and 3 below. On the other hand, these categories do not yet contain the concrete content of particular rights, such as freedom of speech or freedom of religion. Citizens must define this content themselves in a democratic procedure, which is why a fourth category of political rights is added. Finally, Habermas adds a fifth category that pertains to the level of living conditions that is required if citizens are to make proper use of the first four categories:

1. Basic rights that result from the politically autonomous elaboration of the *right to the greatest possible measure of equal individual liberties*.
2. Basic rights that result from the politically autonomous elaboration of the *status of a member* in a voluntary association of consociates under law.
3. Basic rights that result immediately from the *actionability* of rights and from the politically autonomous elaboration of individual *legal protection*.
4. Basic rights to equal opportunities to participate in the process of opinion and will-formation, in which citizens exercise their *political autonomy* and through which they generate legitimate law.
5. Basic rights to the provision of living conditions that are socially, technologically, and ecologically safeguarded, insofar as the current circumstances make this necessary, if citizens are to have equal opportunities to utilize the civil rights listed in (1) to (4); (Ibid., 122- 123).

Point 5 makes the valid point that the citizens’ opportunities to actually make use of their civil rights are dependent on living circumstances and socio-material conditions, including a basic level of education and economic safety. For most people, taking care of a family and a full time minimum wage job (or two jobs) is not compatible with participating in political debates and influencing public opinion through free speech. Thus, as Martha Nussbaum puts it, all our basic human capabilities have an economic or material dimension: “even the freedom of speech requires education, adequate nutrition, etc.” (Nussbaum 2004, 13).

So, according to Habermas, we must fill the abstract right to ‘the greatest possible measure of individual liberties’ with concrete content by exercising our political freedom: “the basic rights (...) remain *unsaturated*, so to speak. They must be *interpreted* and given *concrete shape* by a political

legislature in response to changing circumstances (1998, 125). As I understand Habermas, ‘saturating’ the abstract right to individual liberty with concrete content does not necessarily mean to *restrict* it. For example, the democratic interpretation of free speech may end up with a legal form that has very few restrictions on public speech. This outcome is legitimate if – and only if – it emanates from an inclusive democratic process: those who wish to forbid, say, hate speech, pornographic material, religious blasphemy, or expressions of sympathy with terrorist groups, must be heard and argued with before public opinion can decide that restrictions are unjustifiable. In other words, legally enshrined free speech guarantees are legitimate only to the extent that they result from a ‘politically autonomous elaboration’ of the domain of personal freedom.

What interests me in the rest of this work are the implications of Habermas’ understanding of freedom for his approach to multiculturalism and (the use of) free speech. In the following chapter, I look in more detail at Habermas’ deliberative multiculturalism and the way in which it integrates the three dimensions of freedom: reflexive, political and personal. When it comes to the thesis of co-originality, as presented in this section, I shall argue that it is appealing in as well as problematic. It is appealing because it invites cultural minorities and marginalized groups to contribute as ‘co-authors’ to the definition of personal freedom and its limits, thus avoiding a paternalistic or moralistic defense of ‘unquestionable’ rights and liberties. Seeing our personal liberties not as ‘pre-given moral facts’ but as results of an open and inclusive discussion makes it possible to conceive of the system of rights as *difference-sensible*, that is, a sensible to the beliefs and needs of diverse citizens with distinct identities, interests and conceptions of the good. However, the thesis of co-originality may also be problematic. Without further modification, the thesis seems to be compatible with a variety of more or less liberal interpretations of the five categories of rights, i.e. when it comes to interpretations of the right to free speech. I shall characterize this as the problem of democratic relativism’.

2 Freedom and multiculturalism

Multiculturalism is an ambiguous term, both among its critics and defenders. However, it seems fair to say that deliberative democrats are multiculturalists in the sense that they accept the facts of pluralism and deep diversity within the constitutional democratic state. Accepting the fact of pluralism means to recognize cultural diversity as an empirical fact of contemporary socio-political reality, a fact that is related to opportunities and promises but also to challenges and conflicts. However, the deliberative response to diversity also has a normative side, in the sense that it points towards a society in which laws and policies do not privilege any particular lifestyles or cultural

groups. Ideally, on the deliberative model, political regulations are expressions of symmetrical recognition and communication between members of different identity groups, not manifestations of the identity of one particular group.

Since his first writings on deliberative democracy and multiculturalism (e.g. 1994 and 1998) Habermas has elaborated his approach and applied it more systematically to issues of religion, toleration, secularism and ‘Islam in Europe’. In this chapter, I reconstruct Habermas’ deliberative multiculturalism in light of the three dimensions of freedom presented in the previous chapter: reflexive, political and personal. I also demonstrate how Habermas understands his own position as a third way between ‘strong multiculturalism’, on the one hand, and ‘colorblind’ liberalism’, on the other. Habermas associates strong multiculturalism with communitarianism, group rights, and republicanism. By contrast, he associates colorblind liberalism with a rigid application of the system of liberal rights, which is insensitive to cultural difference and diversity. What strong multiculturalism and colorblind liberalism have in common, however, is a flawed or reduced understanding of freedom, and in particular a failure to understand how personal and political freedom are mutually constitutive and co-original.

2.1 Multiculturalism and reflexive freedom

Habermas’ main reference when discussing strong multiculturalism is Charles Taylor. Taylor is known for arguing that cultural groups have a legitimate claim to recognition, not just in the ‘ordinary’ liberal sense that their individual members have the same rights and liberties as everyone else, but also in the more demanding sense that their right to be *different* should be accommodated by the state. For Taylor, the right to difference calls for “some variations in the kinds of law we deem permissible from one cultural context to another” (Taylor 1994, 61). His main example of such variation is the Quebec case in Canada. Quebecers who identify themselves with French language and culture have special rights *as a group* that other citizens do not have; i.e. the law forbids immigrants and francophone Canadians to send their children to English-language schools, it requires companies with more than 50 employees to use French as their official language, and it forbids certain kinds of commercial signage. Such legislation, Taylor argues, challenges the dominant form of egalitarian liberalism, which insists on uniform application of legal rights, and which is suspicious of collective cultural goals. The ‘politics of difference’, by contrast, sometimes treats people (and cultures) differently in order to attain equality, i.e. in order for francophone Canadians to have the same opportunity to preserve their cultural heritage as anglophone ones. For Taylor, this is justified because the right to difference implies a duty on behalf of the democratic state to actively protect the *future survival* of vulnerable groups:

One could consider the French language, for instance, as a collective resource that individuals might want to make use of, and act for its preservation just as you do for clean air or green spaces. But this can't capture the full thrust of policies designed for cultural survival. It is not just a matter of having the French language available for those who choose it (...) But it also involves making sure that there is a community of people in the future that will want to avail itself of the opportunity to use the French language. Policies aimed at survival actively seek to *create* members of the community, for instance, in their assuring that future generations continue to identify as French-speakers" (Ibid., 58).

Habermas is not very specific about his views concerning the particular rights Taylor is willing to defend for French speaking Quebecers. However, one of the things that worry Habermas about Taylor's position is that it may inhibit the freedom of the individual members of those cultural groups whose survival Taylor wants to guarantee. According to Habermas, Taylor "attacks the [liberal] principles themselves and calls into question the individualistic core of the modern conception of freedom" (Habermas 1994, 109). The individualistic core of the modern conception of freedom has, as we have seen, a reflexive, political and personal dimension: in all three dimensions, the freedom we want to protect and cultivate is the freedom of *human individuals*, not the freedom of groups or communities as such. Habermas believes that Taylor's position in particular, and strong multiculturalism in general, may lead to a suppression of reflexive freedom because it encourages an unreflexive or 'unconscious' continuation of cultural traditions:

The critique of strong multiculturalism boils down to the fact that the principle of civic equality confronts all cultural groups with the normative expectation that their members should not just become unconsciously accustomed to traditional convictions and practices, *but should be taught to appropriate a tradition in a reflexive way* (2008, 303, my emphasis).

My aim here is not to discuss whether this is a good critique of Taylor. I use Taylor's example primarily to present Habermas' own appeal to reflexivity and the right of persons to a 'conscious' appropriation of her own tradition(s). According to Habermas, cultural traditions must be able to reflexively sustain themselves by way of *conscious appropriation* by its own members. The state can provide the institutional framework (the rights and opportunities) for such appropriation, but it cannot *guarantee* survival. If the state tries to guarantee survival through a comprehensive system of cultural rights, exemptions and protections, then it robs the members of the respective groups of the freedom to reflexively say 'yes or no' to their own traditions:

The constitutional state can make this hermeneutic achievement of the cultural reproduction of lifeworlds possible, but it cannot guarantee it. For to guarantee survival would necessarily rob the members of the very freedom to say yes or no that is necessary if they are to appropriate and preserve their cultural heritage. When a culture has become reflexive, the only traditions and forms of life that

can sustain themselves are those that *bind* their members, while at the same time allowing members to subject the traditions to critical examination and leaving later generations the *option* of learning from other traditions or converting and setting out for other shores (Ibid., 130).

In this passage, Habermas ties reflexivity to the option of ‘learning from other traditions’, which in itself provides a kind of epistemic argument in favor of cultural pluralism. If the conscious appropriation of our own tradition is premised on the option of learning from other traditions, then we should want to live in societies in which there are truly ‘others’ around, and not just ‘others like ourselves’. Furthermore, in the above passage, Habermas ties reflexive freedom to what he and others refer to as “the right to exit” (Habermas 2008, 303) or “freedom of exit” (Benhabib 2002, 19), that is, the right to completely break with a cultural group or tradition and set out for ‘other shores’, for example through apostasy or religious conversion. In itself, the freedom to leave a cultural group is an example of personal rather than reflexive freedom. However, the two are still closely connected in the sense that one way of preventing members from leaving a group, or even *thinking* about leaving it, is to suppress the free flow of communication within the group, or between members and non-members. If members of a cultural group are taught that questioning their own assumptions and values is a sin, or a sign of moral weakness, then it may matter little that they have a juridical right to free speech. The ability to question one’s social roles requires a *de facto* and not just a *de jure* opportunity to speak without sanctions such as social ostracism or threats, also when one’s family or social environment dislike the things one has to say. As Kymlicka puts it: “to inhibit people from questioning their inherited social roles can condemn them to unsatisfying, even oppressive lives” (1995, 92).

For Habermas, the paradigmatic counterpart to the reflexive attitude of modernity is religious fundamentalism. Fundamentalists try to give their lifeworld “ultrastability” (1994, 132) by making it immune to change and critical revision, and they reject what Rawls calls the ‘burdens of judgment’:

[Fundamentalism] claims exclusiveness for a privileged way of life. Such conceptions lack an awareness of the fallibility of their claims, as well as respect for the ‘burdens of reason’ (Rawls). (...) [F]undamentalist worldviews are dogmatic in the sense that they leave no room for reflection on their relationship with the other worldviews (...). They leave no room for ‘reasonable disagreement’ (Habermas 1994, 133).

For Rawls, recognizing the burdens of judgment means recognizing the sources and causes of reasonable disagreement, that is, the “grave difficulties of making correct judgments of rationality” (Rawls 2005, 56). These difficulties are related to the fact that reasonable persons disagree on how evidence should be assessed, how different considerations should be weighted, how a given concept should be understood, and so forth. Knowing this, reasonable political opponents recognize that,

sometimes, “there are different kinds of normative consideration on both sides of an issue and it is difficult to make an overall assessment” (Rawls 2005, 57). Fundamentalists, by contrast, reject that political disagreements can be reasonable, and, correspondingly, they insist on the direct and unconditional political implementation of their own religious doctrines(s).

We should not confuse fundamentalism with dogmatism and orthodoxy. Every religious doctrine is based on a kernel of belief. (...) Such orthodoxy first veers toward fundamentalism when the guardians and representatives of true faith ignore the epistemic situation of a pluralist society and insist – even to the point of violence – on the universally binding character and political acceptance of their doctrine (2003, 31).

It seems uncontroversial to reject the ‘frozen’ fundamentalist mentality and its insistence that particular religious doctrines are universally binding in a political sense. However, does this rejection justify a general normative commitment to cultural reflection and self-reflection? Habermas does not seem to worry about the criticism that some political liberals have leveled against using reflexivity as a normative standard in political theory. Liberals such as Rawls and Charles Larmore believe that appeals to comprehensive conceptions of “what is of value in human life, as well as ideals of personal virtue and character” are incompatible with fully recognizing the fact of pluralism (Rawls 2005, 174). In other words, accepting the burdens of judgments as a condition for reasonable political disagreement should not lead us defend critical reflection more generally as a human value or as a character ideal. A liberal political theory should present itself as a candidate for an overlapping consensus among different worldviews and traditions. Even though they are not fundamentalist (i.e. because they accept basic norms of tolerance and democratic participation for everybody), some of these traditions may not value reflection and ‘reflexive freedom’ at all.

I agree that the concern with reflexivity should not be articulated (by political philosophy) in terms of a comprehensive liberal or philosophical doctrine of the good. In Habermas’ words, the deliberative model is ‘post-metaphysical’ in the sense that it makes no claims about what a good or successful life is, what man’s place in the universe is, and so forth. According to his own self-understanding, Habermas restricts himself to making claims about justice, impartiality and the basic presuppositions of human rationality. The implicit norms of equality and inclusion which Habermas believes to have uncovered through his analysis of communicative rationality are thought to be present in all cultures, and all sociocultural contexts, though in different forms and to different degrees. Thus, “there is no form of sociocultural life that is not at least implicitly geared to maintaining communicative action by means of argument, be the actual form of argumentation ever so rudimentary and the institutionalization of discursive consensus building ever so inchoate” (1990, 100).

However, for liberals like Larmore and Rawls, appealing to a ‘self-conscious’ and ‘self-reflexive’ appropriation of cultural traditions moves beyond the basic norms of tolerance and fair cooperation that all citizens can be expected to share in a liberal democracy, that is, it postulates something about how citizens should live their lives and optimize their individual freedom. On this background, the normative concern with reflexive freedom may seem to come close to a version of ‘comprehensive liberalism’ in Rawls’ and Larmore’s sense. “From John Locke’s time to our own”, writes Larmore, “[comprehensive] liberal thinkers have generally presented their political philosophy in terms of a full-scale individualism, urging a *critical detachment toward inherited forms of belief and cultural traditions*” (1999, 602-603, emphasis added).

Deliberative democrats respect the pluralism of identities and lifestyles in modern societies, that is, they do not claim that we should all live Socratic examined lives, that reflexivity necessarily increases human happiness, or that reflexive freedom should always be optimized and prioritized in our individual lives. The deliberative model is supposed to have what Habermas calls “transcultural binding force” (2008, 88), that is, it should be able to gain the support of different groups and sub-groups within the political community. In that sense, like Rawlsian political liberals, deliberative democrats also appeal to principles that (they hope) can be recognized within “those conceptions of life which refuse to accord supreme value to critical reflection and call instead upon forms of moral allegiance that are rooted in a sentiment of belonging” (Larmore 1999, 23).

However, as Rostbøll has shown, appealing to autonomy and reflexivity does not necessarily entail appealing to a character ideal or a comprehensive conception of the good, as understood by Rawls and Larmore. First, Rostbøll argues, there is a difference between seeing critical reflection as a good in itself, and regarding it as a necessary condition for something else, i.e. democratic deliberation. I agree with Rostbøll that political liberals cannot avoid appealing to critical reflection in the latter sense. Political liberals appeal to ideals of equal respect and civilized deliberation among diverse citizens and groups, but neither respect nor civilized deliberation would be possible if the participants could not take a reflexive attitude to their own beliefs and conceptions of the good. We need a minimal degree of reflexivity in order to understand that others do not share our conception of the good, and in order to deal with this disagreement in a fair and communicative way.

As I understand Habermas, the appeal to reflexivity is instrumental in Rostbøll’s sense, not comprehensive in Rawls’ and Larmore’s sense. Reflexivity is required if members of different traditions and identity groups are to be able to deliberate in a minimally successful way, especially in cases of political or moral disagreement. If we are unwilling or unable to consider any arguments that challenge our own views, then it is difficult to see how we participate successfully in deliberative politics. Without some cultivation of reflexive freedom, political adversaries would not

be able to orient themselves towards mutual understanding and fair compromise in cases of disagreement:

Reaching mutual understanding through discourse indeed guarantees that issues, reasons, and information are handled reasonably, but such understanding still depends on contexts characterized by a capacity for learning, both at the cultural and the personal level. In this respect, dogmatic worldviews and rigid patterns of socialization can block a discursive ‘mode of socialization’ (Habermas 1998, 324-325).

Habermas’ deliberative multiculturalism rests on the premise that some kind of (abstract, temporary) mutual understanding can be reached across cultural and religious divides. However, such understanding may be blocked by unreflexive or rigid worldviews and socialization patterns, that is, by a lack of what I have called reflexive freedom. In that sense, minimum reflexive freedom is a presupposition for “civilized debate among convictions, in which one party can recognize the other parties as co-combatants in the search for authentic truths without sacrificing its own claims to validity” (1994, 133).

As the latter quote makes clear, asking culturally attached individuals to take a reflexive attitude does not imply asking them to ‘sacrifice their own validity claims’, say, their belief in God, their Catholic self-identity, or their commitment to a particular ethical-existential way of life. What reflexivity requires of us as democratic citizens is that we do not assume infallibility in moral and political disputes, that is, in disputes about the laws and regulations that affect everybody’s lives. That does not entail full-blown Socratic self-examination, but it does entail a willingness to deliberate with others in a fallibilistic spirit, and sometimes to revise or modify particular views we hold.

2.2 Multiculturalism and personal freedom

There is another aspect of Habermas’ critique of (Taylor’s) strong multiculturalism, which has more to do with the legal protection of personal freedom than with reflexive freedom. As we have already seen, Taylor is willing to defend some forms of cultural group rights in order to secure the future survival of threatened cultural groups. Habermas is not against cultural rights and exemptions as such, but he argues against Taylor that such rights are justified only to the extent that they protect the personal freedom of individuals to form and pursue a conception of the good, not the freedom of cultural groups to restrict the behavior of their own members. If cultural rights are justified in terms of concern with the survival of cultural groups – as Taylor does – the implementation of these rights may lead to oppression *within* cultural groups: “Collective rights that strengthen a group, not in order to protect the cultural rights of its individual members, but in order to support the continued

existence of the cultural background of the collectivity directly, have the potential to promote internal repression” (2008, 301). In these cases, cultural authorities, spokespersons or elites may “use their expanded organizational rights and competences to stabilize the collective identity of the group, even if it entails violating the individual rights of dissenting members of the group” (Ibid., 297).

According to Habermas, Taylor operates with an artificial conflict between a concern for cultural particularity and the ‘politics of difference’, on the one hand, and a commitment to equal rights and liberties, on the other. Taylor wrongly assumes that the modern notion of equal freedom – emphasizing the same rights and liberties for all – must come into conflict with the requirement of cultural recognition. According to Taylor, the “liberalism of rights”, as defended by Rawls, Habermas and Ronald Dworkin, is “inhospitable to difference, because (a) it insists on uniform application of the rules defining these rights, without exception, and (b) it is suspicious of collective goals” (Taylor 1994, 60). Taylor refers to this form of liberalism as ‘liberalism 1’, but he also argues that a different kind of liberalism – ‘liberalism 2’ – is conceivable. This second form of liberalism, which he defends, is willing to balance the need for equal rights and liberties with the importance of cultural survival and recognition, and it “sometimes [opts] in favor of the latter” (Ibid., 61). Taylor’s ‘liberalism 2’ does operate with a notion of basic human rights and liberties – such as the right to life or to free speech – which are non-negotiable and equal for all. However, at the same time, it distinguishes these basic rights (which must be applied in a uniform manner) from not so basic rights (which can be applied differently in different contexts), say, the right speak one’s mother tongue in the workplace. He therefore concludes that his liberalism is not procedural in the style of Rawls and Habermas, because it is “grounded very much on judgements about what makes a good life – judgements in which the integrity of cultures has an important place” (Ibid., 61).

I agree with Habermas that cultural exemptions or rights, to the degree that they are justified, are better justified by appealing to equal freedom(s) than to a particular conception of the good. It is unclear why Taylor needs to assume anything about the good life in order to argue that, in some cases, cultural minorities have legitimate claims to special treatment, say, when it comes to the food served in kindergartens or dress codes in he workplace. To the degree that I am willing to defend such rights, this is because I am concerned with the equal opportunity to form and realize a conception of the good, not because I defend a particular vision of the good life or undistorted self-realization.

Habermas’ appeal to personal freedom justifies two kinds of rights: the right to *belong* to a cultural tradition, without suffering from discrimination or stigmatization, and the right to *break with* or *critically reform* the tradition we already belong to:

In multicultural societies the coexistence of forms of life with equal rights means ensuring every citizen the right to grow up within the world of cultural heritage and to have his or her children grow up in it without suffering discrimination because of it. It means the opportunity to confront this and every other culture and to perpetuate it in its conventional form or transform it; as well as the opportunity to turn away from its commands with indifference or break with it self-critically and then live spurred on by having made a conscious break with tradition, or even with a divided identity (Habermas 1994, 132).

This position reminds somewhat of Will Kymlicka's distinction between "external protections" and "internal restrictions" (1995, 35-44). By external protections, Kymlicka refers to cultural rights that are given to members of particular groups in order to grant them the same opportunities as everyone else, for example as when Norwegian authorities grant Sami parents the right to send their children to Sami speaking schools in order to provide them with the same opportunity to use their own mother tongue as ethnic Norwegians have. Such protections are legitimate, Kymlicka argues, especially when it comes to 'national minorities', that is, members of colonized nations who were historically integrated by force, such as the Sami people in Norway or Sweden, Native Americans in the US, or the Eskimos in Greenland.¹¹ Habermas seemingly agrees with Kymlicka on this point: "In arguing for their support, endangered indigenous cultures can advance special moral reasons arising from the history of a country that has been appropriated by the majority culture" (1994, 129). Internal restrictions, by contrast, are restrictions imposed on individual members of a cultural group by cultural leaders or authorities. Such restrictions occur when limitations are imposed on lifestyle choices or marriage, apostasy and exit, free speech and critical debate, or when practices such as female genital circumcision are carried out despite the grave personal costs to the victims.

But how can we, in concrete cases, balance the concern with external protection against the risk of internal repression? How can we decide whether cultural rights protect vulnerable minorities against majoritarian pressure, or whether they facilitate internal dominance? Some critics of multiculturalism argue that *any* attempt at cultural accommodation tends to lead to internal repression, in particular when it comes to the status of women and children. Susan Moller Okin, for example, argues that multiculturalism is incompatible with feminism (understood as a normative commitment to the equal rights and dignity of women). This is because, she argues, most cultures are "suffused with [inegalitarian] practices and ideologies concerning gender" and characterized by "fairly clear disparities in power between men the sexes, such that the more powerful, male members are those who are generally in a position to determine and articulate the groups interests, needs, and desires" (Okin 1999, 12). Habermas agrees with feminists such as Okin that women and children are

¹¹ For a discussion of the Sami case in relation issues of education and (mis)recognition in Norway, see Jakobsen 2011.

often the first victims when personal freedom is suppressed by ‘guardians of orthodoxy’ within a cultural group:

When the communal life of religious groups is determined by a ‘law’ that is guarded and interpreted literally by guardians of orthodoxy (as it is in Islamic countries and in Israel, for example), and when religious law supplements or even replaces civil law, especially within the sphere of the family, women and children in particular are exposed to repression by their own authorities. Given the ‘special power relations’ within the family, even the secular rights enjoyed by parents in Western countries can lead to similar conflicts (for example, when Turkish fathers keep their daughters out of coeducational physical education in public schools). (2008, 297-298).

On Habermas’ view, however, the solution is not to avoid cultural accommodation and sensitivity all together, as Okin seems to suggest, but to include the potential victims of repression in a conversation about the best way to protect them against dominance. Habermas therefore appeals to citizens’ *political freedom* – and to the co-originality of personal and political freedom – when explaining how we should approach controversies over cultural rights and exemptions.

2.3 Multiculturalism, political freedom and co-originality

According to Habermas, it is only the democratic process itself, which is able to reconcile the universal claims of liberal democracy with the particular claims of cultural groups. On the one hand, the democratic process must include all participants as free and equal regardless of culture, religious belief, ethnicity, social status, gender etc. (universalism). On the other hand, if the democratic process proceeds along the lines of a rational discourse, it ‘gently’ forces the participants to take each-others perspectives and listen to each-other *as* situated and embodied persons with particular identities, values, traditions, experiences, beliefs, etc. (particularism). Only through deliberation oriented towards mutual understanding can we find out what *in fact* – and not just in our own imagination – is universal in the sense of being acceptable to all, given everyone’s particular interest and beliefs.

Through democratic deliberation, Habermas argues, diverse citizens can work out a culturally sensitive interpretation of the system of rights. He therefore refuses to see a conflict between a defense of individual rights, on the one hand, and a concern with cultural sensitivity and recognition of difference, on the other: “[If Taylor’s] selective reading of the theory of rights is corrected to include a democratic understanding of the actualization of basic rights, there is no need to contrast a truncated version of Liberalism 1 with a model that introduces a notion of collective rights that is alien to the system” (1994, 116).

However, Habermas' deliberative multiculturalism not only implies a critique of strong multiculturalism and its appeal to collective rights, it also implies a critique of rigid or 'colorblind' liberalism. Colorblind liberalism overemphasizes private liberties and ignores the need for ongoing deliberation about the correct definition and understanding of these liberties: it is "paternalistic in that it *ignores half the concept of autonomy*" (Ibid., 112, my emphasis). In other words, colorblind liberalism fails to understand that personal and political freedom are co-original and mutually constitutive, and by this, it makes itself blind to cultural difference (as we have seen, it is only through the exercise of political freedom that the relevance of cultural differences for the implementation of equal rights is discovered).

By stressing the need for a deliberative actualization of basic rights (and their limits), Habermas also wants to draw attention to majoritarian domination and discrimination within existing liberal democracies. "The challenge of multiculturalism", Habermas writes, is that "discrimination takes place within the framework of a broadly legitimate state and takes the more subtle form of domination by a majority culture that has merged with the general political culture" (2000, preface, xxxvii). In other words, even if the political institutions and practices of existing liberal democracies are 'broadly legitimate' in a way that dictatorships or illiberal states are not, majoritarian dominance can nevertheless permeate the democratic process and the institutions of the state, sometimes under the banners freedom and equality themselves. In particular, Habermas believes that the religious freedom of cultural minorities is under pressure in different ways in contemporary Europe. This is because the 'cultural substance' that permeates the majority's interpretation of liberal democratic norms infiltrates national constitutions in ways that privileges particular interests and lifestyles over others:

Freedom of religion tests the neutrality of the state. The latter is often jeopardized by the predominance of a majority culture that abuses its historically acquired power of definition to lay down what shall count as the generally binding political culture in a pluralistic society according to its own standards. This intact fusion can lead to a gradual infiltration of an essentially procedural constitution by cultural substance (2008, 265).

The fact of majoritarian cultural dominance points to the need for more inclusion, more voice, and better opportunities for democratic participation, for cultural minorities and marginalized groups. Sometimes, minorities may have to turn to civil disobedience in order to receive public attention. Civil obedience, Habermas writes, is a "litmus test" according to which the democratic state's ability to deal tolerantly and self-reflexively with dissent can be measured (Ibid., 257). Recognizing civil disobedience as a legitimate form of self-expression within the constitutional state does not mean to exempt it from punishment, but rather to give dissidents a chance to convince fellow citizens that the

current interpretation of the constitution is in need of revision or improvement: “dissidents, who could ultimately prove to be enemies of the constitution, nevertheless have an opportunity to contradict this appearance and prove themselves to be true constitutional patriots, that is, champions of a constitution understood in dynamic terms as an on-going *project*” (Ibid., 256). This view of course presupposes that the disobedient citizens are willing to justify themselves deliberatively, that is, through argumentation that is oriented towards mutual understanding, rather than appealing to idiosyncratic or sectarian goals (see my discussions in part IV.3 on the use of religious reasons in public deliberation).

Finishing this chapter (and part) of the thesis, I conclude that Habermas’ deliberative multiculturalism is analytically rich and normatively forceful. It addresses three distinct but interrelated dimensions of human freedom, and – correspondingly – three domains of cultural *dominance*: of our reflexive capabilities, of the political process, and of our personal choices and lifestyles. Nevertheless, as mentioned in the introduction, I also believe that Habermas’ approach faces some systematic problems, which are related to the argumentative infrastructure of his theory. At the beginning of part III, I address two such problems: the problem with *exaggerated proceduralism*, and the problem with *rational consensus*. As I shall argue, both problems must be overcome in order to give a convincing justification of the right to free speech on Habermasian terms.

III JUSTIFYING FREE SPEECH

Free speech is one of the core normative principles of any liberal democracy. Many citizens, myself included, regard free speech as integral to who they are and the kind of society they wish to live in. Understood as a human right, free speech is justified in moral terms in international covenants and declarations, such as article 19 of the Universal Declaration of Human Rights, which states that: “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. In constitutional democracies, furthermore, free speech takes the form of positive law and has the status of a constitutional right (Holst & Molander 2009, 35).

At the same time, the use and misuse of free speech continues to stir up controversy and disagreement, in political philosophy as well as in the public sphere(s). Why should we have free speech in the first place? Is it in order to protect important values such as rational discourse and political participation? If so, what about speech that is neither rational (discursive) nor political? What are the limits – if any – to free speech? Should racist or hateful speech be prohibited, or only morally condemned? Should ridicule and mockery of religious figures be regulated through law, as in existing ‘blasphemy clauses’ in some European countries?

Chapter 2 gives a Habermasian defense of constitutional free speech, based on a normative commitment to reflexive, political and personal freedom. Chapter 3 addresses the issue of legal constraints on free speech, focusing on hate speech, blasphemy and religious offence respectively. First, however, I need to address the problems of ‘exaggerated proceduralism’ and ‘rational consensus’, and explain how my (Habermasian) justification of free speech attempts to avoid these problems (chapter 1).

1 Problems with proceduralism

1.1 Normative deficit

My understanding of the normative basis of deliberative democracy has a substantial and a procedural component. The substantial component (which morally grounds the procedural component) is the moral idea of free and equal persons. The procedural component (which is morally required by the substantial component) is our commitment to discursive procedures that are fair, deliberative, and open to all. The idea that persons are *equal* implies a rejection of all kinds of inegalitarianism (i.e. racism or religiously justified misogyny), and a corresponding insistence on equal citizenship across ethnic, cultural and religious divides. The idea that we are *free* implies that

each person should be treated as someone who has the capacity – and the right – to exercise freedom: reflexively, politically and personally.

What I call ‘exaggerated proceduralism’ refers to Habermas’ tendency to overemphasize the formal features of the process of deliberation, and, correspondingly, to downplay the more substantial norms and principles that inform (or should inform) his approach. This tendency produces different kinds of problems in Habermas’ model, in particular what I refer to as ‘normative deficit’, ‘democratic relativism’, and ‘crypto-normativity’. In this section, I focus on the first problem (normative deficit) and explain how I attempt to avoid it in my own (Habermasian) justification of the right to free speech.

In *Between Facts and Norms*, Habermas maintains that “[t]he *democratic process* bears the entire burden of legitimation” (1998, 450), meaning that constitutional rights and principles can be justified entirely in terms of their role in democratic opinion- and will-formation. This is in line with his own self-understanding as someone who merely reconstructs the general premises for democratic will-formation, and *not* someone who has constructed a normative theory of law and politics. Habermas’ concept of discursive rationality “no longer provides a direct blueprint for a normative theory of law and morality”, but “offers a guide for reconstructing the network of discourses that, aimed at forming opinions and preparing decisions, provides the matrix from which democratic authority emerges (Ibid., 5).

However, several commentators have pointed out that constitutional rights are not reducible to their instrumental value for democratic participation in the way Habermas argues in *Between Facts and Norms* (for example Forst 2002; Flynn 2014; Iser 2008; Larmore 1999; Nussbaum 2000; Rawls 2005). If the democratic process bears the *entire* burden of legitimation, then constitutional rights can only be justified in terms of their constitutive role in the democratic process. This is problematic not just because it prioritizes political freedom over personal freedom (despite Habermas’ insistence that these are equally important), but also because the democratic defense of individual liberties is too weak: “the meaning of human rights is surely not exhausted by a rational reconstruction of the human rights principles implicit in the practice of constitution making” (Flynn 2014, 108). We do not have a right to basic education or religious freedom *merely* because it enables us to participate in democratic deliberation. Correspondingly, we do not have a right to free speech *merely* because it makes democratic self-rule possible. On my account, we have these rights because we deserve them – morally speaking – as human persons. Respecting others as persons, I shall argue, implies respecting them as someone who are equally capable and entitled to exercise freedom: reflexively, politically, and personally. For example, respecting others as persons who are able to think and act independently implies respecting their right to speak and express themselves freely. By

this, I propose to justify free speech more substantively (or less procedurally) by appealing to a moral conception of persons as free and equal, independently of the democratic process. As Charles Larmore puts it, “[t]he familiar constitutional rights of free-expression, property, and political participation, though no doubt serving to promote the goal of democratic self-rule, also have independent rationale. They draw upon that most fundamental of rights, the right to equal respect (Larmore 1999, 621).

My attempt to justify extensive free speech guarantees by appealing to a moral principle of equal respect is in tension with what Habermas sometimes says about the normative basis of his political theory. Habermas claims to articulate discursive procedures that are formal and abstract enough to avoid any moral content: they are “morally freestanding” (2008, 80). Habermas does not want to participate in moral or legal disputes, but merely to reconstruct the pragmatic presuppositions for such disputes, and to translate these presuppositions into a discursive theory of the justification of law and morality. As we have seen (part 1), the most basic presuppositions are inclusion, equality, honesty, and noncoercion. These presuppositions, however, do not have any direct moral or legal implications. Habermas emphasizes that pragmatic presuppositions are *not* moral norms, that is, they are not to be understood as moral guidelines for human interaction: they do not tell us how we ought to communicate, how we ought to treat each other, which rights we have, or what the result of our communication ought to be. Discursive rules of rationality say nothing about whether, say, coercion, murder or violence outside of the practice of argumentation is morally right or wrong: “[e]ven the presupposition of noncoercion refers only to the process of argumentation itself, not to interpersonal relations outside of this practice” (2008, 83).

So, the procedural justification of human (and constitutional) rights understands itself as a reconstruction of commonly accepted normative presuppositions, not as a form of moral argumentation. As Rostbøll puts it,

Reconstruction neither builds upon the norms people have fashioned for themselves as the substantive outcome of their normative practices, nor does it introduce a norm from outside these practices that it imposes on them. Rather, it builds on norms that are constitutive of practical reasoning and deliberation, norms that thinking and acting beings must be committed to in order to regard themselves and others as such (Rostbøll 2011, 362).

I agree that we should distinguish (with Habermas) between the norms that particular citizens construct in deliberation, and the norms that are constitutive of the very practice of norm construction, say, inclusion, equality, honesty and the absence of force. By this, we may reconstruct free speech as a constitutive norm in the sense that it cannot be violated without violating the very practice of rational norm-construction. We may then argue that free speech cannot be made

contingent on the actual outcomes of norm construction in particular political communities since it is presupposed in the process of norm construction as such. Free speech would then count as implicit ‘normative content’ that communicating citizens accept whenever they engage in communication.

In my view, however, appealing to the distinction between constitutive and constructed norms is insufficient to justify free speech as an *extensive* constitutional right. It is far from obvious that norm constructing deliberators must accept, say, the right to publish a work like Salman Rushdie’s *The Satanic Verses*, or a movie like *The Life of Brian*, in order to regard themselves and others as ‘thinking and acting’ in Rostbøll’s and Habermas’ sense. On the contrary, many thinking and acting persons are willing to repress the speech of other thinking and acting persons in the name of some idea of decency, truth, sacredness, security or group based honor.

Habermas uses the distinction between normative theory (or argumentation) and normative reconstruction to distance himself from political liberals such as Rawls, and libertarians such as Nozick:

As opposed to my famous American colleagues such as Rawls or Nozick, I’ve never had any ambition of sketching out a normative political theory. Although it’s perfectly sensible, I don’t design the norms of a ‘well-ordered society’ on the drafting table. It’s more a matter of reconstruction of actual conditions [for democratic will- and opinion-formation] (1994a, 101).

However, as Rawls points out, Habermas seems to presuppose that deliberation will lead to *normatively correct outcomes*, and he has a lot to say about what these outcomes should be. For example, they should live up to the moral infrastructure of a liberal political culture, and be committed to quite demanding ideas of freedom, equality, and mutual recognition. This, I agree with Rawls, detracts from the persuasiveness of Habermas’ claim that his theory is merely ‘procedural’ and not ‘substantial’: “[Habermas] presupposes an idea of reasonableness to assess the outcomes, and his view is substantive. It is common oversight (which I do not say he makes) to think that procedural legitimacy (or justice) tries for less and can stand on its own without substantive justice. It cannot (Rawls 2005, 425)”.

In a response to Rawls, Habermas admits that his model cannot remain neutral with regard to its own normative commitments: “it is intertwined with a concept of autonomy that integrates ‘reason’ with ‘free will’; *to that extent* it cannot be normatively neutral” (Habermas 2000, 99). For Habermas, this means that deliberative democracy is premised on a normative conception of autonomy as “the self-binding of the will according to maxims we adopt according to insight” (Ibid., 99). However, he also claims that “*this* normative content does not impair the neutrality of a procedure (...) that operationalizes the moral point of view of impartial judgment” (Ibid., 100). In

other words, even though the concept of autonomy is indeed normative, it does not violate the neutrality of the discursive procedure because it merely says something formal about the capacity to bind our will to principles and live our lives according to laws we consider as *our own*.

I agree with Habermas that the deliberative ideal relies on a weak but still normative understanding of autonomy (or freedom). Indeed, my own justification of free speech in the following chapters is based on a normative conception of (reflexive, political and personal) freedom. However, in my view, what is crucial when discussing the extent to which this conception is ‘neutral’ or ‘substantial’ is not how we philosophically define concepts such as autonomy, free will, and reason, but the *actual moral and legal implications* of these concepts. Does our commitment to autonomy mean that homosexuals should be able to live their lives, and realize their interests and needs, on equal terms, without fear of sanctions or threats? Does it mean that Muslim women should be free to wear the hijab, and free to take it off, in public space? Does it mean that we reject any incitement to punish Salman Rushdie for having written the *Satanic Verses*, or *Jyllands-Posten* for having published the Danish cartoons? If it does, as I believe it should, then the deliberative approach is not just normative in the weak sense that it operates with an abstract commitment to free will and rationality. It is also normative in the stronger sense of being committed to a comprehensive system of liberal freedoms that some people reject (parts of).

Fortunately, the non-moral and purely procedural justification of human and constitutional rights is not the only justification Habermas gives. In some works after *Between Facts and Norms*, Habermas defends human rights not in terms of an idealized justification procedure that is supposed to be morally freestanding, but in *moral* terms: “[b]asic rights (...) regulate matters of such generality that moral arguments are sufficient for their justification. These arguments show why the guarantee of such rules [rights] is the *equal interest of all persons qua persons*, and thus why they are equally good for everyone” (Habermas 1997, 138, emphasis added). In this passage, Habermas does not put the *entire* burden of legitimation on the democratic process, as he claimed to do in *Between Facts and Norms*. Instead, he appeals to general interests that human persons have *qua human persons*. These interests, furthermore, correspond basic rights that can be justified *exclusively* in moral terms – rather than in terms of what the democratic process presupposes and requires.

This revised description does not sit easily with what Habermas sometimes says about the difference between legal and moral norms, namely that morality is exclusively concerned with interpersonal relations, and law exclusively with institutional regulations: “[w]ith the transition from morality to law, our perspective shifts from individual actors to the level of the institutional system” (2008, 93). The revised (moral) approach implies that human rights have a moral as well as a legal (or institutional) side. Morality is not reducible to informal relations between ‘individual actors’, but

a crucial aspect of the justification of constitutional rights and statutory law. As Habermas now argues: “[human rights have] a moral-legal Janus face” because they are designed for “the effective implementation of (...) an egalitarian universalism in terms of coercive law” (Habermas 2010, 464).

This revised description of the relationship between morality and human rights allows us to argue that constitutional rights have intrinsic value because they protect the dignity or moral status of human persons (2010). In this way, we avoid the problem of normative deficit: constitutional free speech can be justified by appealing to a thicker and more substantial moral vocabulary, a vocabulary that *includes* a concern with rational discourse and democratic procedures, but which cannot be *reduced* to such a concern. This moral vocabulary allows us to relate free speech not just to the democratic process, but more fundamentally to what Habermas himself calls ‘basic human interests’. I do not consider it the task of the deliberative theorist to give an all-encompassing list of these interests, among other things because any such list is up for public negotiation and contestation. However, even though a comprehensive list of interests is not the goal, some interests are so basic that we can – and should – defend them as *universal human interests*. In line with this, the justification of free speech I provide in chapter 2 and 3 rests on the appeal to three basic interests: the interest in reflexive freedom, the interest in political freedom, and the interest in personal freedom.

1.2 Democratic relativism and crypto-normativity

I argued in the previous section that the lack of normative indeterminacy of Habermas’ proceduralism is a deficit, and that this deficit makes it difficult to give a convincing justification of constitutional free speech through procedural arguments alone. But Habermas’ proceduralism also creates a different type of problem, which I shall refer to as ‘democratic relativism’. Consider again Habermas’ insistence that basic rights and liberties must be interpreted in a ‘contextual’ and ‘difference sensitive’ way – through public deliberation – in order to have democratic legitimacy:

A ‘liberal’ version of the system of rights that fails to take this connection [between personal and political freedom] into account will necessarily misconstrue the universalism of basic rights as an abstract leveling of distinctions, a leveling of both cultural and social differences. These differences must be interpreted in increasingly context-sensitive ways if the system of rights is to be actualized democratically (1994, 116).

I agree with Habermas that there is a need for ongoing deliberation about the meaning, implementation and limitations of the right to free speech. However, precisely what does it mean that the right to free speech must be actualized democratically by way of a ‘context-sensitive’ interpretation of cultural differences? Does it mean, for example, that religiously offensive speech

should be criminalized if this is what the majority decides after listening to and debating with opponents? Does it mean that the democratic process is the ultimate authority in disputes about free speech and its limits? Does it mean that political philosophers must always accept the democratic outcome of public debates about free speech as legitimate, given that the democratic process has been open, inclusive and fair?

One could read Habermas' insistence on a democratic realization of basic rights as a form of democratic relativism. On a relativistic reading of the principle of co-originality, different political communities are allowed to decide on different 'realizations' of the right to free speech, depending on the public flow of argumentation and counter-argumentation in specific political cultures. Such a reading is in line with Habermas' own refusal to 'saturate' the category of private autonomy with concrete content: it presupposes an understanding of constitutional freedom that is neither controversial nor demanding because it has to be compatible with many different types of constitution making and legislation. A position that bears some similarities with Habermas' is Bhikhu Parekh's 'dialogical multiculturalism'. There are many differences between Habermas and Parekh (Parekh is an outspoken critic of Habermas) but they nevertheless share the insistence on a deliberative (Habermas) or dialogical (Parekh) actualization of basic liberal rights, which is sensitive to cultural context and particularity. In Parekh's case, this sensitivity leads him to argue that societies in which "religion means a great deal to its members" (2000, 320) may rightfully prohibit religiously offensive works, such as Rushdie's *The Satanic Verses*. Unless we add some further arguments to Habermas' five categories of abstract rights and his thesis of co-originality, it seems obvious that he has to argue something similar.

A democratic relativism that goes too far faces particular normative problems. If we allow political communities to democratically realize constitutional free speech according to particular cultural sensibilities and interests, then, in effect, we also allow democratic *majorities* to impose its sensibilities and interests on minorities. Unless we protect free speech through constitutional guarantees that parliaments cannot easily overrule, and unless we are able to justify such guarantees morally and philosophically, we make free speech vulnerable to majoritarian impulses and contingencies, and we potentially fail to protect the 'right to dissent' of minorities and dissidents.

Habermas nevertheless seems to regard the normative indeterminacy of his proceduralism as a virtue that distinguishes his model positively from other models, in particular from Rawlsian political liberalism. According to Habermas, "[Rawls'] theory generates a priority of liberal rights that denotes the democratic process to an inferior status" (2000, 69). Habermas argues that his theory is more modest than Rawls', and that it avoids the moral paternalism inherent in political liberalism, because it derives the system of rights from the procedural aspects of the public use of reason: "[i]t

can leave more questions open because it entrusts more to the process of rational will- and opinion formation” (Habermas 2000, 72). According to Habermas, his approach ‘leaves more questions open’ in the sense that it makes more room for the citizens’ own democratic interpretations of the system of liberal rights. Based on Habermasian intuitions, Benhabib articulates a similar critique of political liberalism, insisting that only the disagreeing parties themselves, and not a ‘juridical calculus of liberal rights’, can solve multicultural conflicts:

Deliberative democracy focuses on social movements, and on the civil, cultural, religious, artistic and political associations of civil society of the unofficial public sphere as well [in addition to the formal public sphere such as courts, administrations and parliaments]. (...) It is in this domain that multicultural conflicts and politics have their place. Rawls’ approach, but Brian Barry’s as well, neglects this dimension and instead attempts to solve multicultural conflicts through a juridical calculus of liberal rights (Benhabib 2002, 21).

I agree with Benhabib that multicultural conflicts cannot be easily ‘solved’ through a juridical calculus of liberal rights. For example, conflicts related to the understanding and use of free speech will not dissolve simply because politicians, legal experts or political philosophers have figured out what the law should protect (say, religiously offensive speech) and what it may prohibit (say, threats or racist propaganda). The deliberative approach is appealing precisely because it insists that the legal implementation of liberal rights must be accompanied by discursive contestation and mutual perspective taking, also in the informal public sphere(s). If the majority population insists on a particular interpretation of free speech that is contested by minorities, then members of the majority owe minority members to listen to their views, experiences and perspectives. We all have something to learn from such dialogues; for example, as I shall come back to in part IV, there are important moral and pragmatic discussions to take about how free speech should be used (or not used) in particular cases and situations.

At the same time, I believe that Habermas and Benhabib exaggerate the extent to which their models are more open – and therefore less paternalistic – than political liberalism. As March puts it, “we are forced to abandon Habermas’ [and Benhabib’s] claim that discourse ethics [and deliberative democracy] imposes no substantive moral principles beyond the ones implicit in the rules of argumentation and to concede that discourse ethics stacks the deck no less than Rawls’s original position or later concept of ‘reasonableness’” (March 2009, 41). March’s remark is part of a discussion of Benhabib’s and Habermas’ criticisms of political liberalism, in particular Benhabib’s claim that the deliberative approach is superior to political liberalism because of its openness to democratic interpretations and “iterations” (Benhabib 2008, 147) of liberal rights. Benhabib calls for ‘cross-cultural dialogue’ and ‘complex global dialogues across cultures’ about such issues as “Koran

schools in postunification Germany, struggles about the rights of young Muslim women in the Pakistani community of Bradford, England, to refuse arranged marriages, and the desire of girls of Islamic faith to wear the scarf in French public schools” (2002, 48). In fact, however, Benhabib does not seem to not leave very much open for discussion in these dialogues. As March asks “[i]s there any doubt that she (correctly) believes that the right of these girls to refuse marriage is inviolable?” (2009, 40). March’s point is that even though cross-cultural dialogue is necessary and often productive, deliberative democrats have not convincingly shown that their approach leaves more questions open in these dialogues than political liberalism, at least when it comes to basic issues of human rights and equal citizenship. Thus, according to March, “[t]he reason that the deliberative model does not focus on state power and the rights approach to social conflict is that, for the most part, it has nothing to add or detract from it as far as it goes” (2009, 40).

In order to further illustrate March’s point, consider Benhabib’s critique of the French ‘hijab ban’, which prohibits the wearing of religious symbols in public schools. Benhabib criticizes the democratic process leading to the ban, arguing that “the [hijab wearing] girls’ own perspectives were hardly listened to (2002, 118)”. This may be a correct description. Even through the Stasi commission (after Bernhard Stasi) held four months of public hearings during which they consulted religious communities, state agencies, non-governmental organizations, higher education institutions and more, only two out of the approximately 140 people that were finally invited to give evidence, actually wore the hijab (McGoldrick 2006, 84). However, the appeal to deliberation also raises a question: is the hijab ban illegitimate because it is wrong as such (i.e. illiberal or biased), or because veiled Muslim women were not sufficiently represented in the deliberative process leading to the ban? If Benhabib does not hold a substantial position on the right to wear the hijab in public schools then, clearly, she has to take a relativist or ‘open’ position: restrictions on religious clothing in public schools may be justified as long as all concerned parties have been consulted. It nevertheless seems clear from her writings that she disagrees with the Stasi commission, and supports the right to veil. In other words, she appeals to democratic deliberation and openness when criticizing the ban, while implicitly presupposing that there is a correct answer about the law at issue.¹²

¹² Habermas regards the French hijab ban as a violation of the principle of *state neutrality*: “Here we have a secularist interpretation of the constitution that must face the question of whether the republican tradition of interpretation dominant in France is not so ‘strong’ that it inevitably violates the required neutrality of the state vis-à-vis the claim to self-representation and public recognition of a religious minority” (2008, 266). My point is that there is a tension here between Habermas’ understanding of neutrality (with which I agree in this case) and the appeal to public deliberation about the correct meaning of terms such as ‘neutrality’ or ‘religious freedom’.

Consider furthermore the case of blasphemy and religious offence. If deliberative theorists really ‘leave more questions open’ (Habermas) than political liberalism, then it is natural to assume they are willing to accept different interpretations of free speech and its juridical limits, arrived at by different populations in different socio-political contexts, sometimes criminalizing religious offence, sometimes not. But how open are they after all? While Benhabib is critical to the publication of the Danish cartoons, she also emphasizes that she does not want to see such publications prohibited by law (Jakobsen & Duarte 2013). According to her, “limitations upon the content and scope of public dialogue, other than constitutional guarantees of free speech, (...) [are] unnecessary” (1992, 99). What confuses me is the relationship between the repeated appeal to deliberation about basic liberties, and the criticism of Rawlsian human rights paternalism, on the one hand, and the strong commitment to constitutional liberties, such as free speech, on the other. If Rawls or Barry had argued that the Danish cartoons were neither wise nor morally virtuous, but that they should nevertheless be legally permitted, would Benhabib then have criticized them for trying to solve a multicultural conflict through a ‘juridical calculus of liberal rights’?

Habermas rarely comments on ongoing free speech controversies, but he seems to take the juridical right to publish religiously shocking material for granted. For example, his only comment on the Rushdie case is that, “as the Rushdie case reminded us, a fundamentalism that leads to a practice of intolerance is incompatible with the democratic constitutional state” (Habermas 1994, 132). Habermas does not give the impression that there is an important debate to take about free speech in this case. Habermas is reported to have taken a similar position in a lecture at the University of Tilburg, the Netherlands, on the 15 March 2008.¹³ According to secondary sources, Habermas criticized Gert Wilder’s movie *Fitna* for being unnecessarily provocative, but at the same time defended the constitutional principle of freedom of the press: “nobody in this room who would disagree with the constitutional principle of freedom of the press as one of our most important basic rights, which often even trumps other basic rights.”¹⁴

If I am right that Habermas takes the juridical right to public works like the *Satanic Verses* or Wilder’s *Fitna* for granted, or regards this right as beyond debate, then he contradicts his own insistence that the *citizens* themselves must fill the unsaturated categories of abstract rights with concrete content. How can Habermas – given his own premises – suddenly step in as a theorist and take side in a controversial debate about the limits of free speech?

¹³ Wilder’s movie portrays Islam and Muslims in essentialistic, generalizing and exclusive negative terms, intending to produce fear and aversion in the audience.

¹⁴ My translation. Source: <http://www.pi-news.net/2008/03/habermas-philosophiert-ueber-wilders/>. See also http://www.habermasforum.dk/index.php?type=news&text_id=407.

In my view, the unclear relationship between the commitment to democratic openness and fallibility, on the one hand, and the strong defense of constitutional free speech, on the other, makes Habermas vulnerable to the accusation of ‘crypto-normativity’. This term was originally used by Habermas himself in his critique of Foucault (Habermas 1983, 331). What Habermas meant was that Foucault was giving the impression that his theory was not based on any normative commitments (i.e. moral principles or political ideals), even though it *was* premised on strong normative assumptions. My claim is not that Habermas denies that his theory has a normative content, but that he fails to make this content explicit and downplays its controversial nature. Making this content explicit may make the deliberative approach more controversial, but it also makes it more transparent.

In my view, Taylor has a point when he acknowledges that we are faced with substantial philosophical and religious disagreement, also when it comes to free speech and religious offence:

In these circumstances, there is something awkward about replying simply, ‘This is how we do things here’. This reply must be made in cases like the Rushdie controversy, where “how we do things here” covers issues such as the right to life and to freedom of speech. The awkwardness arises from the fact that there are substantial numbers of people who are citizens and also belong to the culture that calls into question our philosophical boundaries. The challenge is to deal with their sense of marginalization without compromising our basic political principles (Taylor 1994, 63).

Of course, simply replying that ‘this is how we do things here’ is not the best way of dealing with the sense of marginalization of those who find Rushdie’s work deeply disturbing. There is a need for publication justification and mutual perspective taking, including a need on behalf of ‘us’ to justify our political principles to ‘them’ in language they can relate to as free and equal citizens. However, being more explicit about our own ‘philosophical boundaries’ when engaging in multicultural dialogues may in fact facilitate a more transparent and honest dialogue with those who disagree with ‘us’. Thus, whereas Habermas claims that he merely reconstructs the formal conditions for democratic opinion and will-formation and leaves it up to the citizens themselves to decide on to controversial moral and legal issues, I admit to be a *participant* in moral deliberation about multiculturalism, freedom and free speech. The variant of deliberative multiculturalism I defend is therefore more self-conscious about its moral commitments, and, unlike Habermas, it does not claim to be morally freestanding. To say that we leave all substantial issues up to public deliberation while in fact assuming that deliberation will lead to ‘correct’ liberal outcomes, is also a form of paternalism, only a more hidden one.

2 Problems with consensus

2.1 Rational consensus: regulative ideal or requirement of legitimacy?

The ‘problems with consensus’ I address in this section are related to but not identical with the ‘problems with proceduralism’ I discussed in the previous sections. In certain sense, Habermas theory of rational consensus is a consequence of his strong proceduralism: rather than premising deliberation on given moral norms and liberal rights, proceduralism leaves it up to the *citizens themselves* to work out their own agreements, meaning that justice is nothing more and nothing less than what can be *agreed upon* on in a rational discourse. However, as we shall see, the theory of consensus creates some problems of its own.

As we have already seen, Habermas believes that the democratic process aims at mutual understanding and ‘rational consensus’ in the sense that everybody can agree on the laws, regulations and constitutional principles that they are forced to obey. Habermas is not naïve in the sense that he believes that reaching a consensus is the solution to *all* kinds of disagreement and conflict. On the contrary, the reason why we must come to an agreement on basic interaction norms is precisely that we disagree about so many things, say, the good life, ethical values judgments, ultimate truth, the existence of God, and man’s place in the universe. According to Habermas, agreement on basic interaction norms is not *opposed to* but a *condition for* non-violent pluralism and diversity:

The transitory unity that is generated in porous and refracted intersubjectivity of a linguistically mediated consensus not only supports but furthers and accelerates the pluralization of forms of life and the individualization of lifestyles. More discourse means more contradiction and difference. The more abstract the agreements become, the more diverse the disagreements with which we can nonviolently live (1992, 140).

For Habermas, reaching agreement is not just a normative goal or ideal; rather, it is built into the fabric of propositional language as its implicit goal or “telos” (1984, 287; 1998, 4). Even when we disagree and say no to others’ validity claims, even when we try to break an existing consensus with new evidence or argumentation, we do so in order to *convince* someone about something, say, that their views are prejudiced or incoherent, or that the norms they defend are wrong. If we did not believe that some arguments are better than others, say, factually more correct or morally superior, and that we could come to a shared understanding of the ‘better argument’, why argue about anything? In other words, whenever we take the practice of discussion seriously, we *in fact* appeal to consensus:

Even in the most difficult process of reaching understanding, all parties appeal to the common reference point of a possible consensus, even if this reference point is projected in each case from within their own contexts. For, although they may be interpreted in various ways and applied according to different criteria, concepts like truth, rationality, or justification play the same grammatical role in every linguistic community (1992, 138).

I accept that the appeal to consensus is intrinsic to the practice of argumentation, also when actual consensus seems difficult or impossible. Furthermore, like Rostbøll (2008), Bohman (1996), Cooke (2000), and others, I regard consensus as a *regulative ideal* towards which we should strive even though we can never achieve it. Public deliberation aims at the common good or the ‘general interest’, that is, it aims at norms and regulations that are acceptable to *all*. In that sense, consensus is a critical principle, something that directs our political behavior, not a practically attainable goal or requirement. In my view, therefore, we should regard the relationship between legitimacy, deliberation and consensus as a ‘negative’ relationship: when others *cannot* accept the norms we ask them to obey, we owe them to listen to what they have to say, and consider whether we have been unjustified in thinking that they should obey these norms. Have we been relying on sectarian beliefs, egocentric interests or unexamined prejudices? As Habermas puts it, “[t]he veto of others can lead each of us to realize that the conceptions of justice we initially proposed were not sufficiently decentralized” (2000, 92).

However, many of Habermas’ formulations suggest that he regards the relationship not just as a negative one, but also as a ‘positive’ one, meaning that *deliberatively achieved consensus makes norms legitimate*. Theoretically, this insistence can be traced back to the ‘discourse principle’ (D), which states that “[j]ust those action norms are valid to which all possible affected persons could agree as participants in rational discourses” (1998, 107). ‘Those affected’ are here understood as anyone whose interests are affected by the foreseeable consequences of a social practice which is regulated by the action norms at issue.

The discourse principle is supposed to capture the inherent meaning of the idea of *impartiality*. This idea, Habermas argues, is not detached from our everyday interactions and self-understandings; quite the contrary, it reflects the symmetrical recognition that is built into communication and “communicatively structured forms of life in general” (Ibid., 109). By coordinating our action plans communicatively, that is, by seeking a mutual understanding with others about the legitimacy of our strategies and ends, we implicitly confirm to the idea that action norms require an impartial justification, that is, a justification which is not biased in favor of any particular persons’ interests, beliefs and values.

Habermas further emphasizes that the discourse principle is neutral with regard to the distinction between moral and legal norms: it is conceived at a more fundamental level than this

distinction, and precedes the discussion about morality versus law. When translated into a principle for the justification of *legal* norms, the discourse principle takes the form of a ‘democratic principle’, stating that “only those statutes may claim legitimacy that can meet with the assent (*Zustimmung*) of all citizens in a discursive process of legislation that in turn has been legally constituted” (1998, 110). By this, Habermas establishes a strong connection between the rational assent of each legal subject, and the *democratic legitimacy* of each law. In order for any law (or legal norm) to be legitimate, all citizens must be able to experience themselves as authors of the law; not just in the indirect sense that they have participated (or had the opportunity to participate) in a public debate about legal issues, but also in the direct sense that each legal subject is cognitively convinced about the legitimacy of each the law she obeys.

Both friendly and more dismissive critics have argued that rational consensus cannot serve as a requirement of legitimacy in culturally diverse societies. Some of these focus on the infeasibility of consensus in diverse societies. Thomas McCarthy puts it mildly when stating that “efforts to achieve consensus in discourse *may* fail owing to basic differences in collective identities and fundamental values, differences that need not dissolve under discussion but may emerge all the more clearly” (1998, 149). In a similar vein, Bohman notes that “[g]iven the pluralism of standards and uncertainty of outcomes, it is hard to see why such [deliberative] procedures would necessarily lead to the agreement of all citizens in culturally pluralistic societies if by such agreement is meant unanimity for every particular law” (1996, 182). As Habermas puts it himself “the expectation that disagreement will endure is merely a function of the fact that political convictions are (...) deeply rooted in background convictions founded on worldviews” (2008, 260). Other commentators point out that consensus as such does not tell us anything about truth or legitimacy: “[c]onsent alone can never be a criterion of anything, neither of truth nor of moral validity [nor of legal validity] (...)” (Benhabib 1992, 37).

Another problem with rational consensus is that it implies the counter-intuitive claim that rationally disputed norms are illegitimate. If there is such a thing as a valid but rationally disputed norm, then validity cannot be defined in terms of rational consensus. Correspondingly, if we define validity in terms of rational consensus, then practically all norms should be regarded as invalid, given that that there is some disagreement about all or most of them. For example, if we read Habermas’ ‘democratic principle’ as a standard of legal legitimacy, then any given law that prohibits religiously offensive speech would be invalid, but so would any law that protects such speech. Some citizens regard blasphemy legislation as a necessary protection of the sacred, others believe that it leads to cases where legitimate critique of religion (or religious persons and holders of power) is suppressed. In other words, a statute that either allows or criminalizes religiously offensive speech

cannot ‘meet with the assent (Zustimmung) of all citizens in a discursive process of legislation that in turn has been legally constituted’. Such legislation is neither in the equal interest of all concerned, nor justified according to principles that are equally convincing for all.

Thus, I agree with Habermas that “[t]he exercise of power that cannot be justified in an impartial manner is illegitimate because it reflects the fact that one party is forcing its will on another” (2008, 122). However, the question remains of how strict we should conceive of the requirement of impartiality. If we conceive of it in terms of a rational consensus among all affected legal subjects, then we may have to arrive at the strange conclusion that none or very few of the laws we obey are legitimate.

2.2 Freedom in conflict

Habermas insists that we must come to a rational agreement about tolerance and its limits; only a definition of tolerance that *all affected find equally convincing* is tolerant itself: “only the idea of equal freedoms for all and a definition of the domain of tolerance that all concerned find equally convincing can draw the sting of intolerance from tolerance” (2008, 253). Understood as a requirement of legitimacy rather than as regulative ideal, this consensual approach to tolerance seems to make almost any definition of tolerance intolerant. Furthermore, if disagreement about a specific conception of tolerance reveals its hidden intolerance, then political theorists may contribute with very little to public debates without being charged with intolerance. How can we argue, for example, that publications such as Rushdie’s *Satanic Verses* or the Danish cartoons are within the boundaries of the legally admissible, knowing our own conception of tolerance is far from being ‘equally convincing’ for all concerned?

In order to be able to participate in public debates, deliberative democrats must be allowed to propose a definition of tolerance that some citizens reject. What is important is not that we attempt to remain as open and neutral as possible, but that we engage with objections and disagreements in a discursive and respectful way. What is also important is that we are explicit about the controversial status of the ‘claims of freedom’ that informs our conception of tolerance. However, in making this status explicit, we cannot agree with Habermas’ definition of the ‘dogmatic core’ of the deliberative understanding of law and politics: “[c]ertainly, this understanding, like the rule of law itself, retains a dogmatic core: the idea of autonomy according to which human beings act as free subjects only insofar as they obey just those laws they give themselves in accordance with insights they have acquired intersubjectively” (1998, 446). Understood as a regulative ideal, this definition of autonomy simply points towards an imagined but practically impossible condition where all citizens regard themselves as co-authors of every law they obey. Such an ideal may be very productive as normative

guideline in public controversies over law and politics. However, understood in its literal sense as a postulate about what we must presuppose before we can regard human subjects as free, the definition is problematic because it ties the attainment of freedom to the attainment of rational consensus: we are *only* free as long as we obey *only* those laws we have given ourselves in accordance with insights we have acquired in a discursive process. If, after deliberation, we still disagree about some of the laws we obey, say, a law that allows or prohibits certain forms of speech, then at least some of us are *not free* because we are forced to obey a law to which we have not given our rational consent. This definition seems to make freedom virtually impossible, given that we never agree with everybody about all the laws we obey.

I agree with Habermas that the deliberative ideal relies on a normative core that is ‘dogmatic’ in the sense that it is regarded as a starting point and presupposition for deliberation. However, in order to avoid the premise of an actually obtained consensus, I regard the ‘dogmatic core’ in terms of a particular interpretation of the moral idea that human persons are free and equal. Furthermore, whereas Habermas argues that his dogmatic core is only “dogmatic in a harmless sense” (1998, 446) because it respects the pluralism of values, identities and lifestyles in modern societies, I recognize that my interpretation of the moral idea of free and equal persons is incompatible with some beliefs and interests that some citizens have. Take for example the ‘right to exit’, that is, the right to *leave* a cultural or religious group, for example through apostasy or religious conversion. Like Habermas, I defend this right, but there is nothing harmless about it. Mainstream Islamic theology, for example, still considers apostasy a serious crime, and a major threat to social cohesion and stability (Asad 2009). In my view, we should therefore not pretend that our normative conception of freedom is more neutral – or more ‘harmless’ – than it is.

On my account, adopting a less rationalistic approach to the question of legitimacy goes hand in hand with adopting a more conflictual understanding of freedom. By this, I mean an understanding that is more explicit about the fact that there is, and will continue to be, conflicting views about the nature, limits and correct exercise of freedom. Habermas is less explicit about this, partly because he believes that a ‘correct’ way of restricting freedom will emerge from democratic deliberation: “correct restrictions [of freedom] are the result of a process of self-legislation conducted jointly (Habermas 2000, 101). While I agree on the importance of democratic self-legislation, I do not see why I – as a citizen – should regard particular restrictions of freedom as ‘correct’ simply because they are the result of a ‘process of self-legislation conducted jointly’. The jointly conducted legislation process is unlikely to result in a rational consensus, but it may very well result in a *majoritarian consensus* that I oppose. For example, I may perceive particular restrictions on free speech as ‘incorrect’ or wrong even though they result from a democratic procedure in which I have

participated and been heard. The fact that these restrictions are democratically enacted does not exclude the possibility that I experience them as violations of *my* freedom.

Habermas seems to put so much trust in the ability of rational argumentation to produce a shared understanding of the ‘better argument’ that he finds it unnecessary to consider how we should proceed when disagreeing on how to proceed. Habermas does recognize that democratic institutions of freedom depend on a citizenry that is “accustomed to freedom” (1998, 130), in the sense that the population has cultivated the virtues and attitudes required by a liberal political culture. However, is it the citizens who use their political freedom to publish blasphemous material who need to be ‘accustomed to freedom’, or is it those who protest against such publications? It is probably too much to ask of political philosophy to answer such questions, but the controversies related to religious offence nevertheless tell us something about the potential for conflict that is involved in citizens’ use of political freedom.

The domain of *personal* freedom also contains a potential for conflict in the sense that my private liberties may come into conflict with yours. According to Habermas, “[n]obody can be free at the expense of anybody else’s freedom. Because persons are individuated only by way socialization, the freedom of one individual cannot be tied to the freedom of everyone else in a purely negative way, through reciprocal restrictions” (2000, 101). I agree that freedom cannot be reduced to negative rights and restrictions, but not that each person’s freedom must always harmonize with everybody else’s freedom, at least not at the level of subjective experience, feeling and belief. Precisely because human persons are ‘individuated by way of socialization’, they are also vulnerable to how other citizens behave and speak. Thus, the relationship between the freedom to form and pursue a conception of the good, on the one hand, and the freedom to speak about *others’* conception of the good, on the other hand, is more conflict ridden and less likely to find a generally acceptable form than Habermas acknowledges. As Mahmood puts it, “one particular tension [in liberal democracies] is manifest in how freedom of religion often conflicts with the principle of free speech, both of which are upheld by secular liberal democratic societies” (2009, 87).

Finally, looking at the conflict potential between political, personal and reflexive freedom from a different angle, one could also point out that citizens’ personal freedom *not* to participate in public deliberation, and *not* to discuss their views and beliefs with others, may come into conflict with their own political freedom as well as their own reflexive freedom. In a certain sense, therefore, it is not only the case that individual persons sometimes exercise their freedom at the expense of other person’s freedom, but also the case that we sometimes exercise freedom at the expense of our *own* freedom. If I insist on my personal freedom to avoid any critical debate about my own beliefs and interests, I may compromise my own cultivation of reflexive freedom. If I insist on my personal

freedom not to participate in public debates about matters of common concern, I compromise my own political freedom.

2.3 Freedom, free speech, and overlapping consensus

So, on my account, the plausibility of the deliberative ideal does not stand or fall with “the ability to explain how public deliberation can bring about agreement without exclusion under conditions of pluralism” (Lafont 2013, 231). Rather, it stands or falls with its ability to interpret the moral conception of free and equal persons in a convincing way, given the fact of reasonable pluralism.

If we give up the ideal of all-encompassing rational consensus as a standard of democratic legitimacy, then we also admit that citizens have conflicting views about how freedom should be exercised and regulated. Not everybody can regard herself as free in the sense implied by Habermas’ ‘dogmatic core’: sometimes, I obey a law that I have not ‘given’ myself in a deliberative process; rather, the law has been given to me by a democratic majority, and for reasons I disagree with. However, I still think I *should* obey the law because I accept the democratic *procedure* as legitimate, including the principle of majority voting. In these cases, I obey the law not because I have ‘succumbed to the force better argument’ in a rational discourse, but because I regard the democratic procedure as justified even when it produces a result that goes against my rational beliefs.

Nevertheless, if diverse citizens are to regard the democratic procedure as legitimate even when they lose the vote, they still need to agree about *something*. They do not need to agree at a first-order level about each and every law, policy or constitutional principle, but they need to agree at a second-order level that constitutional democracy is justified in the first place. On my account, given that constitutional democracy is premised on – but also protects – the citizens’ reflexive, political and personal freedom, there is a need for consensus about the human right to exercise freedom in all three dimensions. However, whereas Habermas requires a *rational consensus*, I regard Rawlsian overlapping consensus as sufficient (Rawls 2005). Through overlapping consensus, different citizens agree on the *same principles* (say, a particular understanding of free speech and its limits) for *different reasons* (say, Christian, Islamic and humanistic reasons). Rational consensus, by contrast, refers to a much stronger agreement that is based on *identical* reasons: “the consensus brought about through argument must rest on identical reasons able to convince the parties *in the same way*” (1998, 339). The identity of reasons is supposed to make the achieved consensus rational, that is, based on intersubjectively achieved insight, as opposed to a mere modus vivendi or strategic compromise. However, do we ever agree on anything for the *exact* same reasons? Is it realistic to expect diverse citizens to become convinced *in the same way* about why they have free speech, what its limits are, and how they should use it? I believe there are genuinely Buddhist, atheist, Hegelian,

Islamic, or naturalist reasons to embrace the three dimensions of freedom in some form, and I regard it as more important that the citizens embrace freedom than that they do it for identical reasons. Remember that overlapping consensus is not a mere *modus videndi*, that is, a strategic agreement among different parties who only seek their own good. An overlapping consensus is based on a genuine normative endorsement of the agreed upon norms, but the citizens' own ultimate justification of these norms are rooted in diverse philosophical, religious, moral and cultural doctrines.

Chapter 3 provides a general, philosophical justification of the right to free speech. I do not expect to see an overlapping consensus on the philosophical details of this justification, but I do appeal to overlapping agreement across cultural, philosophical, religious and moral systems regarding its basic normative intuitions: there is a human right to exercise reflexive, political and personal freedom, and this right morally grounds the constitutional right to free speech.

Chapter 4 addresses the more controversial issue of legal constraints on public speech. I argue that restrictions on hate speech (i.e. racist speech) are compatible with (but not required by) the deliberative approach, but not restrictions on blasphemy and religious offence. By taking a principled stance on the issue of blasphemy legislation, some deliberative democrats may argue that I interfere in multicultural conflicts which the involved parties should be allowed to solve themselves (believing that I can solve these conflicts through a 'juridical calculus of liberal rights', as Benhabib puts it). However, in order to avoid the problems with democratic relativism and crypto-normativity, I believe it is better to make my own normative position explicit rather than downplaying it or portraying it as less controversial than it is.

3 Justifying free speech

Having addressed some general issues pertaining to the normative foundation of the deliberative approach, as I understand it, the present chapter outlines a broad philosophical justification of the right to free speech, based on the three-dimensional conception of freedom presented above. There is an obvious connection between deliberative democracy and the right to free speech. As Habermas writes, "[r]ational discourse' should include *any* attempt to reach an understanding over problematic validity claims insofar as this takes place under conditions of communication that enable *the free processing of topics and contributions, information and reasons in the public space*" (1998, 107-108, emphasis added). If the conditions of communication are such that we are threatened or manipulated to speak or not speak in specific ways, then public discourse fails to live up to our most basic idea of what a discussion *is*, namely an open and unconstrained search for the better argument. In states or

regimes that suppress public speech about politics, truth, religion, justice, etc., there can be democracy in the sense that the citizens elect their politicians through voting, but there cannot be *deliberative* democracy in the sense implied here. However, even though the link between free speech and rational communication is important, I believe that Habermas' deliberative approach contains a more substantial normative basis for justifying free speech. In what follows, I attempt to spell out this basis in terms of the three dimensions of freedom analyzed so far. I begin with a note on the role of morality in the justification of basic human rights.

3.1 Free speech and reflexive freedom

A normative political theory that emphasizes democracy as an epistemic learning process should justify free speech at least partly in terms of its instrumental value for critical discussion and truth-seeking. However, we do not need to demonstrate that 'truth' is somehow valuable in itself in order to justify free speech. All we need to argue is that the *reflexive orientation towards truth* is valuable for human action and interaction. Emphasizing reflexive freedom means to emphasize the human capacity to learn and correct errors, to question arguments and validity claims, and to critically examine prejudices and ideologies, all of which requires a critical, deliberative environment – and constitutional free speech.

Justifying free speech by appealing to our reflexive capacities and the search for truth is not new in Western political philosophy, the classic example being John Stuart Mill's *On Liberty*. I shall refer briefly to Mill's argument for free speech in order to highlight how it resembles but also differs from my Habermasian approach. Like Habermas, Mill sees the intersubjective testing of arguments and views as a precondition for learning and critical self-reflexion, in the sphere of morality as well as in matters of epistemic truth: "[man] is capable of rectifying his mistakes, by discussion and experience. Not by experience alone. There must be discussion, to show how experience is to be interpreted. (...) Very few facts are able to tell their own story, without comments to bring out their meaning" (2009 [1859], 23). Furthermore, it is the concern with truth, learning and "rational human conduct" (Ibid., 23) that makes constraints on free speech illegitimate: "[i]f all mankind minus one person were of one opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind" (Ibid., 20). If the view of the one person is correct, then humanity misses the opportunity to replace a false opinion with a true one. If the view is false, then humanity forfeits an opportunity to solidify truth through the refutation of error, that is, through the public demonstration of its falseness.

Also, like Habermas, Mill emphasizes the "unavoidable fallibility of the human mind" (Habermas 2003, 37). According to Mill, no one who truly understands her own fallibility would

want to suppress the opinions of others for the reason that these opinions are *false*: “[t]o refuse to hear an opinion because they are sure that it is false, is to assume that *their* certainty is the same as *absolute* certainty. All silencing of discussion is an assumption of infallibility” (Mill 2009 [1859], 21). Even if human beings normally admit that they are fallible as individuals, Mill argues, they have a strong tendency to regard the *groups* to which they belong as infallible, say, their political party, social class, or religious community (Ibid., 21). Against this tendency, Mill insists that groups, traditions and historical ages are no less fallible than individual persons, meaning that even complete agreement among a population is no good reason to legally suppress a ‘false’ view. This is in line with Habermas’ view that the lifeworld we share with others always relies on background assumptions that are taken for granted in the sense that they are not even recognized *as* assumptions, that is, as the fallible validity claims they in fact are.

Despite the affinities between Mill’s defense of free speech and the Habermasian approach, there are also important differences. Mill’s justification of free speech is ultimately grounded on a stronger conception of autonomy as a *character ideal* that is, on an ideal about how we should lead our personal lives and develop our own individuality through lifestyle experiments and discussions with others (Rostbøll 2009). According to Mill, critical self-reflection is to be promoted because it leads to “individual and social progress” (Mill 2009 [1859], 21) and human happiness: “the free development of individuality is one of the leading essentials of well-being” (Ibid., p. 57).

As we have already seen, deliberative democrats do not appeal to reflexive freedom as a good in itself, that is, as something that needs to be promoted and maximized in human life. While not denying that there could be a connection between the personal cultivation of reflexive freedom and the quality of human life, deliberative democrats refuse to commit themselves to controversial ethical, religious or metaphysical assumptions about the good life, such as Millian comprehensive liberalism. If the main argument for free speech is that it forces us to expose our beliefs and values to permanent criticism and self-scrutiny, then some groups may not find free speech that attractive, for example groups who want to continue a conservative religious lifestyle, *devoting* themselves to a given life path or religious truth.

I have already argued that the appeal to reflexive freedom can be justified instrumentally because some level of critical self-reflection is required in order for democratic deliberation to function well, and in order for diverse citizens to orient themselves reflexively towards the common good, transcending a merely egocentric or idiosyncratic stance. We can therefore continue to defend constitutional free speech in terms of its value for reflexive freedom without accepting the accusation that we are promoting a comprehensive (Western, liberal, or Habermasian) conception of the good. As Rostbøll notes, the concern with reflexive freedom (or ‘internal autonomy’) “is not perfectionist

in the sense of being concerned with whether people live examined lives and critically scrutinize their private life projects” (2008, 141). In other words, what is at stake is not a moralized or paternalistic attitude to private life projects, but a critical attitude to the way in which laws and policies are publicly legitimized and justified.

However, there is another way of justifying free speech in terms of the commitment to reflexive freedom. As I would argue, human beings have a *right* to engage in thorough reflexive criticism and self-examination, even though they do not have a *duty* to do so. Put differently, human beings have a right not to expose their belief in God to pervasive skepticism and falsification attempts, but they also have a right to do so. Human beings know that they have evaluative views, and they have a right to examine whether these views are based on the best reasons available, or whether they are simply affirmed by ideological indoctrination, habit, or lack of awareness of alternatives. Of course, we may be so certain that our own views are correct that we have no desire to test them, or to hear about alternatives, and we have a juridical right to withdraw from communication with those who disagree with us. But my point is that *if* we want to test our views, then we have a right to do so. We have a right to consult competing views, listen to critics, engage in discussions, and seek information that could weaken or strengthen our position. In that sense, free speech does not *require* anyone to optimize their level of reflexivity, and their ability to regard their own views critically, but it does protect the right of *speakers* as well as *audiences* to publicly exercise reflexive freedom. As Sarah Sorial puts it, an environment of free speech provides citizens with competing, alternative views, *should they want to attend to them*:

An environment of free speech provides people with alternative views, *should they want to attend to them*. It gives audiences information valuable for them to make up their minds about certain issues. Free speech also benefits audiences insofar as being exposed to expression sometimes triggers critical reflection about their commitments and beliefs, causing them to reassess and critically examine their own convictions. We cannot, for example, form an informed opinion on the causes of terrorism, the insurgency in Iraq, or Western foreign policy in the Middle East without listening to a diversity of perspectives, including opinions that are put forward to advocate or glorify violence (Sorial 2010, 173).

Drawing on Joshua Cohen, but also alluding to Habermas’ recent appeal to general human interests in the justification of human rights, I would defend the right to exercise reflexive freedom in terms of a basic *human interest*. Cohen does not use the term ‘reflexive freedom’, but he justifies “stringent protections” of free speech partly in terms of an abstract “deliberative interest” (Cohen 1993, 228). Cohen argues that human beings generally accept the claim that it is important to do what is *in fact* best or worthwhile to do, not simply what one *now believes* is best or worthwhile. Consequently, “we have an interest in circumstances favorable to finding out what is best, or at least what is worthwhile:

that is, to finding out which ways of life are supported by the strongest reasons” (Ibid., 228). Cohen adds that the deliberative interest is also connected to the idea that it is important that one’s evaluative views “not be confirmed out of ignorance” (Ibid., 228), and, third, that the relation between these two aspect (the first and the second) lies in the fact that “reflection on matters of human concern typically cannot be pursued in isolation. As Mill emphasized, reflection characteristically proceeds against the background of an articulation of alternative views by other people” (Ibid., 229). In other words, if human persons have a legitimate interest in discovering the best choices for themselves, and considering whether these choices are supported by the most convincing arguments available, then they also have a right to participate in a discursive learning environment with a very wide legal scope. This right does not imply any comprehensive doctrine of reflexive freedom, but it does imply a moral conception of the human person and its legitimate interest in reflexive freedom.

3.2 Free speech and political freedom

The right to free political speech is a basic human right. Article 20 of the Universal Declaration of Human Rights states that “everyone has the right to take part in the government of his country, directly or through freely chosen representatives”. Human beings are ‘political animals’: we are not just interested in the personal pursuit of happiness and well-being, but also in influencing and contributing to the society in which we live. Given our capacity to respond reasons, and to govern ourselves according to reasons, we have a fundamental interest in being able to rationally accept the laws and regulations we are subjected to as citizens of a political community. That does not mean that everybody is in fact interested in – or engaged in – politics, but that everyone should have a right to exercise political freedom, should she want to. This right is a moral right, grounded on the basic interest of human persons in political freedom, and it implies a robust constitutional protection of free speech. James Bohman and William Rehg therefore stress the internal relation between legitimate law and political autonomy (or freedom):

[D]eliberative democracy refers to the idea that legitimate lawmaking issues from the public deliberation of citizens. As a normative account of legitimacy, deliberative democracy evokes ideals of rational legislation, participatory politics and civic self-governance. In short it presents an ideal of political autonomy based on the practical reasoning of the citizens (Bohman & Rehg 1997, viiii).

If citizens cannot not freely discuss the laws they obey, then these laws can be seen as imposed on them. Imposed laws are democratically illegitimate because – on the deliberative view – political power must spring from the ‘will of the people’ in some way or another. Habermas never addresses

free speech as a political right; first of all because his system of rights consists of abstract categories rather than specific liberal rights, and secondly because he regards the deliberatively saturated right to free speech as a pre-political *private* right, even though it of course presupposes and ‘co-constitutes’ political freedom. However, it makes sense to say that free speech is *also* a political right because citizens’ political participation depends so directly on it: “the desired political rights must guarantee participation in all deliberative and decisional processes relevant to legislation and must do so in a way that provides each person with *equal chances to exercise the communicative freedom to take a position on criticizable validity claims*” (Habermas 1998, 127, emphasis added). If the core concern of political rights is the protection of the “public use of communicative freedom” (Ibid., 127), then free speech is also a core political right. As Ronald Dworkin puts it:

Free speech is a condition of legitimate government. Laws and policies are not legitimate unless they have been adopted through a democratic process, and a process is not democratic if government has prevented anyone from expressing his convictions about what those laws and policies should be (Dworkin 2006).

3.3 Free speech and personal freedom

Some free speech scholars argue that political speech deserves the most robust legal protection compared to other kinds of speech due to its internal relation to the democratic process and the possibility of democratic self-rule. Cass Sunstein, for example, defines political speech as speech that “is both intended and received as a contribution to public deliberation about some issue” (Sunstein 1995, 130). Sunstein argues that legal restrictions on political speech (say, critical speech about the government or the law) are never justified, whereas restrictions on non-political speech (say, scientific plagiarism or threats) can be justified. However, we still have to deal with the fact that many forms of speech are neither intended nor received as contributions to public deliberation, say, emotional expressions among friends or partners, some forms of artistic expression or provocation, some uses of jokes and irony, religious preaches, or everyday talk. Why should they deserve less robust constitutional protection? As Dworkin puts it, “even apart from its intimate relationship with democracy, [free speech] is a universal human right” (2009, v).

I agree with Joshua Cohen that the legal right to free speech should not be made contingent on the role a given expression plays in public deliberation, and certainly not on whether it is *received* by others as a contribution to deliberation:

Should the level of protection for, for example, Kathy Acker’s literary exploration of sexuality be made to depend on whether people find her *Hannibal Lecter*, *My Father* or *Blood and Guts in High*

School challenging or instructive rather than offensive, disgusting or simply out of control, postmodernist identity-deconstructive raving? (Cohen 1993, 227).

In their analysis of the view developed by the Norwegian Governmental Commission on Free Speech, Cathrine Holst and Anders Molander develop a critique that has some affinities with Cohen's critique of Sunstein (Holst & Molander 2009, 46). Holst and Molander criticize the main theoretician behind the Commission, Gunnar Skirbekk, for justifying free speech according to an overly rationalistic conception that draws on Habermas but neglects Habermas' understanding of negative individual freedom, that is, *private autonomy* or, as I have called it, personal freedom. Referring to Albrecht Welmer, Molander and Holst emphasize that private autonomy implies a right to act "selfish, deranged, eccentric, irresponsible, provocative, obsessive, self-destructive, monomaniacal etc." (Welmer, quoted in Holst and Molander 2009, 39). I agree with Holst and Molander that constitutional free speech protects (or should protect) much more than discursive, political speech: it allows us to say things that are not considered (by ourselves or others) as contributions to deliberation, perhaps not even as rational or communicative. If we want to justify such speech within a Habermasian framework, then we need to invoke the idea of private autonomy or 'personal freedom'. It could of course be objected that 'selfish, deranged, or eccentric (etc.)' speech is not necessarily an expression of personal freedom, but rather a product of internal fears or compulsions, mental instability, weakness of the will, and so on. I agree with this, but the point is that it is not the job of the state and legal system to decide what counts as an 'authentic self-expression', or as part of a person's pursuit of happiness and the good life, and what counts as an expression of bad faith, false consciousness, self-deception, etc. In my view, therefore, the protection of personal freedom implies a strong commitment to constitutional free speech as a negative right, that is, a right that sets limits to the state's role in defining for the individual how she should realize her personal freedom.

I conclude that the human interest in personal freedom – the interest in living our lives and expressing ourselves as we desire to, or as we believe we ought to – in itself justifies extensive free speech guarantees. As Benhabib states, "the right of the modern self to authentic self-expression [including authentic free speech] derives from the moral right of the modern self to the autonomous pursuit of the good life" (2002, 53). Cohen, furthermore, speaks about an "expressive interest", that is, "a direct interest in articulating thoughts, attitudes, and feelings on matters of personal or broader human concern, and perhaps through that articulation influencing the thoughts and conduct of others" (1993, 224). As Cohen notes, we sometimes feel we have an obligation to speak out, and perhaps to urge on others a different course of thought, as in religious preaches, proselytizing, or

artistic expressions. However, the expressive interest is not reducible to an interest in propositional or discursive speech because we may prefer to express ourselves through images or symbols, or to test conventional modes of conduct and expression.

4 Legal constraints?

There is a reason why I have repeatedly referred to free speech as an *extensive* juridical right, namely that, on my account, there is very little that the state can prohibit without wrongly interfering with the citizens' reflexive, political and personal freedom. At the same time, there is also a reason why I have not defended free speech as an *absolute* right, namely that free speech is never absolute. As noted by Sunstein, free speech absolutism is a religion with no real followers:

Some people purport to be free speech “absolutists”, advocating constitutional protection of every form of speech; but no one really thinks that way. The government can prevent many forms of speech, including perjury, attempted bribes, threats, private libel, false advertising, unlicensed medical and legal advice, conspiracies, and criminal solicitation. It can do this even if the only target of regulation is ‘speech’ rather than conduct. Free speech absolutism is at most a theology, it has no real followers (1995, 121-122).

Given that Habermas never addresses the question of legal constraints on speech, this chapter gives a short outline of the basic approach I think deliberative democrats should take. I focus on hate speech understood as a group libel (section A), and on blasphemy and religious offence (section B). I argue that deliberative democracy (and multiculturalism) is compatible with legal restrictions on the first type of speech, but not on the latter.

4.1 Hate speech

Most Canada, Australia, New Zealand and most European democracies – but not the U.S. – have adopted some form of hate speech regulation. For example, the English Racial and Religious Hatred Act (2006) forbids “stirring up hatred against persons on racial or religious grounds.” The Norwegian penal code states that “[a]ny person who willfully or through gross negligence publicly utters a discriminatory or hateful expression shall be liable to fines or imprisonment for a term not exceeding three years” (§135a). The same code defines discriminatory or hateful expressions as the acts of “threatening or insulting anyone, or inciting to hatred or persecution or of contempt for anyone because his or her (a) skin color or national or ethnic origin; (b) religion or life stance, or; (c) homosexuality, lifestyle or orientation”.

I follow Jeremy Waldron in defining hate speech in terms of “group libel” (Waldron 2012, 34). Group libel is not a critique of someone’s opinions or beliefs, but an attack on their basic social

standing: “the fundamentals of basic reputation that entitle them to be treated as equals in the ordinary operations of society” (Ibid., 5). Waldron associates the citizens’ basic standing as free and equal members of society with the recognition and public assurance of their *dignity*: “[t]heir dignity is something they can rely on – in the best case implicitly and without fuss, as they live their lives, go about their business, and raise their families” (Ibid., 5). In a similar vein, Habermas considers ‘human dignity’ to refer to a moral status that is expressed not just through legal rights, but also through mutual recognition between interacting members of a particular political community: “the universalized dignity that accrues to all persons equally preserves the connotation of a self-respect that depends on social recognition. As such a form of social dignity, human dignity also requires anchoring in a social status, that is, membership in an organized community in space and time” (Habermas 2010, 472). Thus, for Waldron as well as for Habermas, dignity is not merely an abstract moral quality that we ascribe to human beings in principle, but also a “public good of inclusiveness that our society sponsors and should be committed to” (Waldron 2012, 4). Hate speech attacks that dignity by postulating things about individuals (say, that they are enemies of the nation, that they can never be trusted, that they are morally depraved, bestial, dirty, or aggressive, that they are terrorists or cancer cells, that they must be kept out, sent back, punished, or silenced, etc.) *qua* their membership in specific groups (say, racial, sexual or religious minorities).

On Waldron’s account, hate speech laws neither can nor should prohibit subjective feelings of hatred. Characterizing something as hate speech does not even imply that the speaker is overwhelmed with hatred; on the contrary, she may be calm and controlled. The term ‘hate’ in hate speech does not refer to a psychological condition but to the hateful *message* that is conveyed about certain types of people. This message is most effectively conveyed through drawings, speeches, or written publications that become semi-permanent parts of our public environment, say, posters, blogs, or pamphlets. This is also why spontaneous verbal outbursts of hatred – say, in a bar or on the street – are less likely to be punished than planned publications.

Like Habermas, Waldron rejects the view that there is a principal separation between speaking and acting. Hate speech is an action – a speech act – in the sense that it *does* something *through* language. For example, hate speech casts suspicion on particular groups, or produces a feeling of disgust or anxiety in the audience. It is tempting to regard hate speech as ‘strategic action’ (or ‘teleological action’) in Habermas’ sense. For Habermas, strategic actions are not concerned with achieving understanding through communication, but with the realization of some strategic goal, say, to make others vote for a particular candidate, or fear a particular group: “we identify their meaning only in connection with the intentions their authors are pursuing and the ends they want to realize” (1984, 289). However, in my view, hate speech may be *both communicative and strategic*: on the

one hand, it seeks to communicate something to one group, say, fellow Muslims or fellow white Americans; on the other hand, it seeks to inflict harm, fear, or feelings of inferiority on another group, say, non-Muslims or African-Americans. Habermas' distinction between communicative and strategic action is therefore too rigid to capture a phenomenon like hate speech. Another problem is that Habermas regards strategic action as "concealed" (1984, 294), meaning that the speaker has to hide her strategic intentions and pretend to communicate in order for the speech act to function (I cannot lie to you if I tell you that I am lying). Of course, hate speech *can* be disguised as communication. For example, hate speech about Muslims may pretend to be an argumentative critique of Islam. However, some forms of hate speech are perfectly capable of fulfilling their purpose (i.e. to shock or offend) without being concealed. A death threat, for example, is *open and strategic*: it neither pretends to communicate nor forfeits its purpose, namely to force others to act (or not act) in a certain way.

However, my main concern here is not to discuss the phenomenon or harmful effects of hate speech as such, but to consider its legality. Hate speech laws are controversial, not just in the broader public sphere, but also in political philosophy. Several free speech scholars reject these laws as illegitimate, sometimes appealing to deliberative democratic intuitions. Sunstein, for example, argues that any kind of constraint on *political* speech will "impair the processes of political deliberation that is a precondition for democratic legitimacy" (1995, 136). If democratic legitimacy means that all citizens have a say in the political process, then that process must include racists, sexists and religious bigots whenever they take a stand on social and political issues.¹⁵ If we exclude them, we violate their political freedom, and compromise the legitimacy of the democratic process:

Without a showing of likely, immediate, and grave harm, government cannot regulate political speech. This conclusion has broad and dramatic implications. It suggests, for example, that government may rarely regulate speech critical of own performance during wartime, that claims for the violent overthrow of government are usually protected, and even that racist and sexist speech usually falls within the free speech 'core' (Sunstein 1995, 122).

Referring to Habermas' thesis of the co-originality of public and private autonomy, Robert Post makes a somewhat similar case as Sunstein (2011, 482). For Post, civility norms like the ones that justify hate speech regulations are always *someone's* norms. This means that distinctions between legitimate and illegitimate speech are always ideological in the sense that they express the settled convictions of the majority: "although such laws *purport* to enforce civility norms that are

¹⁵ Referring explicitly to Habermas, Robert Post has made a similar case against legal regulations of hate speech (1995, 145).

universally shared, they *in fact* express the mores of dominant groups” (Post 2007, 81). Thus, grounding the legal regulation of speech on particular norms of respectful debate means imposing one group’s values on other groups. And since *any* norms and values may be publicly challenged in a deliberative democracy, we are not justified in repressing that very debate by law.

Dworkin has given the democratic argument against hate speech laws an interesting twist. He begins by stating, like Sunstein and Post, that “[t]he majority has no right to impose its will on someone who is forbidden to raise his voice in protest or argument or objection before the decision is taken” (2009, 7), and that “[t]his is true no matter how offensive the majority takes these convictions or tastes or prejudices to be, nor how reasonable the objection is” (Ibid., 8). He then goes on to argue that liberal democracies must enact *anti-discrimination laws*, that is, laws which protect minorities and vulnerable groups against ‘specific and damaging discrimination’: “[w]e may and must protect women and homosexuals and members of minority groups from specific and damaging consequences sexism, intolerance and racism. We must protect them against unfairness and inequality in employment or education or housing or the criminal process” (Ibid., 8). The point is that, for Dworkin, we need to be able to give a strong *democratic* argument for the legitimacy of anti-discrimination laws, and we cannot do that as long as we interfere with the speech of those who oppose them: “if we interfere too soon in the process through which collective opinion is formed, we spoil the only democratic justification we have for insisting that everyone obeys these laws, even those who hate and resent them” (Ibid., 8).

On my view, Habermas’ model cannot be used in any straightforward way to defend hate speech laws – or reject them. But the question remains whether my justification of free speech in terms of a commitment to (reflexive, political and personal) freedom commits me to the view held by Sunstein, Post, and Dworkin, namely that hate speech legislation is illegitimate as such. In what follows, I argue that this is not the case, that is, that my appeal to freedom is *compatible* with hate speech legislation.

Starting with reflexive freedom, there is an argument against restrictions that goes back to Mill. According to Mill, every expressed opinion has value for us either because it is true, or else because, though false, it contributes to the public apprehension of truth. In other words, Mill believes that false opinions will be revealed *as* false, and that their presence in the public sphere will enable us to sustain a “clearer perception and livelier impression of truth, produced by its collision with error” (2009 [1859], 20). However, is Mill right that *every* opinion is valuable for us and enables us to clearly perceive the truth? I probably have less faith in the free marketplace of ideas and its intrinsic epistemic qualities than Mill does. As Dworkin notes, “history gives us little reason for expecting racist speech to contribute to its own refutation” (2009, 7). Or as Waldron argues: “[t]he implication

[of Mill's view] would be that racism and religious bigotry need to be artificially cultivated in order to enliven our egalitarian convictions" (2012, 194). It seems absurd to argue that the lack of racist speech in the public sphere is regrettable because it prevents us from 'lively apprehending' the superiority of liberal egalitarianism. Therefore, I am not convinced by the argument that banning certain forms of extreme speech is detrimental to the search for truth. One could just as easily argue (as I shall do in part IV.1.3) that the structural manifestation of hatred and misrecognition is detrimental to rational argumentation and learning, that is, to reflexive freedom.

So what about political freedom? Like Waldron, I am not convinced that European style hate speech laws inhibit the political freedom of racists, misogynists, religious bigots, etc. As Waldron notes, no one is prevented from criticizing hate speech laws themselves, or the 'downstream' anti-discrimination laws whose legitimacy is a concern for Dworkin. All one has to do is to speak in a language that is not directly threatening and does not depict particular groups as second class citizens. Much of what members of hate groups want to say about politics can be articulated in terms that would not be restricted by the laws we are familiar with in European democracies (2012, 190). Consider for example the following amendment to the English Racial and Religious Hatred Act (§29):

Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytizing or urging adherents of a different religion or belief system to cease practicing their religion or belief system.

If 'antipathy, dislike, ridicule, insult or abuse' of particular religions does not qualify as hate speech, then many things can be said about, say, Islam, Judaism, or Christianity that believers regard as offensive and hateful, perhaps even as manifestly false. This suggests that the fear that hate speech regulations will silence criticism of religion is exaggerated.

Finally, what about the category of personal freedom? In relation to this category of freedom, I also do not see that hate speech laws necessarily violate the citizen's ability to express themselves, and pursue the good life as they see it. Of course, radicalized Islamophobes or jihadists cannot directly incite discrimination or violence through public publications or statements. However, in a society where such incitements abound, *everyone's* personal freedom is potentially under threat. We may therefore just as well conceive of hate speech laws as a protection of personal freedom, and not as a limitation of it. As Waldron puts it, hate speech "undermines the public good of socially furnished assurance with which the dignity of ordinary people is supported" and "pollutes the

environment in which members of vulnerable groups, like the rest of us, have to live their lives and bring up their children” (2012, 165).

Of course, one always needs to look at how such legislation is formulated, interpreted and applied in specific cases, and misuse is always a possibility, as when criticism of political or religious power is defined as hate speech in order to be able to legally suppress it. In February 2016, a Danish citizen was convicted of racism for writing on his facebook page that “the ideology of Islam is just as despicable, horrific, oppressive, and inhumane as Nazism. The massive immigration of islamists into Denmark is the most destructive event in Danish society in recent times”.¹⁶ I regard this statement as stigmatizing and harmful to any enlightened debate on immigration and religious extremism. However, given that it contains no direct threats or incitements to discrimination, it does not belong to the category of hate speech and I would therefore not consider the statement a criminal act. In fact, the conviction may harm Danish Muslims who are regularly accused of having a problem with free speech and critique of religion, that is, it may fuel the anxiety among some that ‘criticism of Islam’ is somehow being suppressed in the public sphere.

I personally prefer to live in a country with some form of hate speech regulation. Through such legislation, the constitutional state communicates to all citizens that some forms of speech go against the commitment to free and equal citizenship, and that it (the state) is willing to protect this commitment by force, should that be necessary. Nevertheless, my aim in this section was not to defend hate speech legislation as such, or to say that it is required in order for deliberative democracy to work. Rather, I simply wanted to argue that hate speech legislation is not in principle incompatible with deliberative democracy, as for example Dworkin argues. In some forms, hate speech legislation is fully compatible with (and perhaps conducive to) the citizens’ right and opportunity to exercise freedom in all three dimensions.

4.2 Blasphemy and religious offense

Another debate concerns blasphemy and religious offence. Can blasphemy and religious offence be criminalized in the same way as hate speech, perhaps even as a *form* of hate speech? By ‘blasphemy’ I mean expressions that religious believers regard as forbidden according to religious doctrine. By religious offense I mean speech that somehow offends believers *as* believers, even if it does not count as blasphemy in a theological sense. Religious offense may therefore be regarded as a broader category than blasphemy.

¹⁶ Source: ”Til kamp mod tankeforbrydelser”, *Information*, 17 February 2016; <https://www.information.dk/debat/2016/02/kamp-tankeforbrydelser>

Contrary to the expectations of some sociologists and philosophers, religion has neither disappeared completely, nor been not been fully ‘privatized’ in Western democracies (Habermas 2008; 2008b). Politicians, but also representatives of religious groups, make moral and political claims on behalf of religion, say, in debates about abortion, immigration policy, public education, gay marriage, or reproductive life (Hellesnes 2007). Given that religion is a matter of public concern, and given that organized religion still has a considerable influence on human lives and capabilities, it is crucial that the constitutional state not only allows but actively protects argumentative and critical speech about religious traditions, norms, institutions and truth-claims. As Andrew March puts it, “the secular liberal discourse about speech and religion emphasizes that religion is a matter of *public concern* and that is why speech about it is itself political and protected” (2012, 336).

The deliberative approach I defend regards it as crucial that religious doctrines and traditions can be exposed to public criticism – even provocation, mockery and ridicule – without legal sanctions. This is not just in order to protect the freedom of those who criticize religion or particular religions, but also in order to protect the freedom of religious believers themselves. If criticism and debate within religious communities is formally repressed by the law, then the members’ reflexive freedom is threatened. Furthermore, when reflexive freedom is threatened, so is personal and political freedom: if we are not free to deliberate openly about truth, morality, and justice, how can we be free to lead our personal lives autonomously? How can we participate as free and equal persons in the political process?

Some multiculturalists have criticized liberal defenders of free speech for focusing on the *beneficiaries* of free speech, i.e. philosophers, scientists, poets and authors, as opposed to those allegedly who suffer from its consequences, namely religious and cultural minorities (Pharekh 2000, 319). I agree with Parekh that the interests and beliefs of religious minorities should be taken into account whenever we exercise our right to criticize, mock or provoke religion. I also agree that religious sensibilities are sometimes unfairly downplayed or ignored in particular discussion or defenses of the right to free speech. However, on a larger scale, it is difficult to see how modern liberal democracies could have evolved and taken their current form unless authors, poets, artists, philosophers, scientists and so forth, had had the opportunity to challenge religious views, taboos, and sensibilities, sometimes in ways that were considered offensive or blasphemous by religious spokespersons. It is also difficult to see that free speech about religion has *only* been working to the advantage of secular elites. Thus, even though Brian Barry probably exaggerates the ‘illiberal implications’ of Parekh’s position, he has a point when stressing that, historically, free speech about religion has had an emancipatory effect on the population as whole, as well as on religious believers themselves:

If this [Parekh's view] is where 'respect for culture' takes us, it is scarcely necessary to spell out its illiberal implications. The chief beneficiaries of the world's literature, philosophy and science are those whom it enables to break out of the limited range of ideas in which they have been brought up. There is no reason for exempting religion from this. Indeed, since religions (as against culturally transmitted practices) claim a truth value, there is even more reason for saying that members of all religious faiths should be able to find out what can be said against them (Barry 2001, 31).

I agree with Barry that 'things can be said' against religious truth claims (just like things can be said against other types of claim), and that believers have a right to hear these things, should they want to attend to them. One could of course argue that respectful critique should be allowed, but not blasphemy and insulting speech. As an example of this view, Barry cites Lord Scarman, "the most vociferous advocate among the judiciary of multicultural policies", who argued at the time of the Rushdie Affair for "legislation extending [the offense of blasphemy] to protect the religious feelings and beliefs of non-Christians on the ground that it would 'safeguard the tranquility of the Kingdom'" (Barry 2001, 30). (Barry sarcastically adds that putting valium in the water supply would also safeguard tranquility). Consider also article 196 of the Polish penal code which states that "[w]hoever offends religious feelings of other people by publicly insulting an object of religious cult or a place for public holding of religious ceremonies, is subject to a fine, restriction of liberty or loss of liberty for up to 2 years". I would argue that such legislation is problematic in a principal sense. Some believers regard proposals in favor of birth control or gay marriage as religiously offensive, and, a general prohibition of *any* expression that offends someone's religious feelings would in principle make such proposals illegitimate. The Polish law should therefore worry philosophers and citizens who are concerned that blasphemy legislation may be misused to suppress legitimate and valuable contributions to public deliberation. As Peter Jones notes, there is too much risk involved in protecting religious feelings *as* religious feelings by law: "[t]here is a too great a risk that this clumsy instrument [the law] will silence what ought not to be silenced" (Jones 2011, 89). For example, prohibiting religious offence as such makes it possible in principle for governments and religious authorities to legally repress speech that merely criticizes or questions religious doctrines.

What is furthermore problematic about prohibitions of blasphemy and religious offence is that it the religious communities themselves who decide what blasphemy is, and which expressions are offensive. In principle, religious authorities may categorize many different types of speech – from theological arguments to satirical cartoons – as blasphemy, or as offensive. As Robert Post notes, this possibility introduces a relativistic and subjective quality into the legal system:

[T]he distinction [between legal and illegal speech about religion] cannot be drawn simply on the basis of the beliefs of discrete religious groups. What any given religious group finds offensive is a matter of contingent history. Before the European religious wars of the seventeenth century, Catholics found deeply offensive the mere existence of Protestants in their community, and vice versa. It would seem that the law cannot transparently apply the beliefs of religious groups without becoming entangled in endless and insoluble contradictions (Post 2007, 81).

On these grounds, the deliberative approach I defend remains skeptical towards legal restrictions on blasphemy and religious offense. Hate speech legislation should not protect people's *ideas* – or the subjective feelings that are attached to these ideas – but their basic standing as equal members of society. Thus, even if many believers sincerely feel that an attack on Jesus or Mohammad is an attack on *them*, the law has to draw a line between attacks on persons and attacks on their beliefs:

[T]he basic distinction between an attack on a body of belief and an attack on the basic social standing and reputation of a group of people is clear. In every aspect of democratic society, we distinguish between the respect accorded to a citizen and the disagreement we might have concerning his or her social and political [and religious] convictions (Waldron 2012, 120).

Furthermore, given that it is not a criminal act to offend someone as such, prohibiting religious offence treats religion as a special case. Unless we insist that religious citizens have special privileges, equality before the law must mean that religious feelings are not given special protection compared to 'non-religious feelings', say, the feelings of attachment to a nation, a flag, a political party, or a way of life. Unless we are willing to forbid offense in general, why forbid religious offence in particular?

Indeed, there is certainly a need for discussion here about the distinction between hate speech and religious offense. This distinction is not always easy to make because religiously offensive statements may be intended as hate speech, perceived as hate speech, or because these statements may be part of a larger 'packet' (say, a discourse, statement, or political position) that contains criticism of religious beliefs as well as defamatory claims about those who hold these beliefs. Nevertheless, I do think that a distinction can be made (and has to be made) between defaming a group of people, and defaming their beliefs and holy figures. One such case is the so-called 'Danish cartoons', which will be discussed briefly in the following section.

4.3 The Danish cartoons

On September 30, 2005, the Danish newspaper, *Jyllands-Posten*, published twelve cartoons in a column entitled 'the Faces of Muhammad'. The cartoons were intended to address the issue of self-

ensorship by journalists in particular, and Danish and European artists in general, in relation to Islam and its derivatives. Five months later, national and international protests broke out, and thousands of Muslims contacted the newspaper to express disappointment, anger and grief. In the Middle East, Danish (and Norwegian) embassies were torched, and Danish flags burned. Twelve Muslim majority countries launched a trade boycott against Danish products. Cyber attacks and death threats against the newspaper escalated, and Danish diplomats and aid worker were withdrawn from several countries for safety reasons. More than 130 people died in violent protests.¹⁷

Even though the most intensive political and political-philosophical debates about the Danish cartoons took place several years ago, the principal questions and disagreements that came to the fore are still relevant for my discussions in this thesis. I could have used a more recent case, i.e. the religious caricatures published by the French magazine *Charlie Hebdo*, which was attacked by an Al-Qaida inspired group on 7 January 2015. However, the fact that much has been written already about the Danish cartoon controversy allows me to draw on other discussions and positions, and to contribute to a debate that is already established. At the same time, however, the interest I have in the Danish cartoon controversy is not particularistic but universal: I am interested in the actual cartoons and the different responses to them only to the extent that this allows me to say something in general about the legality and morality of free speech.

In this part of the work, I focus on the justification and legal scope of the right to free speech. In the present section, therefore, my approach to the Danish cartoons is legalistic, in the sense that I focus on the legal right to publish them, not on moral questions related to recognition and mutual respect (see part IV.2.B), or on the postcolonial claim that the cartoons manifested an act of Western hegemony (see part V).

In 2006, seven Muslim organizations reported *Jyllands-Posten*'s publication to the police for breach of § 140 in Danish legislation, the so-called 'blasphemy clause', which states that "those who publicly mock or insult the doctrines or worship of any religious community that is legal in this country, will be punished by a fine or incarceration for up to four months." In the previous section, I argued that religious offence and blasphemy should not be regarded as illegal in a liberal democracy. These arguments are in line with arguments made by Rostbøll in his discussion of the Danish cartoon controversy. Posing the question as to why the state should not prohibit publications disrespectful of religion, Rostbøll argues that "legally enforced respect will (...) tend to freeze a certain understanding of respect into the law, and this conception will most likely not be a universally shared conception" (2009, 636). According to Rostbøll, respect is not a principle that can be determined a

¹⁷ For a thorough presentation of the empirical details of the publication and the following events, see Klausen 2009.

priori by one particular person and group, but one that needs ongoing reinterpretation and mutual justification by members of all affected groups in the democratic public sphere. Legally enforcing *one group's* understanding of respect can therefore be “counterproductive” (Ibid., 636). At least since the Rushdie affair, however, some European Muslims have argued for coercive restraints on blasphemy and religious offence. As March notes, “[b]oth Islamic law and the law of modern Muslim states have always insisted on such legal protections [of religion]; it makes perfect sense from a religious standpoint that this is one thing Muslims might try to achieve in the West” (March 2011, 810).

The seven Muslims organizations that reported *Jyllands-Posten* to the Danish police did not demand a special protection of Muslim sensibilities, but merely that existing laws also protect Muslims. One could therefore argue that their claim was legitimate because it did not imply that Islam be treated differently than other religions, but only that Muslim citizens should be treated as equal before the law. However, *Jyllands-Posten* was never taken to court since the Danish Public Prosecutor decided that the publication, after all, did not infringe the blasphemy clause (Director of Public Prosecution 2006). I cannot go into detail on this decision here, but I do think that if not even the most provocative Muhammad cartoons can be said to ‘mock’ or ‘insult’ Muslim faith, then few things can. In my view, therefore, instead of pretending that the Muhammad cartoons were not insulting enough, the public prosecutor should have admitted that the blasphemy paragraph was out of contact with the moral sensibilities of contemporary Danish society, which is also why the paragraph is practically never used (since 1938, only two Danes have been convicted, the last one in 1966). The vast majority of Danes do not consider it a legal crime to ridicule or satirize religious figures or beliefs (which does not mean that they think it is always morally right or wise). My argument is therefore that, given that the blasphemy paragraph is also not used when Christianity or other religions are under attack, a conviction of *Jyllands-Posten* would have given *special* – and not equal – protection of Islam.

There is, however, a different type of argument that could be used to justify the view that the Danish cartoons should be regarded as criminal acts, namely that they should be considered not primarily as blasphemy or religious mockery, but as hate speech, comparable with racist or otherwise discriminatory views. After all, the Danish legal code also contains a so-called ‘racism clause’ – 266 paragraph b – which makes it a crime to threaten or insult a group of people on account of their “race, color, national or ethnic origin, religion or sexual orientation.”

In order to assess the claim that the Danish cartoons should be understood as a form of hate

speech, we need to engage with the cartoons themselves. Did any of the cartoons promote false or hateful stereotypes about Muslim citizens? Did they incite to hatred or discrimination? It should first be noted that not all of the cartoons satirized the Muslim prophet. One is a naturalist portrayal of Muhammad; one ridicules *Jyllands-Posten* and calls its journalists a ‘bunch of reactionary provocateurs’ (in Arabic); and one mocks a well-known Danish ‘critic of Islam’, Kåre Bluitgen.¹⁸ That being said, most of the cartoons do satirise the prophet and insinuate that he is aggressive, an oppressor of women, or diabolical (with horns). The most controversial cartoon portrays him with a bomb in his turban, with a lit fuse, and the *shahadah* (the Islamic creed) written on the bomb.

Some commentators interpret these more provocative cartoons as straightforwardly racist and islamophobic. Tariq Modood, for example, writes, “[the cartoons] are not just about one individual Muslim per se – just as a cartoon about Moses as a crooked financier would not be about one man but a comment on Jews. And just as the latter would be racist, so are the cartoons in question” (2006, 4). Seyla Benhabib has compared some of the cartoons with anti-Semitic cartoons in the Nazi magazine *Der Stürmer* (Jakobsen & Duarte 2013). I think these concerns should be taken seriously, i.e. because much ‘critique of Islam’ today *is* concealed hate speech about Muslims. However, the fact that much speech about Islam is concealed hate speech does not mean that all such speech is. Who decides that a cartoon of Muhammad is about *Muslims* rather than a critique of religious ideology, or particular religious extremists? Kurt Westergaard who drew the infamous ‘bomb in the turban’ cartoon, insists that this cartoon targets extremists who misuse Islam for violent purposes, not ordinary, peaceful Muslims or Islam as such: “The cartoon is not directed against Islam as a whole, but against the part of it that obviously can inspire violence, terrorism, death and destruction.” (quoted in Post 2007, 76). There is room for interpretation precisely because the cartoon is a *cartoon* and not a propositional claim about Muslims. Offensive cartoons of the Muslim prophet *can* be understood as a form of ‘critique of power’ rather than ‘stigmatization of ‘Muslims’.

Islamic doctrines (just like other religious doctrines and different kinds of secular ideologies) exercise an enormous power on human lives in the world today, sometimes in repressive or illiberal ways, as when oppressive governments misuse the Islamic teachings for political purposes. On this background, caricaturing the prophet as violent or repressive may be *intended* as a critique of extremism, or as mockery of religious fanaticism and religiously justified political oppression. I therefore agree with Jeremy Waldron that “in and of themselves, the cartoons can be regarded as a critique of Islam rather than libel of Muslims; they contribute, in their twisted way, to a debate about

the connection between the prophet's teachings and the more violent aspects of modern jihadism" (Waldron 2012, 125). What Waldron means is not that the publication was admirable or necessary. On the contrary, he stresses that, in his view, "there was something foul in the self-righteousness with which Western liberals clamored for the publication and the republication of the Danish cartoons in country after country (...) Often, the best they could say for this was that they were upholding their right to publish them" (Ibid. 125). Thus, Waldron defends the legal right to publish the cartoons, but stresses that the right to offend neither gives the right bearer a reason to use that right, nor insulates her from moral criticism if she chooses to use it. Given this distinction between legality and morality, I discuss the moral implications of the cartoon controversy in part IV.2.3 and IV.2.4.

Finishing the present section, chapter and part, it is important to note that the justification of free speech I have defended so far is committed – along Habermasian and deliberative democratic lines – to an awareness of fallibility. As Rostbøll notes, "*any* formulation of these norms [liberal rights] might be biased and could be improved" (Rostbøll 2010, 417). What this means in practice is that I do not regard critics of my position as illiberal, anti-democratic or 'enemies of free speech' but – unless they advocate manifestly illiberal ideas – as someone who disagrees with me about the correct interpretation of a contested norm (free speech), and who could potentially enrich my own position.

IV USING FREE SPEECH

Part III addressed Habermas' normative conception of freedom from a particular and limited perspective, namely the perspective of free speech understood as a legal right. However, as mentioned in the introduction, Habermas' model forcefully demonstrates that human freedom is not reducible to a system of negative rights. More specifically, the cultivation of freedom depends on active citizens who are and willing to use their right to free speech in a communicative way: democratic citizens must "make active use of their communication and participation rights, which means using them not only in their enlightened self-interest" (2008, 105). Thus, the 'claims of freedom' in Habermas model are not just 'negative' rights claims, by also 'positive' claims about the virtues, norms and communication structures that enable citizens to realize actual freedom.

Part IV elaborates the 'claims of freedom' that are implicit in Habermas' model from two interrelated but analytically distinct perspectives. I use Habermas' basic vocabulary of reflexive, political and personal freedom as a theoretical framework, but I also draw on a range of other philosophers and theorists. First, from a descriptive (or social-philosophical) perspective, I discuss how freedom – in all three dimensions – presupposes a basic relation of mutual recognition between members of the political community, and, correspondingly, how freedom may be distorted through misrecognition, i.e. hate speech and cultural stereotyping (chapter 1). This chapter includes a discussion of an article by Sindre Bangstad and Arne Johan Vetlesen in which they argue that Habermas' model presupposes a naïve and overly optimistic view of how the public sphere actually works. Second, from a normative (or moral-philosophical) perspective, I argue that the requirement of mutual recognition confronts democratic citizens with certain duties and expectations: recognizing other as free *requires* something of us as speakers and listeners in the public sphere (chapter 2). This chapter includes a comparative discussion of Honneth's and Habermas' normative theories of recognition. I also address Yolande Jansens' claim that Habermas himself 'spreads prejudices' about Islam and Muslims. Finally, chapter 3 addresses the particular case of 'religious reasons' in democratic deliberation. This chapter includes a critical discussion of Habermas' distinction between 'secular' and 'religious' reasons, and his proposal to formally exclude the latter from parliamentary debates. The final part of this chapter addresses two critics of Habermas, Maeve Cooke and Lasse Thomassen, and their attempt to overcome what they see as a biased and exclusivist secularism in his work.

1 Recognition as a presupposition for freedom

1.1 Distorting freedom through misrecognition

Given the functional need for communication in modern societies, Habermas notes that “the institutions of constitutional freedom are only worth as much as a population makes of them” (2003a, 27). Paraphrasing Habermas, we could say that *the right to free speech is only worth as much as a population makes of it*. Free speech allows us to argue with others and learn from their perspectives, seek mutual understanding, criticize dominance and ideology, etc., but it also allows us to spread lies, anxieties, aggressions, or unexamined prejudices in the public sphere. In that sense, there is always a risk that the democratic public sphere disintegrates into a place where “isolated, self-interested monads (...) use their individual liberties exclusively against one another *like weapons*” (Habermas 2008, 107).

As we have seen (part I), Habermas sometimes analyses the necessary ‘unifying bond’ of a well-functioning democracy in terms of a ‘liberal political culture’. Such a culture, as we have also seen, is characterized by relations of symmetrical recognition between different identity groups. In a certain sense, therefore, the freedom that is achieved for everybody in a liberal political culture presupposes recognition. Equal recognition (or respect) is expressed (or not expressed) in a formal way in policies, laws and political institutions. However, it is also expressed (or not expressed) in the more informal ways in which citizens speak and interact in public and political life, as when ‘subtle’ but still painful forms of exclusion and discrimination permeate the political culture: “[s]tructurally entrenched mechanisms of exclusion are difficult to pin down. It is true that, under the banner of formal equality, discrimination has retreated into the more inconspicuous zones of informal interactions; but even these more subtle forms of discrimination are painful enough (2008, 268).

When recognition is not expressed but *should* be expressed, we usually speak of misrecognition. As the above passage suggests, misrecognition is not reducible to legal injustice or formal exclusion, but includes more informal ways of interacting (or not interacting) with others in public space.

So, what is misrecognition? There is an obvious sense in which public speech counts as misrecognition, namely when particular groups or individuals are being denied the right or ability to exercise freedom – reflexively, politically or personally. Arguing that women are unable to think critically (reflexive freedom) or participate in politics (political freedom), or that Muslim citizens must be ‘send back’ or prevented from practicing their religion (personal freedom), all amounts to explicit acts of misrecognition because it denies individuals the right to free and equal citizenship. Misrecognition in this sense refers to what Corey Brettschneider characterizes as *hateful viewpoints*:

Hateful viewpoints are defined not necessarily by their emotion, but by their expressing an idea or ideology that opposes free and equal citizenship. Those who hold hateful viewpoints seek to bring about laws and policies that would deny the free and equal citizenship of racial, ethnic, or minorities, women, or groups defined by their sexual orientation (Brettschneider 2012, 1).

However, there are other types of speech that do not explicitly incite to discrimination or mistreatment, but which nevertheless count as misrecognition. What Honneth refers to as the “denigration of ways of life” (1995, 131) or “cultural degradation” (Ibid., 132) comes in many forms: “the continuum of examples ranges from the harmless case of not greeting another person to the serious case of stigmatisation” (2007, 137). To be stigmatized means to be publicly associated with negative characteristics – i.e. violent behavior, dishonesty, sexual perversity, greed, selfishness, irrationality – due to traits one shares with a group of other people, for example in terms of gender, ethnicity, sexual orientation, or cultural-religious background. Stigmatization in this sense may *implicitly* suggest that the targeted group should not be granted the benefits of equal citizenship. As Waldron notes, misrecognition in the form of group defamation targets the members of a particular group with some imputation of “terrible criminality” – “an imputation which, if sustained on a broad front, would make it seem inappropriate to continue according the elementary (...) status of citizenship to members of the group in question” (2012, 47). However, my point is that misrecognition comes in many different forms, including forms that do not *explicitly* question the status of the equal citizenship of the group in question.

So, how does misrecognition distort freedom? Let us look at reflexive freedom first. Reflexive learning processes, I submit, are only possible among discussants who recognize each other as rational, honest, and morally accountable in some minimal sense. Persons who regard each other as ideologically deluded, dishonest or morally depraved, are unlikely to take each other’s arguments seriously as candidates for truth, moral rightness or personal truthfulness. Therefore, if systematic misrecognition permeates the political culture, then the “quality of the discursive truth seeking procedure” (Habermas 2008, 51) cannot remain unaffected. If political rhetoric, or the narratives and stories presented to us in mainstream media, are dominated by stereotypical, misleading or hateful claims about specific groups, then ‘the force of the better argument’ may be suppressed by what Habermas calls the “spiral of stereotyping” (2003, 36). In that sense, misrecognition works against the kind of cognitive openness that is required if learning processes are to take place, that is, the cultivation of reflexive freedom presupposes that participants in deliberation recognize each other as someone from whom they might have something to learn. For example, minorities who feel misrecognized by the majority may withdraw from public deliberation and take refuge in what Honneth calls “countercultures of compensatory respect” (2007, 94), that is, in a

subcultural environment that confirms and stabilizes their identities in a rigid and non-reflexive way. Such a culture, Honneth writes, may further develop into a “counterculture of violence” (Ibid., 78).

Consider next the category of political freedom. Being free in a political sense requires much more than a legal right to free speech; for example, it requires an audience that is willing to listen, and a political culture that is not excessively burdened with communicative asymmetries and structural mechanisms of marginalization and misrecognition. Subjects who suffer from structural misrecognition may be marginalized in the political process because they lack what Rostbøll characterizes as “discursive status”, that is, the status of someone who is worth talking to and arguing with in the first place (2008, 45). Thus, on a deliberative account, the ‘negative’ right to speak freely points beyond itself, in the sense that it is regarded as instrumentally valuable – or as an enabling condition – for something else, namely the ‘positive’ ability to participate and be heard.

Working for the equal opportunity of each citizen to exercise political freedom means working towards what Nancy Fraser calls ‘parity of participation’. In recent works (2008), Habermas welcomes Fraser’s distinction between two interrelated but analytically distinct conditions for participatory parity: *economic redistribution* (relating to ‘objective’ socio-material conditions) and *recognition* (relating to ‘intersubjective’ symbolic conditions). With regard to the intersubjective or recognitive component, Fraser stresses that misrecognition may hinder subjects from participating as peers, both by overemphasizing their ‘difference’ (say, their assumed religious ‘otherness’ within a liberal democratic population), and by failing to acknowledge their distinctiveness (say, by expecting them to behave exactly like the majority).

Participatory parity also has intersubjective conditions. People cannot interact as peers in the absence of certain cultural prerequisites. In general, the institutionalized cultural patterns of interpretation and evaluation must express equal respect for all participants and ensure equal opportunity for achieving social esteem. This requires the absence of institutionalized value schemata that systematically depreciate some categories of people and the qualities and activities associated with them. Precluded here are institutionalized patterns of signification that disadvantage some people either by burdening them with excess ascribed ‘difference’ or by failing to acknowledge their distinctiveness. Only when the status order is free of such pervasive biases can social actors interact as peers (Fraser 1996, 54-55).

Finally, we have the category of personal freedom. As I have already argued, the category of personal freedom includes not just a concern with equal rights and liberties, but also a concern with the actual ability of concrete subjects to make use of these rights in order to form and pursue a specific conception of the good. Like Taylor, Honneth and Benhabib, Habermas emphasizes that we are intersubjective beings who develop our identity and sense of integrity in relationships with others, both ‘significant others’ such as friends and family members, and strangers with whom we interact with in civil society and the political public sphere. As Taylor puts it, we are vulnerable to

misrecognition because our self-image depends on some form of positive feedback from our interaction partners and social environment:

Our identity is partly shaped by recognition or its absence, (...) so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or contemptible picture of themselves. Nonrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being (1994, 25).

Like Taylor, Habermas emphasizes the profound dependency of the human subject on intersubjective recognition of its identity: “a post-conventional ego-identity can only stabilize itself in the anticipation of symmetrical relations of unforced reciprocal recognition” (1992, 188). Thus, a convincing social philosophical understanding of the human person must take into account what Habermas calls the “cultural constitution of the human mind” (2008, 296), that is, the dependence of the individual person on “interpersonal relations and communication, on networks of reciprocal recognition, and on traditions” (Ibid.). Given that we develop, maintain and revise an individual self-identity only in (perhaps critical) interaction with others, protecting the integrity of the individual is not possible without protection the cultural networks with which she identifies:

the integrity of the individual legal person cannot be guaranteed without protecting the intersubjectively shared *experiences and life contexts* in which the person has been socialized and has formed his or her identity. The identity of the individual is interwoven with collective identities and can be stabilized only in a cultural network (1994, 129).

So, personal freedom implies more than a negative freedom from external constraints, namely a de facto opportunity to pursue one’s goals and life-plans within ‘experiences and life contexts’ that are characterized by recognition, or at least not permeated with structural misrecognition. “Private autonomy”, Habermas writes, “does not simply mean free choice within legally secure boundaries; it also forms a protective cover for the individual’s ethical freedom to pursue his own existential project or, in Rawls’ words, his current conception of the good” (1998, 45). Habermas is not very specific about the nature of this ‘protective cover’; however, my point is that it cannot be articulated in terms of legal rights alone because it has an ethical-existential dimension too: personal freedom is vulnerable to experiences misrecognition, also in the form of public stigmatization, stereotyping or group defamation. This is why Waldron asks us to consider whether victims of hate speech really are able to live their everyday lives in a successful way: “[c]an their lives be led, can their children be brought up, can their hopes be maintained and their worst fears dispelled, in a social environment polluted by these [hateful] materials?” (Waldron 2012, 10). In a similar vein, Honneth stresses that

misrecognition may inhibit the misrecognized subject's individual self-realization, that is, their capacity to articulate and pursue "self-chosen lifegoals" (1995, 174). Honneth therefore emphasizes that personal freedom cannot be understood merely in negative terms, as the absence of constraints, but presupposes an intersubjective context of recognition:

With regard to such a process [of self-realization as individual persons], 'lack of coercion' or freedom' cannot be understood simply as the absence of external force or influence, but must rather signify the lack of inner barriers as well as psychological inhibitions and fears. But this second form of freedom is to be understood, to put it positively, as a form of trust directed inward, which gives individuals basic confidence in both the articulation of their needs and the exercise of their abilities. [...] this sort of confidence, these unanxious ways of dealing with oneself, constitute aspects of a positive relation-to-self that can only be gained through the experience of recognition. To this extent, the freedom associated with self-realization is dependent on prerequisites that human subjects do not have at their disposal, since they can only acquire this freedom with the help of their interaction partners (1995, 174).

1.2 Freedom through offense?

Following this discussion, it is suitable to again briefly consider the case of religious offence. The point I now want to make is not legal but *pragmatic* in Habermas' sense: it takes for granted that freedom is a settled value in liberal democracies, and asks how we can realize this value in the best or most effective way. Based on what I have said until now about recognition as a presupposition for freedom, one could argue for at least some self-restraint in the use of religiously offensive speech.

Of course, as I have used the term misrecognition so far, it refers to stigmatizing and downgrading speech about human persons, not to statements about religious beliefs or symbols. Nevertheless, it is not always clear that an attack on people's beliefs or the things they consider sacred is not (also) an attack on them as persons; one way in which I can demonstrate my lack of respect for you is to mock the things you cherish, value and care for. Or take the example of the 'bomb in the turban' cartoon mentioned in part III. discussed in part III.2.3. On the one hand, this cartoon targets the misuse of a religious figure (Mohammad) by religious extremists; on the other hand, it reproduces what could be seen as stereotypes about the angry, threatening Arabic man. At the very least, regardless of the intentions of the cartoonist and the publisher, it is likely that some Muslims perceive an offensive cartoon of the prophet as an act of misrecognition of *them*, i.e. as a message that they are not welcome or valued in Danish society. This gives us a reason to reflect upon the psychosocial consequences of misrecognition, also in the case of religious offense and insults of people's 'religious feelings'.

As we have seen, Habermas emphasizes that democratic deliberation presupposes a self-reflexive attitude (reflexive freedom), which includes among other things a willingness to critically

consider one's own standpoints and validity claims when communicating with others. Religious offence, however, may have the effect that the offended become alienated from public deliberation, and immunize themselves against criticism and dialogue, say, by attributing to the offender only the worst intentions, and the poorest understanding of the facts. For example, some immigrants from traditional or non-liberal cultures who are not yet 'accustomed to freedom' in Habermas' sense may distance themselves from the political culture and its secular-liberal presuppositions. The possibility should therefore be considered that reflexive freedom is better promoted through a dialogue that proceeds on conditions that most participants find acceptable and which is oriented towards mutual understanding. When participating in such a dialogue, one can still defend the right to blaspheme and ridicule, or criticize religion and religious taboos, but now through argumentation rather than through the act of offence itself. This approach is in line with basic Habermasian intuitions: Habermas emphasizes the transcending force of rational argumentation between language users who attempt to *convince* each other about something, not the transcending force of ridicule and insult.

However, as Rostbøll notes (2009, 637), publications such as the Danish cartoons are sometimes defended precisely through appeals to autonomy and self-reflection as an educative process. It is assumed that helping others to become self-reflexive is a good thing (even a moral obligation) and that transgressing religious taboos is a means to attaining that. Brian Barry, for instance, has made the case that respectful critique, say, discursive examinations of the persuasiveness of particular religious beliefs, is ineffective: "it is not enough that only polite and respectful criticisms should be available" (2001, 31). I agree with Barry that also impolite and disrespectful forms of critique should be 'available' in the sense of being legally permissible. However, in addition to merely defending the *right* to be disrespectful, Barry makes the consequentialist argument that disrespectful speech about religion is *needed* in order to protect autonomy and combat fanaticism:

[F]ew people have ever been converted to or from a religion by a process of 'examining beliefs critically'. Religious fanaticism is whipped out by non-rational means, and the only way in which it is likely to be counter-acted is by making people ashamed of it. If Christianity has in the past fifty years finally become compatible with civility (at least in most of Western Europe), that is the long-term consequence of an assault on its pretensions that got under way seriously in the eighteenth century (Ibid., 31).

It seems plausible that ridicule of religious fanaticism can have the positive effect that those who were initially attracted to it become ashamed of it. However, it seems mistaken to assume that the only way of combating religious fanaticism is through offensive or disrespectful speech. If this were true, the only way of responding to the attraction that radical Islam has for some European youths,

would be to ridicule Islamic beliefs and symbols more intensely. This approach seems absurd because experts tell us that feelings of misrecognition and disrespect is one of the explanatory causes of the attraction that radical Islam has on some European youth (i.e. Haleem 2011). Also Habermas, after the Paris Attack in 2015, argued that failed socio-economic integration combined with feelings of misrecognition have led some Muslim youths to struggle for self-respect in ‘sociopathic’ ways: “the West’s policy is far from innocent when it comes to the lack of any future prospects and hopelessness felt by young generations seeking opportunities to build a better life on their own and be recognized for doing so. And, when all political efforts fail, become radicalized in order to regain their self-respect via sociopathic routes” (Habermas 2015). On this background, there is no guarantee that the kind of religious offense that Barry wishes to see more of would not contribute to radicalization rather than ‘combat’ it.

In addition, one could argue against Barry that it makes a pragmatic difference *who* offends *who*. If ‘external’ criticism does always have the same effect as ‘internal’, then there is reason to consider whether ‘Western’ provocations of Islamic sensibilities may lead us into a different kind of dynamic than the one we are familiar with from European history. Finally, Barry does not consider whether it makes a difference that the offended subjects see themselves as members of a minority, and the offender as a representative of the majority. It could at least be argued that the European case is different from today’s multicultural societies: in the first case, religious offence was primarily directed at powerful authorities and elites, whereas, in the second case, also minorities and vulnerable groups are exposed to it. It is of course debatable who counts as minority, and in which sense. European Muslims who see themselves primarily as parts of a global ‘ummah’ may think of themselves as members of a powerful transnational community, not as members of a weak minority in Denmark. Nevertheless, many European Muslims do live their daily lives as members of a minority culture within a dominant majority culture. For them, the culture that confronts them in public and political life is sometimes seems alien, incomprehensible or hostile. On that basis, we should therefore again consider whether the trajectory of the European enlightenment will repeat itself, as Barry seems to think, if only these Muslims are exposed to pervasive and sustained religious ridicule.

1.3 A naïve conception of the public sphere? Bangstad and Vetlesen’s critique

I shall finish this chapter with some reflections on an essay by Norwegian anthropologist Sindre Bangstad and philosopher Arne Johann Vetlesen (Bangstad & Vetlesen 2011). According to Bangstad and Vetlesen, ‘Habermasian’ conceptions of the public sphere neglect the dark sides of free speech – and free speech ideology – in contemporary liberal democracies. The empirical basis for

their criticism is the Norwegian public sphere, in particular before and after the terror attacks on the 22 July 2011 in Oslo and on Utøya, committed by anti-immigrant and anti-Muslim nationalist, Anders Breivik.¹⁹ Bangstad and Vetlesen describe free speech as a secular-liberal “doxa” in Bourdieu’s sense, that is, a right that no one dares to question or critically discuss. Those who do question it, they argue, are accused of being “anti-democratic and illiberal” (2011, 336). By the ‘dark sides’ of free speech they refer to the spread of hate speech and religious stigmatization, including the specific kind of Islamophobic ideology that motivated Breivik to commit the mass-killing on the 22 July.

The main target of Bangstad’s and Vetlesen’s critique is the Norwegian Free Speech Council (Ytringsfrihetskommisjonen) and its report from 1999: “Free speech must occur”.²⁰ Bangstad and Vetlesen argue that “[t]he philosophical foundation of the view of the Free Speech council can be found in Habermas, especially in his *Transformation of the Public Sphere*, and his later contributions to discourse ethics and so called deliberative politics and legal theory” (2011, 339).²¹ The report, they note, still influences the way in which powerful (Norwegian) political elites and editors conceive of and exercise free speech. I have already mentioned the report in relation to a different kind of criticism, namely that it suffers from a ‘liberal deficit’ because it justifies free speech in an overly rationalistic manner (Holst & Molander, 2009). Bangstad’s and Vetlesen’s critique comes from a different direction: they are not worried that the report *justifies too little*, as Holst and Molander, but that it *presupposes too much* about how the public sphere actually works. As an example, they refer to a passage in the report stating that “a relatively well functioning public sphere” makes it possible to “correct false information” (Bangstad & Vetlesen 2011, 342). By this, they argue, the commission demonstrates that it relies on a flawed Habermasian understanding of “how the public sphere works” (Ibid., 334). This understanding is flawed, they argue, because Habermas holds a far too optimistic view of the ability of ‘rational discourse’ to correct stereotypical, stigmatizing and false claims, and therefore neglects the more irrational, fear-driven and propagandistic dimensions of public discussion.

Against this assumed Habermasian understanding of the public sphere, Bangstad and Vetlesen come up with different examples of how public speakers are not interested in rational probing of their own arguments, but merely in confirmation of the views they already have – so-called ‘confirmation bias’. Furthermore, they emphasize that mass slaughters and massacres, like the one on the 22 July, are typically the end result of a longer ideological campaign intended to publicly

¹⁹ In IV.2.2 I discuss the issue of hate speech and Islamophobia from a moral, recognition theoretical perspective.

²⁰ My translation; the Norwegian title is: “Ytringsfrihet må finne sted”.

²¹ My translation.

dehumanize specific groups. Today, they observe, such demonization has become commonplace in many parts of the new internet-based social media, such as blogs, Twitter, Facebook accounts, as well as the comments sections of online newspapers.

How adequate is this critique? I believe there is something to it, but also that it needs modification. On the one hand, Habermas does say things that come close to the views Bangstad and Vetlesen ascribe to him. For example, he states the process of argumentation is *self-correcting* because it *spontaneously* moves toward the inclusion of new participants and better arguments:

The process of argumentation is self-correcting in the sense that an unsatisfactory discussion, for example, spontaneously generates reasons for ‘overdue’ liberalization of the rules of procedure and discussion, for changing an insufficiently representative circle of participants, for expanding the agenda or improving the information base. One *can tell* when new arguments must be taken seriously, or when marginalized voices must be taken into account” (2008, 51).

If Habermas is right that participants in argumentation can always tell when new arguments must be taken seriously, or when marginalized voices must be included, then it becomes hard to explain why misrecognition and unexamined prejudice exist in the first place. Put differently, it becomes hard to explain why the cultivation of reflexive freedom is frequently blocked by stubborn mentalities, mutual stereotyping, and rigid worldviews. If Habermas is right that discussants are *spontaneously* moved to include new perspectives and information in order to test and falsify their own prejudices, then, needless to say, we should expect misrecognition and ideology to evaporate before our eyes. Habermas writes that “[t]he innocuous presupposition of an honest and impartial balancing of all arguments *forces* the participants to adopt a self-critical stance towards their own interests and evaluations of situations and to take into account the interests of others from the perspective of their self-understandings and conceptions of the world” (2008, 86-87, my emphasis). I agree that discussants themselves normally believe that they are capable of an ‘honest and impartial balancing of all arguments’. But how exactly does this belief *force* them to adopt a self-critical stance, and to consider the interests and self-understandings of others from *their* perspective? It seems more correct to say that, sometimes, rational arguments are able to stimulate our reflexive capacities in a critical way, and sometimes they are not. People who are in the grip of deep-seated aversions related to specific groups – say, ‘Muslims’ or ‘infidels’ – may be more or less immune to rational argumentation from people belonging to the group in question. On this basis, Habermas’ claims about the ‘spontaneous force’ of rational argumentation seem misplaced or naïve.

The idealized claims Habermas sometimes makes about rational discourse go hand in hand with an idealized conception of the rationalized lifeworld and the ‘modern era’. In some writings, Habermas seems to assume that all cultural traditions in the modern era have become self-reflexive:

“The accelerated pace of change in modern societies explodes all stationary forms of life. Cultures survive only if they draw the strength to transform themselves from criticism and secession. (...) In the modern era rigid life forms succumb to entropy” (1994, 132). Understood as a sociological description, this is clearly problematic: rigid forms of nationalism, ethnocentrism, religious fundamentalism, etc. have not ‘exploded’ in modern accelerated societies, but survived and developed in different variants. Also on modern conditions, cultural and religious groups – majorities and minorities – defend themselves against criticism and change, and mobilize against competing traditions and ways of life.

However, these idealized descriptions do not correspond with other and more realistic claims Habermas makes about modern societies and the conditions for rational discourse in such societies. Already in his *Transformation of the Public Sphere*, Habermas’ diagnosis of modern society was pessimistic, demonstrating a degeneration of the public sphere due to the rise of modern mass media and the manipulation of these by powerful elites and economic interests (1990a, 31). In fact, the dark sides of the internet and new social media that Bangstad and Vetlesen worry about seem to confirm Habermas’ early skepticism about mass media in modern mass democracies. Also in recent works, Habermas has expressed skepticism about the democratic potential of new social media, emphasizing that “the dynamics of mass communication are driven by the power of the media to select, and shape the presentation of, messages and by the strategic use of political and social power to influence the agendas as well as the triggering and framing of public issues” (2006a, 415).

Put differently, in spite of some idealized claims about the public sphere and the ability of rational discourse to spark learning, Habermas is much preoccupied with exclusion, marginalization, and systematically distorted communication, ranging from legal discrimination to economic deprivation, ideology, stigmatization and misrecognition in the public sphere. He complains about the “deplorable discursive level of public debates” (2008, 22), and he analyzes how the democratic process is disrupted by systemic asymmetries and inequalities, on the one hand, and opportunistic ‘attitudes, affects, and prejudices’, on the other:

The structures of the public sphere reflect unavoidable asymmetries in the availability of information, that is, unequal chances to have access to the generation, validation, shaping, and presentation of messages. Besides these systemic constraints, there are the accidental inequalities in the distribution of individual abilities. The resources for participating in political communication are in general narrowly limited. This is evident whether one examines the time available to individuals and the episodic attention to topics and issues with histories of their own; the readiness and ability of to make one’s own contribution to these topics; or the *opportunistic attitudes, affects, prejudices, and so on*, that detract from a rational will-formation (1998, 326, emphasis added).

Thus, pace Bangstad and Vetlesen, a ‘Habermasian’ understanding of the public sphere does not necessarily imply the wildly naïve idea that speakers and listeners always enter into “unforced, equal and symmetrical relations” (Bangstad and Vetlesen 2011, 339) in the public sphere. Nor does it necessarily imply the naïve belief that public debates are always rational and oriented towards the testing of validity claims.

To sum up, I disagree with Bangstad and Vetlesen that a Habermasian conception of the public sphere must be blind and deaf to misrecognition, ideology and hate speech, as witnessed in parts of the Norwegian public discourse on Islam and Muslims. It would be more correct to say that Habermas makes ambiguous claims about the ‘spontaneous force’ of rational argumentation, and about degree to which modern societies are rationalized and their citizens ‘accustomed to freedom’. *Sometimes*, Habermas seems to suggest that the public sphere is a place where poor argumentation and unexamined prejudice will always succumb to the ‘unforced force’ of the better argument. At other times, he correctly points to the facticity of ideology, structural violence and manipulation as a semi-permanent trait of the public sphere: “even in our peaceful and well-to-do OECD societies we have in a sense been accustomed to the *structural* violence of invidious social inequalities, of humiliating discrimination, and of impoverishment and marginalization. (...) [O]ur social relations are pervaded by violence, strategic action, and manipulation” (Habermas 2006, 15). Thus, in an interview about the Al-Qaida attacks on the Twin Towers on 9 September 2001, Habermas analyzes the turn to violence in a way that reminds a lot of Bangstad and Vetlesen’s analysis of 22 July 2011, namely in terms of a ‘disruption of communication’: “conflicts arise due to disruptions in communication, from misunderstanding, and incomprehension, insincerity and deception. (...) The spiral of violence begins with a spiral of disrupted communication that leads to a spiral of unchecked mutual distrust to the breakdown of communication” (Ibid., 15).

2 Recognition as a moral duty

In the previous section I analyzed the need for recognition in socio-philosophical terms, focusing ‘descriptively’ on recognition as a presupposition for freedom in all three dimensions. For Habermas, however, mutual recognition is not just a functional but also as a moral requirement, that is, a requirement of justice. For Habermas, the functional and the moral requirement of recognition seems to be two sides of the same coin: “[t]he complex life circumstances in modern pluralist societies are normatively compatible only with a strict universalism in which the same respect is demanded for everybody – be they Catholic, Protestant, Muslim, Jewish, Hindu, or Buddhist, believers or non-believers” (2003, 32).

The emphasis on misrecognition as a form of moral injustice is also present in Habermas' recent writings on human rights in which stresses that the notion of social recognition forms a "conceptual bridge" between the moral idea of free and equal persons and the legal form of human rights (2010, 470). However, what interests me in this chapter is not so much the theoretical importance of recognition as a 'conceptual bridge', but rather the more practical, argumentative implications of the moral idea of equal recognition. Habermas correctly stresses how the "the moral promise of equal respect for everybody is supposed to be cashed out in the *legal currency* [of] human rights" (Ibid., 470), but he seems less interested in how the moral promise of respect is cashed out in our *discursive practices*.

I begin my discussion of the morality of free speech by addressing the most elaborated theory of recognition available today, namely Axel Honneth's. In several places, Habermas refers to Honneth with approval, as someone who has successfully analyzed the moral grammar of contemporary struggles for recognition: "[a]s Axel Honneth has shown, experiences of insults to human dignity are what must be articulated in order to attest to those aspects under which equals should be treated equally and unequals unequally in the given context" (1998, 426). I agree with Habermas that parts of Honneth's framework may serve as fruitful supplements to deliberative democratic theory, and I have already included Honnethian arguments in my own analysis above. However, as I shall argue, Honneth's approach is also burdened with particular problems, in particular in the early writings in which he tends to collapse the distinction between *moral injustice*, on the one hand, and the *psychological experience* of injustice, on the other. By grounding his early theory of justice on a psychological theory of hurt feelings or 'moral injury', Honneth makes it difficult to distinguish between legitimate and illegitimate experiences of offence. Thus, applied to the issue of the morality of free speech, the early Honneth could be read in a way that makes speech immoral simply because it offends someone or denies them the recognition they feel they deserve. In order to avoid misunderstandings, it is therefore important to explain how my Habermasian approach to the morality of recognition and free speech differs from Honneth's early theory.²²

2.1 Honneth: from moral injury to equal respect

In his *The Struggle for Recognition*, as well as in the collection of articles, *Disrespect*, Honneth draws on Hegel's early writings on recognition and works in modern social psychology (Mead) and developmental psychology (Winnicott), to develop a complex theory of human identity formation. This theory stresses our fundamental need for recognition from others and our consequent

²² For a more comprehensive discussion of Honneth, see Jakobsen 2011 and 2014. For a comparison of Honneth and Habermas, see Jakobsen 2009.

vulnerability to ‘moral injuries’, that is, experiences of misrecognition. A moral injury is a subjectively felt harm that is caused by other human subjects, and related to our basic sense of who we are and why we *deserve* recognition, that is, our “personal identity” (1995, 131) and our corresponding “moral feelings” (2007, 71). Serious forms of moral injury, Honneth argues, are accompanied by psychological symptoms such as “being ashamed or enraged, feeling hurt or indignant” (1995, 136). Such feelings can undermine our capacity to act and articulate our interests without shame in the public sphere, but they can also be channelled productively into collective *struggles for recognition* in which groups of injured subjects reclaim the recognition they (believe they) deserve. Honneth also outlines a normative vision of the direction that future struggles for recognition should take. Notably, he argues for a society that is “free from pain” (Ibid., 130), that is, a society of “unrestricted recognition” (Ibid., 171).

According to Honneth, an action or expression becomes a moral injury if:

the person affected has no choice but to view it as an action that *intentionally disregards an essential aspect of his or her wellbeing*; it is not merely bodily pain as such, but the accompanying *consciousness of not being recognized in one’s own self-understanding* that constitutes moral injury. (...) As in the case of a *symbolic offense or humiliation*, it is the disrespect of personal integrity that transforms an action or utterance into a moral injury (2007, 134, my emphasis).

The early Honneth does not seem interested in symbolic offense related to culture and religion: his main examples of historical struggles for recognition are the workers’ movement, the women’s movement, and the American civil rights movement. However, Honneth’s basic arguments translate easily into claims about cultural-religious (mis)recognition. For example, if religious feelings and beliefs are crucial to Muslims’ self-understanding, wellbeing and sense of integrity, and if Muslims think that mockery of their prophet ‘intentionally disregards an aspect of their well-being’ – perhaps the most important aspect of all – then ridicule or satire targeting the prophet must count as a moral injury in Honneth’s sense.

Honneth’s description of the phenomenon of moral injury probably corresponds well with the experiences and moral feelings that many subjects have when they are denied the recognition they believe they deserve. However, description is one thing, but what about justification? In my view, there is a problematic line of argumentation in the early Honneth, which uses the subjective (or psychological) experience of misrecognition directly as a normative basis for social and moral criticism. I call this the ‘psychological’ line because it fails to distinguish between the psychological experience of moral injury that a subject has, and its moral-philosophical assessment.²³ Honneth

asserts, for example, that “moral injustice is at hand *whenever*, contrary to their expectations, human subjects are denied the recognition they *feel* they deserve” (Ibid 71., italics added). If the mere feeling of being misrecognized is sufficient to conclude that we are dealing with a case of moral injustice, then, correspondingly, *any* infliction of offense on others is morally wrong: *whenever* I say something that makes someone feel that she is not ‘recognized in her own self-understanding’, I commit a moral injustice. Understood as a claim about the moral limits of free speech, this is of course very problematic. First, if we regard all feelings of injury as morally justified, and all actions or expressions that produce such feelings as morally wrong, then we have no way of distinguishing between legitimate and illegitimate feelings of offence. Some people feel offended by the sight of two men kissing or holding hands in the street, others feel offended by the sight of a hijab or turban. Second, the psychological line of argumentation makes it impossible to evaluate *conflicting* claims to recognition, say, cultural conflicts in which all the involved parties are offended and feel that they are denied the recognition they deserve. Third, moral injustices do not always produce the kind of negative feelings Honneth is preoccupied with. A sexist comment, for example, may be met with inner calm by the receiver, but that does not make it less wrong. Moral injustice should therefore not be tied too closely to the psychological damage it may cause. Finally, the psychological line of argumentation lacks a distinction between *intended* and *unintended* misrecognition: not knowing enough about your culture may lead me to say or do things that you interpret as misrecognition while I interpret it as genuine interest or friendliness.

Honneth’s early theory of recognition is related to a philosophical-anthropological view of the intersubjective constitution of human identity and autonomy. This view is supposed to spell out the minimal conditions for the possibility of leading a good and autonomous human life, that is, a thin or ‘formal’ philosophical anthropology. Sometimes, Honneth makes the strong claim that without full recognition of our *needs*, *beliefs* and *abilities*, a good and autonomous life becomes impossible:

subjects depend on the recognition of their needs, beliefs and abilities in order to take part in social life (...). Only when citizens see all these aspects of their personality respected and recognized will they be capable of acting with self-respect and committing themselves to their respective life-paths (Honneth 2012, 48).

Honneth is no doubt right that most people need some secure basis of recognition – say, in family relations or friendships – before they can engage successfully in public and political life, and that systematic misrecognition lowers our expectations of satisfactory lives. However, if Honneth means that human beings are too fragile to be exposed to non-recognition in the form of criticism of their beliefs and needs, then his position is incompatible with the ideal and practice of deliberative

democracy. Deliberative democracy is essentially about the public *contestation* of validity claims, which means that our needs and beliefs – even our ‘abilities’ – are sometimes questioned or critically examined.

Furthermore, a general imperative to recognize cultural beliefs or accomplishments would be absurd for several reasons. One tradition claims that Jesus was the Son of God, another that he – like Mohammad – was an ordinary human being who also happened to be a prophet. Given that at least one of these claims is false, it hardly seems meaningful to recognize both, at least if we by ‘recognition’ mean some kind of positive appreciation of their *content*, that is, what they actually claim to be the case. In fact, as Taylor notes, there would be something patronizing about recognizing cultures or cultural claims simply because we feel morally obliged: “[t]he giving of a such a [positive] judgment on demand is an act of breath-taking condescension. No one can really mean it as a genuine act of respect. It is more in the nature of a pretend act of respect given on the insistence of its supposed beneficiary. Objectively, such an act involves contempt for the latter’s intelligence” (Taylor 1994, 70). In my own terms, respecting others as reflexively free implies respecting their capacity to evaluate and reflect critically upon validity claims. Communicating critically with others about contested norms or beliefs may therefore be a sign of respect rather than of disrespect. As Rostbøll puts it, “one can criticise someone’s belief as seriously wrong and show respect for him or her as capable of receiving criticism and coming to recognize its validity. Particularly, some might find religious faith a serious error and one we owe each other to correct” (Rostbøll 634).

In my view, Honneth’s early vision of a society that is ‘free from pain’ – that is, a society of ‘unrestricted recognition’ – is somewhat utopian in diverse societies. The public sphere is not always a pleasant place, and discussing with fellow citizens with whom one deeply disagrees can be a frustrating, even painful experience. In his more mature work, however, Honneth has made it clear that he does not regard cultural esteem as a right that anyone has: “there can be no legitimate claim to this sort of [cultural] esteem, since it can only be the result of a process of judgment that escapes our control, just as sympathy or affection does” (Honneth & Fraser, 168). Put differently, just like love, cultural esteem is something we can hope for and struggle for, but not something we can morally demand because it comes about in a deliberative process of judgment, that is, a *deliberative* process. The mature Honneth also stresses that cultural esteem is always given (or not given) within a particular value horizon, and that such a horizon is lacking in multicultural societies: the contemporary pluralism makes it unlikely that we will ever reach an agreement about which cultural beliefs or ways of life deserve esteem, and how much esteem they deserve (2011, 406-407). Honneth therefore detaches the discussion of esteem and disesteem from the discussion of ‘ways of life’ and

‘modes of self-realization’, and focuses instead on individuals’ socio-economic contributions to society’s reproduction. In other words, Honneth still believes that it makes sense to say that, for example, a bus-driver, psychologist, or dentist, deserves some amount of esteem, and that we can measure their relative contributions to society by applying the meritocratic principle of ‘desert’ or ‘achievement’, but not that this principle can be used to evaluate cultural beliefs or ways of life.

I agree with the mature Honneth that cultural esteem cannot be morally demanded, and that there is no shared value horizon according to which such esteem could be publicly distributed in an uncontroversial way. However, I do not think that this situation justify us to completely disregard *cultural disesteem* as a potential moral injustice. In my view, even though citizens do not have a moral right to be culturally esteemed, they do have a moral right to be spared from disesteem, i.e. group stigmatization and group defamation. The early Honneth mistakenly located the injustice of cultural stigmatization within the category of ‘insults’ related to a persons ‘honor’ and personal identity, a category whose positive equivalent is “social esteem” (1995, 129). However, when he realized that cultural esteem cannot be morally demanded, he more or less dropped the concern with cultural misrecognition and stigmatization all together. Instead, I argue, Honneth should have located the injustice of cultural stigmatization within the category of *disrespect*, a category whose positive equivalent is *equal respect*, not social esteem (Ibid., 129). By this, he could have argued that equal respect implies a ‘negative’ duty to avoid stigmatization, but not a ‘positive’ duty to esteem cultures, or to publicly express such esteem.

Equal respect (or recognition) refers to a form of recognition that we morally owe each other in virtue of our status as free and equal persons, not in virtue of our particular accomplishments, beliefs or personal traits. Honneth therefore distinguishes equal respect from social esteem, which concerns the relative amount of social appraisal we get in virtue of traits of abilities that distinguish us from others. This distinction resembles Stephen Darwall’s well-known distinction between ‘recognition respect’ and ‘appraisal respect’. Recognition respect is something we owe human persons *as persons*: “To say that all persons are entitled to respect is to say that they are entitled to have other persons take seriously and weigh appropriately the fact that they are persons in deliberating about what to do. Such respect is recognition respect” (Darwall 1977, 38). Appraisal respect, by contrast, is the respect we may have for things people actually say and do, that is, their specific merits and achievements. For example, we may have respect “for someone’s integrity, for someone’s good qualities on the whole, or for someone as a musician. Such respect, then, consists in an attitude of positive appraisal of that person either as a person or as engaged in some particular pursuit” (Ibid., 38).

Honneth's distinction between respect and social esteem also resembles Taylor's distinction between the recognition of *equal dignity*, on the one hand, and the recognition of (individual or group based) *uniqueness and authenticity* on the other, a distinction he relates to the rise of two (sometimes conflicting) types of 'politics' in modern societies: "[w]ith the politics of equal dignity, what is established is meant to be universally the same, an identical basket of rights and immunities; with the politics of difference, what we are asked to recognize is unique identity of this individual or group, their distinctness from everyone else (1994, 38).

What Habermas has in mind when emphasizing the moral imperative of equal recognition is clearly the first kind, that is, equal respect (Honneth), recognition respect (Darwall) or equal dignity (Taylor): "the right to equal respect (...) which everyone can demand in the life contexts in which his or her identity is formed as well as elsewhere, has nothing to do with the presumed excellence of his or her culture of origin, that is, with generally valued accomplishments" (Habermas 1994, 129). In other words, the normative emphasis in Habermas is not on the (mis)recognition of cultures or religions as such, but on the way in which individual persons are treated or not treated. By decoupling the requirement of equal recognition from discussions about the value of cultural-religious traditions, it becomes more understandable how recognition is compatible with cultural criticism and intercultural debate. In a certain sense, criticizing cultural ideas or practices means precisely to deem them inferior, say, *epistemically* inferior when it comes to questions of truth, or *morally* inferior when it comes to normative questions. If Christians or Muslims did not believe that Christianity or Islam is the more correct system of belief, compared to other religious systems, they would probably not identify as Christians or Muslims. If debates between moral, philosophical, and religious systems of thought did not allow for rankings and rejections, there would be nothing to debate. Therefore, the imperative of recognition does not prevent us from arguing that particular practices or beliefs are inferior to other practices or ideas. Nor does it require us to admit that all cultures are 'equally good'. What it does forbid is the stigmatization of *groups of citizens* based on their cultural or religious self-identification.

2.2 Misrecognition as group stigmatization

There is an obvious sense in which group stigmatization is morally wrong or disrespectful, namely that it accuses individuals of some wrongdoing, criminality, or dangerousness on the basis of vague group characteristics, such as 'Muslim', or 'Jew'. Just as no one deserves to be accused of a crime merely due to the color of her skin, no one deserves to be characterized as a threat or a morally depraved person merely because she self-identifies as a follower of a particular faith.

As an example, consider the views of blogger and author, Peder Are Nøstvold Jensen, better known as ‘Fjordman’. Fjordman draws on ‘Eurabia’-ideology, which is best considered as a conspiracy theory according to which a secret pact has been made between Arabic states and European leftists and multiculturalists with the aim of Islamizing Europe. In a well-known statement, Fjordman writes that “Islam and all those who practice it must be totally and physically removed from the Western world” (quoted in Bangstad 2014, 84). In other words, citizens who happen to have a particular faith are not protected by the basic rights and liberties as everybody else. Fjordman also advises Westerners to “arm themselves immediately (...) with guns and the skills to use them” (Ibid, 84).

Even though Fjordman has repeatedly distanced himself from the Norwegian mass murder and terrorist, Anders Breivik, several analyses conclude that Breivik – who killed 77 Norwegian citizens on 22 July 2011 due to their alleged sympathies for ‘multiculturalism’ and ‘cultural Marxism’ – was greatly inspired by Eurabia literature in general, and Fjordman’s views in particular (Bangstad 2014, 85). For Breivik, Islam is not so much a religion as a political ideology seeking world dominance. As part of his own ‘cultural conservative’ political vision, he recommends that “all Muslims are to be immediately deported to their country of origin” and that those who resist violently must be “executed” (quoted in Bangstad 2014, 96).

This type of extreme hate speech about Muslims abounds with incitements to mistreatment, exclusion and discrimination, which, if realized, would make it impossible to realize personal and political freedom as a Muslim. In my view, Islamophobic hate speech also expresses a particular form of disrespect of the *reflexive freedom* of individual Muslims: it suggests that Muslims are ‘all the same’, rather than individual persons who can think for themselves, and act on the basis of their own thinking. Respecting others as free in reflexive sense, we could say, requires that we communicate with them as individual persons who interpret cultural traditions in their own way, not as pre-determined parts in some overarching cultural system. For example, by virtue of its homogenizing nature, hate speech about Muslims tends to deny Muslims the ability to appropriate their religious tradition in a reflexive way, based on reasons and interpretations they consider convincing. Consider for example the well-known claim that Islam is incompatible with freedom and democracy. By repeating this claim, the speaker refuses to take seriously the vast majority of European Muslims who regard themselves as Muslims *and* supporters of constitutional democracy. In order to respect these Muslims as reflexive beings, one must of course not agree with them in debates about religion and politics, but one needs to communicate with them on the basis of about views they *actually hold*. Reflecting critically upon verses in the Bible or the Quran, addressing oppression of women or sexual minorities within particular religious environments, confronting

extremism in particular organizations, criticizing the explicit views of public Muslim spokespersons – none of this counts as misrecognition because it has a *particular addressee*: a text, person, ritual, or organization. What is morally required is that we become specific and detailed in our criticism, avoid unsubstantiated generalizations, and that we let the criticized respond, not that we refrain from criticism.

2.3 Equal respect and ‘respect for religion’

I agree with critics of the early Honneth, such as Fraser (Honneth & Fraser 2003) and Laborde that a critical theory of justice cannot be grounded directly on a psycho-sociological theory of experienced misrecognition or ‘hurt feelings’. For example, as I have argued, it would be highly problematic to apply such a theory to discussions about the morality of free speech. However, in my view, the conclusion that should be drawn from this is not that subjective experiences of offence are morally *irrelevant*, as for example Fraser seems to believe. On the deliberative account I defend, everyone’s basic welfare *counts*, morally speaking, not as brute facts that must be accommodated at all costs, but as starting points for discussion, contestation and negotiation. Morality is not just about abstract principles and equal rights, but also about interactions between embodied, concrete subjects who regard their own freedom as deeply entangled with particular identities, beliefs, traditions, values, ways of life, and so forth. Habermas’ moral universalization principle therefore aims at moral norms whose consequences and side-effects are acceptable for *each individual*, given her specific *interests and value-orientations*: “[a] norm is valid when the foreseeable consequences and side-effects of its general observance for the interests and value-orientations of *each individual* could be *jointly* accepted by *all* concerned without coercion” (2000, 42). I take this to mean that those who insist on speaking as they do even if it hurts or offends others must show that they are not driven merely by sectarian or egocentric impulses, or by a mere desire to offend, but motivated by a concern for the general interest. For example, they can argue that even though offensive to some, the things they say contribute to important moral or political discussions, or establish a critique of specific ideologies or powerful institutions.

The injured subjects, on their part, can point to inconsistencies or injustices intrinsic to the general distribution of pain and welfare in a particular political community. If they can show, for example, that majoritarian definitions of ‘offence’, ‘freedom’, and ‘legitimate critique’ are systematically privileged in the political culture, that specific groups are much more exposed to injurious speech than others, or that certain utterances have an unnecessarily hurtful form, then they have a moral argument that transcends the reference to subjective offence, and deserves to be taken seriously.

What happens if we apply these considerations to the case of religious offence and blasphemy? Should religious beliefs and holy figures be publicly respected? Is there, at the very least, a negative duty not to hurt the religious feelings of believers? Or, should the religious accept that injurious speech is the price they must pay to live in a secular, liberal democracy?

Morality, on a Habermasian account, has to do with human individuals, not with assumed supra-human entities or beings. On this account, therefore, there is no *direct* way in which religious beliefs, ancient prophets, or holy scriptures can be said to deserve the moral respect of each citizen. As March puts it, ‘the sacred’ is – on a secular, philosophical account – an object of human construction, meaning that “the fact that something is called ‘sacred’ is insufficient itself to explain why all humans ought to respect it” (March 2012a). Secular or ‘postmetaphysical’ (Habermas) thinking cannot condemn speech as morally wrong merely because it is regarded by some believers as blasphemy, or as a transgression of the sacred.

Nevertheless, there is a more indirect way in which religious feelings and beliefs have a place in postmetaphysical moral discourse. As Peter Jones puts it, even though equal respect does not require us to recognize anyone’s beliefs as true, it does require us to respect others as *holders* of beliefs: “[t]he phrase ‘respect for beliefs’ is really a short-hand way of expressing what is really respect for people as holders of beliefs. It draws upon the general idea of persons as proper objects of respect” (Jones 2011, 86). Jones continues, “[i]f we take seriously the idea of respecting people as the bearers of beliefs, we have reason, *ceteris paribus*, not to subject their most cherished beliefs to vilification and ridicule” (Ibid., 87). From a Habermasian perspective, we could formulate this point in the following way: even though I do not have a duty to respect the content of your beliefs, or to refrain from questioning them, I do have a (moral) duty to interact with you in way that makes it possible for *both of us* to exercise freedom on equal terms. If your exercise of (say, personal) freedom is tied closely to particular religious beliefs, then I should, to some extent, take these beliefs into account when engaging with you (and speaking to you).

Respecting you as a holder of beliefs means respecting you as a person for whom certain claims, traditions and objects are important and meaningful. Clearly, such respect should have some implications for the way in which we address others in the public sphere, and for the way in which we speak about the things (i.e. beliefs, rituals, holy figures) they care deeply about. It is at least difficult to image what mutual respect would look like among persons who *completely* disregard each-others’ religious attachments and feelings. Mutual respect implies some concern for the specific way in which others have chosen to realize their freedom, i.e. their specific path of self-realization or religious devotion, not because we regard this realization as true or valuable as such, but because we recognize each person’s right and capacity to exercise freedom on equal terms. As March puts it,

“the view that one just says whatever one wishes regardless of the company one is keeping is not virtuous honesty or moral heroism, but a kind of moral autism” (2012a).

Also Rostbøll, drawing on a Kantian conception of autonomy, argues that we show respect for others as ‘ends in themselves’ not just by respecting their negative freedom to do what they want, but also by taking into account their actually held beliefs: “[i]f people should be able equally to live according to their deepest beliefs, it cannot be right that we should not take these beliefs seriously in the way we treat others” (2009, 634). Rostbøll emphasizes that the required form of respect is a moral obligation and not something that can be legally mandated by the state. However, the argument that religious attachments are morally relevant when exercising mutual respect (or recognition) does not say anything about *which* attachment are relevant in *which* situations, or which conclusions should be drawn in particular controversies. Thus, in order to apply this discussion to a concrete case, I shall return to the Danish cartoon controversy, now focusing on the alternatives we have when evaluating *Jyllands-Posten*’s publication from a moral rather than a legal perspective.

The deliberative approach stresses that the correct definition and exercise of equal respect is sometimes controversial. In cases of deep moral disagreement, there is a need for intra- and intercultural deliberation, mutual perspective taking, and public reason giving. However, in the Danish cartoon controversy, some discussants argued that the publication of the cartoons was a straightforward moral wrong, i.e. a clear example of moral disrespect. Consider for example Ramadan’s view in the wake of the Danish cartoon controversy:

This is not a matter of additional laws restraining the scope of free speech; it is simply one of calling upon everybody's conscience to exercise that right with an eye on the rights of others. It is more about nurturing a sense of civic responsibility than about imposing legislation: Muslim citizens are not asking for more censorship but for more respect. One cannot impose mutual respect by means of legislation; rather one teaches it in the name of a free, responsible and reasonable common citizenship (Ramadan 2006).

Ramadan defends the legal right to free speech, but criticizes the publication of the Danish cartoons in moral terms, appealing to principles of mutual respect and civic solidarity. He does not demand any special protection of Muslim religious feelings, but defends an interpretation of the norm of equal respect that obliges Muslims to respect non-Muslims – and vice-versa – in the public sphere. As mentioned, like Ramadan, I believe that respect for persons implies respect for them as holders of (religious and non-religious) beliefs. Before deeply offending someone or ridiculing his or her beliefs, I certainly should consider whether I have a sufficiently good reason for doing so. Can what I am about to say be justified according to more general obligations or values, say, the value of an

enlightened debate about religion and free speech, or am I promoting my own sectarian good without sufficient attention to the interests of others?

However, what needs to be added to Ramadan's position is that it cannot be left to the religious alone to decide what moral respect implies in particular cases. If 'the sacred' is something I am always obliged to respect, then religious spokespersons can claim a veto over my speech simply by defining things as sacred. Some of these things, say, the handwritten writings of L. Ron Hubbard or specific passages in the Bible or the Quran, I may not find sacred at all, but misguided and deeply troubling. As March puts it, "it is so easy to think of examples where I am doing valuable and important things in speaking that outweigh the otherwise regrettable fact that others are injured or pained as an unintended consequence of my speech" (March 2012a). From a deliberative perspective, I believe we should regard Ramadan's view as one legitimate position among others, but we cannot side a priori with his interpretation of the publication as a form of moral disrespect. At the very least, such a conclusion presupposes a discussion of the relationship between the *intention* behind the cartoons, their actual *content*, and the interpretative perspectives of those feel disrespected (i.e. Muslims).

What I have said so far about the Danish cartoons probably strikes some readers as too vague. Saying that we should deliberate in cases conflict may sound right in theory, but gives us little direction when trying to evaluate the publication from a moral perspective. However, there are other lines of argumentation that focus not so much on the publication itself (or the cartoons themselves), but on the *discursive context* in which the publication emerged, as well as on the *non-communicative* way in which the publication was publicly justified by some of its defenders. Given that Rostbøll has developed both arguments in some detail, I shall use his position as a background for my own discussions. I begin with the first argument pertaining to discursive context.

2.4 The cartoon controversy and the contextual argument

Rostbøll states that, in his view, there would have been no reason to morally criticize *Jyllands-Posten* for publishing the cartoons if the public discourse about Islam and Muslims had been different, that is, inclusive and respectful towards Muslims. That must mean that Rostbøll sees no moral problem with blasphemy and religious offense as such. What was problematic was the 'atmosphere' of Danish political culture at the time of the publication:

If the cartoons had been published in an atmosphere that was otherwise characterized by mutual respect and attempts to try to understand and listen to Danish Muslims, there would have been no reason for moral reproach of *Jyllands-Posten*. But that was clearly not the case. The atmosphere of Danish public debate has for some years, not least since the election in 2001, (and subsequent re-

election) of a government that relies on the support of the far-right Danish People's Party, been very hostile towards Muslims, and *Jyllands-Posten* has been a main contributor to this hostility (2009, 627).

Rostbøll is not the only one who believes that the tone of the Danish debate on immigration, Islam and Muslims was remarkably harsh after 2001. Several analyses conclude that the public focus on Muslims as threats and 'fifth column activists' was both a cause and effect of the way in which media framed news and reportages (i.e. Andreassen 2012). Kanval and Krone, for example, note that Søren Krarup, a profiled member of the Danish People's Party, (DPP) compared the *Quran* with Hitler's *Mein Kampf*, thus suggesting that ordinary practicing Muslims adhere to a fascist ideology. Krarup also compared the Muslim hijab with the Nazi swastika (2012, 183). Another member of DPP, Louise Frevert, who ran for mayor of Copenhagen at the time of the controversy, called Muslims a 'cancer' to Denmark on her website. Mogens Camre from DDP, also a member of the European parliament, had the following commentary when a young Muslim woman wearing a hijab, Asmaa-Abdol Hamid, announced that she would run for parliament as a member of the leftist party *Enhedslisten*: "[i]t is sick and unnatural that a fundamentalist with a headscarf is to become a member of our democratic parliament. She needs psychiatric treatment (...). Such people need treatment. The sooner she leaves [Denmark] the better" (Brix 2007). Camre also holds the view that "the idea of a 'reasonable' Muslim who supports democracy and human rights is an illusion" (Camre 2006). However, my point is that these examples are no exceptions or rare incidents, rather, they point to a general development in the Danish and European discourse on Islam and Muslims. A growing body of research suggests that the coverage of Islam and Muslims in European media suffers from structural asymmetries, stereotypes, distortion of views, exclusion of arguments or relevant spokespersons, and uncritical reliance on biased 'experts' on Islam (i.e. Bangstad 2013; Jensen 2006). Other studies point to the islamophobic (irrational, fear-driven) turn that populist political discourse has taken in European countries in recent years (Habermas 2010a; Nussbaum 2012). If these analyses are correct, then the Danish cartoons emerged in a political culture in which "the experience of disrespect, marginalization, or exclusion based on membership in a group stigmatized as 'inferior' by the dominant majority culture" (Habermas 1994, 125) was known and felt by many Muslims. Thus, the publication was not a singular event but – intended or not – part of a Danish and European discourse on Islam and Muslims that was already permeated with structural misrecognition. On this basis, I agree with Rostbøll that *Jyllands-Posten* should have been more attentive to the mechanisms of inclusion and exclusion – recognition and misrecognition – in Danish political culture. As Rostbøll notes, there may even be an argument for 'special treatment' of minorities in such a context, not because their interests and beliefs are more important

than others', but because they are likely to be treated worse than others without special care" (2009, 641).

The contextual critique of *Jyllands-Posten* that I subscribe to admits that it is based on discussable empirical assumptions about Danish political culture and Muslims' place in within it. Not everyone agrees with these assumptions, for example those who believe that Muslims form a powerful or dominant group rather than a vulnerable minority, or those who believe that my descriptions of Danish political culture are biased or exaggerated. For them, the critique is not persuasive because of its flawed understanding of the relevant empirical context. For example, also *Jyllands-Posten* justified the publication of the cartoons by appealing to *context*:

The modern secular society is rejected by some Muslims. They demand a special position, insisting on special consideration of their own religious feelings. It is incompatible with contemporary democracy and freedom of speech, where you must be ready to put up with mockery, ridicule and derision. It is certainly not always attractive and nice to look at, and it does not mean that religious feelings should be made fun of at any price, but *that is of minor importance in the present context* (Rose, 2005, emphasis added).

Rose, who wrote the justification, does not argue that 'Muslims' in general reject the values of democracy and free speech, but only that 'some Muslims' do. This makes a moral difference in the sense that it becomes less obvious that *Jyllands-Posten* attempted to stigmatize Muslims as a group. It is nevertheless interesting that Rose refers to the 'present context' when justifying the publication of the cartoons. Rose apparently agrees with Rostbøll (and me) that a contextual approach is appropriate for the application of liberal principles such as free speech, but he estimates the context differently, that is, he emphasizes different aspects of the relevant context. For Rose, the 'present context' is that authors, journalists and comedians exercise self-censorship out of fear when it comes to Islam. Rose fears that this situation will lead to a "slippery slope where no one can tell where the self-censorship will end" (2005). Against Rose's reading of the 2005 context, it could be argued that criticism of Islam and Muslims by no means was repressed in the Danish publish sphere. Even when it comes to pictures of the Muslim prophet, Rose only referred to *one* example of alleged self-censorship, namely Kåre Bluitgen who could not find an illustrator for his children's book on Mohammad's life. It could also be argued that Rose's perspective is one-sided because it ignores the hostility and disrespect Muslims were exposed to in Danish cultural and political life, that is, what I have referred to as the discursive and recognitive context. Finally, we should point out that exercising self-restraint when speaking about religion and 'the sacred' must not be motivated by 'political correctness' or fear of terrorism, but may be motivated by other concerns, i.e. by normative ideas about mutual respect and civility. Many people *want* to respect other people's religious

feelings, regardless of any threats or intimidations, simply because they believe this is the right thing to do.

In a certain sense, unfortunately, Rose's 2005 fears about the future have been affirmed. As became clear after the attacks on 'Krudttønden' in Copenhagen in 2015 and the Parish attacks in January and November 2015, free speech about the Muslim prophet *is* under pressure (in both cases, the terrorists referred to insults of the prophet when seeking to 'justify' the attacks). What is under pressure is not constitutional free speech, i.e. the legal right to publish satirical cartoons, but the actual freedom to do so without facing death threats or violence. Should this development change our 'contextual' moral estimation of religiously offensive publications?

In my view, the cognitive situation (or context) for ordinary Danish and European Muslims has not changed since the Danish cartoon controversy. The contextual features I emphasized regarding the Danish controversy (systematic misrecognition and hostility towards Islam and Muslims) are still relevant. In many European democracies, and more recently also in the U.S., hate speech about Muslims is very much a part of the public sphere. Consider for example Habermas' op-ed in *The New York Times* in 2010, in which he addresses the increasing xenophobia and fear of Islam and Muslims in German political culture. What he refers to are not *rational* fears, say, fears based on reliable information that a terror cell is planning an attack somewhere, but unexamined prejudices and aversions that stigmatize Muslims as a group. According to Habermas,

[T]he usual stereotypes are being flushed out of the bars and onto the talk shows, and they are echoed by mainstream politicians who want to capture potential voters who are otherwise drifting off toward the right. Two events have given rise to a mixture of emotions that are no longer easy to locate on the scale from left to right — a book by a board member of Germany's central bank and a recent speech by the German president (2010a).

The book Habermas refers to is Thilo Sarrazin's *Deutschland shaft sich ab* ('Germany does away with itself'). Sarrazin, a politician from the Social Democratic Party who sat on the Bundesbank board, argues that Germany is threatened by the wrong kind of immigrants, in particular by Muslims, and he proposes demographic policies aimed at the Muslim population. Referring to Sarrazin's claim that Muslim immigration makes Germany "naturally less intelligent on average", Habermas writes that he "fuels discrimination against this minority with intelligence research from which he draws false biological conclusions that have gained unusually wide publicity" (Ibid.) Habermas also praises the "de-emotionalizing introduction of objectivity into the discussion" by Armin Nassehi, a German sociologist, who demonstrated that Sarrazin has adopted a scientifically discredited form of "naturalizing" interpretation of measured differences in intelligence (Ibid.).

The speech by president Christian Wulff that Habermas refers to was delivered on the anniversary of German unification. Here, Wulff affirmed that not only Christianity and Judaism but “Islam also belongs in Germany” (Ibid.) This assertion was given much attention in the conservative press and caused a split within Wulff’s party, the Christian Democratic Union. According to Habermas, the Sarrazin and Wulff incidents show that populist politicians try to divert the social anxieties of their voters into ethnic aggression against vulnerable groups. Among these politicians are also ‘militant Christians’ who fight against Islamic fundamentalism under the banner of ‘enlightenment values’ and Western freedom (2008a). According to Habermas, these Christians adopt the heritage of the European enlightenment as their own *Christian* heritage, using it as a contrast to an assumed unenlightened Islamic world. On a national scale, Christianity is being used to promote a nationalistic or even an ‘ethnic’ interpretation of liberal constitutions:

That we are experiencing a relapse into this ethnic understanding of our liberal constitution is bad enough. It doesn’t make things any better that today *leitkultur* is defined not by ‘German culture’ but by religion. With an arrogant appropriation of Judaism — and an incredible disregard for the fate the Jews suffered in Germany — the apologists of the *leitkultur* now appeal to the “Judeo-Christian tradition,” which distinguishes “us” from the foreigners (Habermas 2010a).

All in all, therefore, there are still contextual reasons to show solidarity with ordinary Muslims (who are not responsible for the crimes of a few extremists), that is, to exercise some self-restraint when dealing critically with Islam and its sacred objects and holy figures. That being said, I do feel a certain ambivalence regarding the current situation (or context). I am ambivalent in the sense that I am convinced neither by those who believe that offence of the prophet is necessarily a form of hidden racism or islamophobia, nor by those who celebrate offence as a virtue in the name of freedom and enlightenment. On the one hand, I sympathize with practicing Muslims who are trying to get a foothold within Western societies, and who do not see that vilification of their prophet is fruitful or necessary. On the other hand, I believe it is necessary to publicly explain and justify why liberal societies nevertheless allow for such expressions, and why that is sometimes a legitimate or even good thing.

2.5 The cartoon controversy and the ‘communication argument’

Besides the contextual criticism of *Jyllands-Posten*, Rostbøll formulates a different kind of criticism, which I have referred to as the ‘argument from communication’. Drawing on deliberative democratic and Kantian intuitions, Rostbøll argues that respect for others’ autonomy implies a duty to treat them not only as persons who are responsive to reasons and rational argumentation, but also as co-

deliberators who are capable of contributing to moral and political opinion formation with valid insights. Rostbøll's empirical argument is that *Jyllands-Posten*, and some of its influential defenders in the Danish controversy, failed to respect Muslims as autonomous by refusing to communicate with them about the publication. According to Rostbøll, rather than treating Muslims (and non-Muslims who were sympathetic to their demands) as co-deliberators who hold a different opinion about the proper use free speech, *Jyllands-Posten* and its defenders rejected them as 'enemies of free speech' with whom one cannot reason:

The arrogance in the defense of the cartoons, then, can be found in that those who did not think that vilifying the prophet is a valuable use of freedom of expression were treated as lacking *any* insight into how to understand freedom of expression. Muslims and sympathetic non-Muslims who complained about of disrespect were not treated as disagreeing about the interpretation of universal values, or about the limits or exercise of freedom of expression, but as rejecting or not understanding the importance of these values (2009, 636)

In my view, the argument from communication is not identical with the argument from context: it is possible to disagree with Rostbøll (and me) about the general features of Danish political culture at the time of publication, i.e. to argue that the context was much more complex and much less hostile than what we imagine, while admitting that specific defenders of the Danish cartoons failed to properly include Muslim spokespersons in a respectful dialogue about free speech and its proper use in a multicultural society. In other words, even if the discursive context is not hostile or asymmetrical, there still is a duty to deliberate respectfully with opponents in cases of deep moral and cultural-religious disagreement.

I agree with Rostbøll that there was a regrettable tendency among some defenders of the Danish cartoons to characterize critics of the publication as 'enemies of free speech' (2010, 419). I also agree that there was a tendency among some defenders of the cartoons to portray themselves as *infallible* – that is, as fully insightful in matters of free speech and its proper use – rather than as fallible co-discussants. Referring to Habermas' distinction between the actual acceptance of a universal norm in a particular context ('Geltung'), on the one hand, and the context of transcending validity of that norm ('Gültigkeit'), on the other, Rostbøll argues that paternalism on behalf of universal values lies not in the appeal to universality itself, but in the insistence that one has *full* insight into how a universal principle should be understood and applied (Ibid., 419). Influential Danish defenders of the cartoons behaved arrogantly because they excluded a priori that there was anything to discuss, that is, that others – in particular Muslims – could contribute with any valid insights to the debate about free speech, its meaning, limits, and proper use.

In spite of this overall agreement, I do not think that all the examples Rostbøll gives of the ‘arrogance’ of the defenders of the cartoons are persuasive. Consider for example Rostbøll’s interpretation of the following passage from Rose:

We have a tradition of satire [in Denmark] (...) The cartoonists treated Islam in the same way they treat Christianity, Buddhism, Hinduism and other religions. And by treating Muslims in Denmark as equals they made a point: We are integrating you into the Danish tradition of satire because you are part of our society, and not strangers. The cartoons are including rather than excluding, Muslims (Rose, quoted in Rostbøll 2009, 631).

On Rostbøll’s account, this passage tells us that Rose approached the whole debate about the cartoons in an arrogant manner: “Rose might want to include Muslims, but it is on his terms; they have to listen to and learn from him. Thus, the arrogance lies not so much in the decision to publish the cartoons as in the rejection of even discussing whether it was a good idea to do so” (Ibid., 631). It could be argued against Rostbøll that Rose does precisely what deliberative democrats want him to do: he publicly discusses whether it was a good idea to publish the cartoons. The fact that Rose believes that it *was* a good idea, and that he defends this idea in the discussion, is not sufficient to justify the claim that he behaved arrogantly. It is true that Rose did not listen very much to opponents and therefore failed to realize the deliberative virtues of listening and mutual perspective taking. However, as Rostbøll notes himself, the same may be said of many critics of the cartoons, including some Muslim ones. The question is therefore whether the label of ‘arrogance’ is too strong; if arrogance applies to anyone who fails to listen properly to opponents in the public sphere, then, unfortunately, it applies to most of us. Furthermore, in complex mass democracies, deliberation cannot always be a face-to-face dialogue in which each participant listens and responds to the others’ claims. Writing a letter to the editor or giving an interview could also be seen as a contribution to deliberation, at least if we take a more ‘systemic’ and less dialogical approach. In line with this systemic approach, it could also be pointed out that *Jyllands-Posten* published many reactions from Muslims who were critical of the publication. Rostbøll’s estimation of *Jyllands-Posten*’s lacking willingness to communicate and ‘listen’ may therefore be somewhat exaggerated.

In my view, finally, there is nothing in the *content* of Rose’s argument, cited above, that allows us to make the general claim that he arrogantly disrespects Muslims and regards them as someone from whom he has nothing to learn. For example, the arrogance cannot lie in Rose’s reference to the Danish tradition of satire. Just as Muslims may refer to their religious traditions when explaining why they felt offended or disrespected in this case, Rose may refer to a particular understanding of religious satire to justify his position. As Habermas argues, political cultures and national constitutions may be ‘ethically permeated’, that is, they may draw on historical traditions

and values without violating the principle of equal respect. What would be disrespectful would be to argue that Muslims do not deserve equal conditions of citizenship; i.e. that Islam should be mocked and ridiculed more than other religions due to some internal deficiencies of that religion. But this is clearly not what Rose is arguing in the particular quote. What Rose attempts to say is that sparing *only* Muslims from religious satire and mockery would make them ‘strangers’ in Danish society, and also give them a special privilege that others do not have. One can agree or disagree with this understanding of equality, but I do not see that it is arrogant or disrespectful as such. I therefore suggest that we consider Rose’s argument about the inclusiveness of Danish satire – but also criticisms of this argument, say, along the line of Tariq Ramadan – as *legitimate*, delivered in good faith as contributions to a complex debate. The fact that I consider them as legitimate does not mean that I personally agree with them or regard them as convincing, but rather that they are compatible with respectful argumentation and counter-argumentation in a multicultural democracy. What may be disrespectful is Rose’s communicative *behavior*, i.e. his failure to listen to Muslims and try to understand them. However, as I have argued, this behavior needs to be distinguished from his substantial view that Danish (or European) style religious satire treats all religions equally.

2.6 Does Habermas misrecognize Muslims? Jansen’s critique of Habermas

I finish this chapter on recognition and religion by looking at Yolande Jansen’s critique of Habermas in her article “Postsecularism, piety and fanaticism: Reflections on Jürgen Habermas’ and Saba Mahmood’s critiques of secularism” (2011).²⁴ Here, Jansen argues that Habermas expresses exactly the kind of downgrading and prejudiced attitude towards Islam and Muslims, which characterizes much islamophobic discourse today. If this is correct, which I shall dispute, it seems that Habermas himself contributes to the ongoing stigmatization and misrecognition of the Muslim minority.

Jansen refers mainly to Habermas’ essay “Notes on Post-Secular Society” (2008a). In this text, Habermas notes how long it took before Catholicism and Protestantism officially committed themselves to the principles of human rights and democracy: “[t]he Catholic Church first pinned its colors to the mast of liberalism and democracy with second Vaticanum in 1965. And in Germany, the Protestant Church did not act differently” (2008a, 27). Having observed this, Habermas then goes on to argue that “many Muslim communities still have this painful learning process before them” (Ibid., 27). In the German version of the same text, as Jansen notes, the claim is not that ‘many Muslim communities’ have a learning process before them, but that ‘Islam’ has (2008b). What I take Habermas to mean is that mainstream Islamic theology has not made itself compatible with modern

²⁴ Jansen’s critique draws upon Saba Mahmood but I focus here on specific claims she makes about Habermas. I discuss Mahmood separately in part V.2.

egalitarian norms (human rights and democracy) to the same degree as Christian theology has. We may consider this as a kind of ‘critique of Islam’ in the sense that Habermas urges Islamic scholars and theologians to make the religion more compatible with these norms: “[t]hey are expected to appropriate the secular legitimation of constitutional principles under the premises of their own faith” (2008a, 27).

According to Jansen, however, Habermas is not just proposing a discursive critique of religion, he also “generalizes about Muslims in terms of how their assumed orthodoxy would determine their identities in a liberal democracy” (2011, 990). In doing this, Jansen argues, Habermas draws on “earlier European imaginaries”:

Voltaire’s *Mahmot ou le fanatisme* is famous in this regard, but it is also important to know that Kant, although he does treat Islam systematically, says some occasional things about it in his anthropology, actually in the part on mental diseases ‘Fanaticism [*Schwärmerei*], ‘the most dangerous human deceptive screen [*Blendwerk*], leads to extremities such as ‘putting Muhammad on the throne’ (Ibid., 990).

In my view, this is an unfair association because Habermas nowhere portrays Islam as *inherently* fanatic, or *essentially* different from other religions. Habermas regards Islam a world religion from which secular philosophy has learned a lot, and from which it might (still) have something to learn: “Philosophy has repeatedly learned through its encounters with religious traditions – and also, of course, with Muslim traditions” (2008, 142). Furthermore, what Habermas says in the passage that Jansen focuses on is that Islam is on the *same* path as European Catholicism and Protestantism. Thus, in contrast to islamophobic ideas about Islam as a threat or a fundamental ‘other’, Habermas emphasizes the similarities between Islam and Christianity, suggesting however that Christianity has made greater progress when it comes to integrating modern egalitarian principles into its doctrinal core.

Like Jansen, I am uncomfortable with Habermas’ use of the term ‘Islam’ in the German version of the quotation above, and also with his generalized comparison of ‘Islam’ and ‘Christianity’. Habermas should have made it clearer that neither Islam nor Christianity has an essence or stable unity, but consists of a multiplicity of traditions, scriptural interpretations, customs, groups, sects, and so forth, that is, he should have refrained from speaking in evaluative terms about ‘Islam’ as such. Recognizing internal diversity is an epistemic virtue because it makes the discussion more focused: *which* version of Islam are we talking about? But it is also a moral virtue because it avoids the stigmatization involved in saying that all versions of Islam – and therefore potentially all Muslims – have a ‘learning process’ before them. Also, the comparison between Islam and Christianity may lead readers to conclude that Habermas holds a purely positive view of

contemporary Christianity and ‘Christian communities’. Unfortunately, such a conclusion finds some support in other claims Habermas makes about Christianity. Consider for example the postulate that “Judaism and Christianity, which not only shaped Western culture but also played an important role in the genealogy of the idea of equality, *no longer have any fundamental difficulties with the egalitarian structure and the individualistic character of the liberal order* (2008, 304, my emphasis). This is a strange postulate, at least if we regard Christian-conservative homophobia as parts of Christianity, and orthodox Jewish gender roles as parts of Judaism. Also striking is the absence of Islam in this quote. By not mentioning Islam, Habermas seems to be arguing that, out of the three monotheisms, *only* Islam has difficulties with the ‘liberal order’, i.e. with democracy, human rights and the secular state. The claim that Christianity and Judaism – but not Islam – have become fully liberal is empirically false, but it also tends to reinforce a narrative which has become popular among some populist politicians in Europe and the USA, namely the narrative about the enlightened West and its ‘other’ – Islam. It is therefore reasonable enough of Jansen to ask whether Habermas, in light of the current discursive climate related to Islam and Muslims, should have been more careful with categorizing whole religions as either modern (Christianity and Judaism) or in need of modernization (Islam).

In my view, however, Jansen goes too far when arguing that Habermas ‘spreads prejudice about Islam and Muslims’: “by suggesting that established religious traditions within Europe have achieved secularity while other religious traditions still have to begin doing so, he [Habermas] might be overestimating both secular and religious constituencies in Europe, as well as spreading prejudice about Islam and Muslims” (2011, 992). This is exaggerated because there is no emphasis in Habermas on Muslims as problems or threats. On the contrary, the general tendency is characterize to Muslims as a *resource*, and to stress the need to include Muslims *as Muslims* in existing political cultures: “Muslim immigrants cannot be integrated into Western society in defiance of their religion but only with it” (2008a, 25). If Muslims can and should be integrated with their religion, this must mean that the religion is generally compatible with liberal democratic citizenship, not a threat to it. Jansen’s claim is also exaggerated for another reason, namely that Habermas has exposed ‘secular and religious constituencies in Europe’ to sharp and ongoing criticism for more than fifty years. On this background, it seems strange to say that he focuses on Muslims and Islam in biased way in the short text that Jansen focuses on. For example, Habermas’ criticizes French secularistic attitudes that he believes are incompatible with religious freedom and state neutrality, and he criticizes general tendencies to nationalism, xenophobia and islamophobia in Europe. Also, contradicting his own claim about the liberal outlook of contemporary Christianity and Judaism, cited above, Habermas points to tensions and conflicts between the liberal democratic state and politicized Christian

interests. For example, Habermas mentions the Catholic resistance to the German Crucifix Decision in 1995. Here, a judgment of the German Federal Constitutional Court overturned a Bavarian regulation that required that a cross be installed in every primary school classroom. By this, the Federal Court upheld a complaint by anthroposophical parents against the crucifix in their daughter's classroom. According to Habermas, "[t]he Catholic opponents of the crucifix verdict defend the religious symbol of the crucified Christ as an expression of 'Western values', and hence as part of a culture that all citizens may be expected to share. This is a classic case of a political overgeneralization of a regionally dominant religious practice, as expressed in the Bavarian *Volksschulordnung*" (2008, 266).

To take another example, Habermas argues that the West is culturally and politically split between a religiously revitalized USA, on the one hand, and a still secularized Europe, on the other. Emphasizing the influence of Christian conservatives on American society and foreign policy, Habermas correctly points to tensions and conflicts between Christian conservatism and European style secular liberalism:

The movements for religious renewal at the heart of the civil society of the leading Western power [the USA] are exacerbating at the cultural level the political division of the West prompted by the Iraq war. Among the divisive issues are abolition of the death penalty, more or less liberal regulations on abortion, setting homosexual partnerships on a par with heterosexual marriages, an unconditional rejection of torture, and in the general the prioritization of rights over collective goods such as national security (2008, 116).

In other words, in spite of some problematic comments, Habermas does not hold the paternalistic view that Western Christianity is always on the side of freedom and equality. This complicates Jansen's claim that Habermas regards Christianity as an unproblematic standard that Islam has to live up. Like other religious traditions, such as Islam, contemporary Christianity comes in different forms, some of which are in tension or conflict with liberal egalitarianism. It is therefore not obvious that we should ascribe the one critical remark about Islam (the claim that Islam faces a learning process) to a general Eurocentrism or hidden islamophobia in Habermas' work, as Jansen does.

3 Religious reasons in public deliberation

In the previous chapter I argued that respecting others as free and equal is incompatible with misrecognition in the form of cultural stigmatization and group defamation. The present chapter focuses not on what we say about *others*, but on the need to exercise self-restraint when referring to our *own* beliefs and comprehensive doctrines (Rawls) in political disputes. More specifically, the chapter discusses Habermas' position on the use of 'religious reasons' – say, references to the

authority of the Bible or the Quran – in political debates. The case of religious reasons is relevant not only for understanding Habermas’ deliberative multiculturalism as such, but also for questions related to the morality of free speech and the ‘ethics of citizenship’.

3.1 What is a ‘religious reason’?

Definitions of ‘religion’ are notoriously controversial, and normative arguments about the inclusion or exclusion of something called ‘religious reasons’ even more so. So what is a religious reason? According to Habermas, a reason counts as religious if it refers to “the dogmatic authority of an inviolable core of infallible revelatory truths” (2008, 129). Here, Habermas seems to think primarily of reasons that rely directly on the doctrinal truths of one of the three revealed religions, Judaism, Christianity and Islam, and to disregard claims based on, say, Buddhist or Hindu metaphysics. Habermas’ understanding of the notion of infallibility implies that revealed religious truths are impossible to confirm or falsify from within the faculty of human reasoning because the reference point for their validity is a *transcendent* reality beyond human experience, history and practice. We can believe or not believe that Mohammad is the last prophet, or that Jesus is the Son of God, but there is no way of *finding out* by way of argumentation or empirical evidence. Postulates about, say, rewards or punishments in the afterlife, or about the will of God, are not irrational but ‘super-rational’: they place themselves beyond human reasoning by referring to some extra-discursive standard of evaluation. In a certain sense, of course, religious doctrines also related to human experience in the form of religious experience; however, according to Habermas, such experience forms an “opaque core” that is “profoundly alien to discursive thought” (2008, 143).

Habermas also uses the notion of infallibility in a more subjective sense, referring to the interpretation given by the claim-maker of her own claim. Believers, he argues, see themselves as “interpreters of a truth revealed in the past that does not admit of revision” (2008, 260). In other words, even if one does not agree with Habermas that religious reasons are ‘objectively’ infallible, one could still agree that believers tend to understand their own doctrines and beliefs as infallible at a subjective level.²⁵

In addition to their revealed, infallible status, Habermas argues that the meaning and validity of religious reasons are rooted in the rites and cultic experiences of a particular religious *community*:

²⁵ Personally, I am not personally convinced that religious claims are ‘objectively infallible’ in Habermas’ sense. On the contrary, it sometimes makes good sense to discursively examine religious truth postulates in terms of their consistency, moral consequences, plausibility, etc. Therefore, in contrast to Habermas, I do not believe that secular philosophy should refrain from any evaluation of religious truths postulates (Habermas 2008). I thank Jon Hellemsness for urging me to make this point clear.

By using any kind of religious reasons, you are implicitly appealing to membership in a corresponding religious community. Only if one is member and can speak in the first person from within a particular religious tradition does one share a specific kind of experience on which religious convictions and reasons depend. (...) The most important experience (...) arises from participation in cultic practices, in the actual performance of worshipping (...) (2011, 61).

In other words, “the evidence for religious reasons does not only depend on cognitive beliefs (...) but [also] on existential beliefs that are rooted in the social dimension of membership, socialization and prescribed practices” (Ibid., 62). Religious claims to validity, therefore, “remain particularistic even in the case of proselytizing creeds that aspire to worldwide inclusion” (2013, 374). For Habermas, the truly distinguishing feature of religion – its “Alleinstellungsmerkmal” (2012, 104) – is its rootedness in cultic practices and the corresponding distinction between members and non-members. This rootedness, he argues, is a Janus-faced one: on the one hand, the combination of ritual, socialization and membership is a powerful source of social solidarity for which neither Kantian theories of equal respect nor Aristotelian virtue ethics has an equivalent alternative. On the other hand, in today’s world, religiously motivated forms of group-based solidarity are too often exploited by leaders and charismatic figures for politically doubtful or violent purposes.

In my view, these two components are the most central ones when trying to understand Habermas’ use of the term ‘religious reasons’. However, what interests me is not so much whether Habermas has given a good or correct definition of religion or religious reasons, but what happens if we exclude those reasons which Habermas takes to be religious from the formal public sphere, and include them without restraint in the informal public sphere, as he suggests. Which arguments do we have for full formal exclusion and full informal inclusion?

3.2 The formal public sphere

Habermas holds that religious reasons should be excluded from the formal public sphere, and, correspondingly, that only ‘secular reasons’ should be allowed within the political organs of the state: “[e]very citizen must know and accept that only secular reasons count beyond the institutional threshold separating the informal public sphere from parliaments, courts, ministries and administrations” (2008, 130). In that sense, Habermas sides with Rawls and the liberal tradition against religious ‘inclusivists’ such as Paul Weithman, Nicholas Wolterstorff, Lasse Thomassen, Taylor, and Cooke. According to Rawls, judges, legislators, and chief executives realize the ‘duty of civility’ in their speech and conduct when they attempt to explain to one another how the principles and policies they advocate can be supported by political values that are shared by all, *qua* free and equal. This duty, Rawls argues, involves “a willingness to listen to others and a fair-mindedness in deciding when accommodations to their views should be reasonably made (2005, 217). We fail to

comply with the duty of civility when defending our political standpoints in sectarian terms, say, by referring to our own comprehensive doctrine as binding on *all*.

Like Rawls, Habermas argues that the duty of civility – or “ethics of citizenship” (2008, 140), as he calls it – implies that we do not appeal to sectarian or idiosyncratic doctrines in political disputes, but to reasons that everybody can “follow and evaluate according to shared standards” (2008, 134). For Habermas as well as for Rawls, deliberation that leads to binding political decisions and coercive laws must be subjected to stricter norms of legitimacy than non-binding discussions in the informal public spheres. For Habermas, furthermore, the use of religious reasons violates the two ‘legitimacy components’ of the democratic process, i.e. its *inclusivity* and its *rationality* (2008, 121). The first component (inclusivity) requires that the reasons we use are understandable for other citizens: the reasons must be “generally intelligible” (2008, 5) and in that sense independent of any membership in a particular faith community. The second component (rationality) requires that the validity of the reasons we use does not depend on the acceptance of ‘infallible’ doctrines, i.e. on claims about divine revelation or the authenticity of particular prophets, but on standards available to all human beings, such as logical consistency, empirical evidence, democratic values, or basic moral reasoning. Based on these two legitimacy components, Habermas argues that religious truth contents must be translated into generally understandable and discursively examinable (fallible) arguments before entering the institutional public sphere – also known as Habermas’ “institutional translation proviso” (2008, 130).

On Habermas’ account, the sectarian and non-rational character of religious reasons leads to two kinds of problems, the first of which is more related to *justice*, and the second of which is more related to *stability*. The problem of injustice arises because religious argumentation infringes against the principle that the state should remain neutral in disputes among competing worldviews, that is, the principle that “all coercively enforceable political decisions must be formulated and justifiable in a language that is equally intelligible to all citizens” (2008, 134). By using a particularistic religious language in the justification of laws and institutional designs, a democratic majority would dominate religious as well as non-religious minorities in a non-democratic way: “by opening parliaments to conflicts over religious certainties, governmental authority can become the agent of a religious majority that imposes its will in violation of the democratic procedure” (2008, 134). Furthermore: “[m]ajority rule mutates into repression if the majority deploys religious arguments in the process of political opinion and will-formation and refuses to offer publicly accessible justifications that the outvoted minority, be it secular or of a different faith, can follow and evaluate in the light of shared standards” (2008, 134). By justifying policies and laws in a religious idiom, the democratic majority refuses to take seriously the right of minorities to be presented with reasons they can understand and

relate to *qua* free and equal citizens. Thus, the argument from justice is based on a concern for the equal opportunity of all citizens to participate in democratic will-formation and exercise political freedom.

The second problem, the problem of instability, arises because religious arguments prevent the establishment of transcultural agreement or mutual understanding in political disputes. According to Habermas, “[t]he competition between worldviews and religious doctrines that claim to explain human beings’ position in the world as a whole *cannot be resolved at the cognitive level*” (2008, 135). Therefore, if we make our political claims dependent on the acceptance of religious claims, we introduce a type of conflict into the political system, which cannot be solved deliberatively, but only through non-discursive means, such as voting, majority rule, bargaining, or brute force. Commenting on Wolterstorff’s view that religious reasons should be included in formalized politics, Habermas says that “it remains unclear on this premise [the premise that law-makers and politicians may use religious argumentation] why the political community should not be in constant danger of disintegrating into religious conflicts” (2008, 135). In order to avoid a spiral of conflict and disintegration, politicians should not rely on claims that are “immune to criticism” (1998, 98), but participate in the game of argumentation as fallible discussants who search for the better argument, not completely unlike the fallible search for truth within a scientific community: “the conflict between the political views of parties competing for influence in accordance with democratic rules resembles a theoretical dispute among scientists more than a dogmatic dispute among theologians” (2008, 260).

I agree with Habermas that religious reasons (as he understands them) have no place in the law, the constitution or the courtroom. However, I do not agree that such reasons should be inadmissible in parliamentary debates. Here, I am more in line with Rawls, who clearly states that the duty of civility is a *moral* duty, not a legal constraint on free speech: “I emphasize that it [the duty of civility] is not a legal duty for otherwise it would be incompatible with free speech” (2005, 445). In contrast to Rawls, Habermas is not talking about a merely moral obligation to exercise self-restraint, but about an institutional and formalized exclusion of religious argumentation: “[i]n parliament, the rules of procedure must empower the house leader to strike religious positions or justifications from the official transcript” (2008, 131). Furthermore, unlike Habermas, Rawls believes that religious argumentation can be used in parliamentary debate if *supplemented* with public, non-religious reasons. Rawls writes: “[t]his requirement [of public reason] still allows us to introduce into political discussion at any time our comprehensive doctrine, religious or non-religious, provided that, in due course, we give properly public reasons to support the principles and policies

our comprehensive doctrine is said to support” (2005, 453). I agree with Rawls on both points, meaning that I defend a less restrictive version of the ethics of citizenship than Habermas.

There are several reasons why I, pace Habermas, believe that religious reasons must be allowed in parliamentary debates. First, even if one is skeptical to religious justifications in politics, as I am, the question remains of whether forbidding such reasons by law is compatible with an enlightened and open debate. If religious motivations form the basis of particular trends in current politics, do I not have a right to hear those motivations, so that I can evaluate them and question them in the public sphere? If religiously motivated lawmakers are legally forced to exercise self-censorship, do we not miss an opportunity to understand and perhaps criticize the deeper motives behind the policies they advocate? My answer to both questions would be affirmative.

Second, I believe that Habermas’ analytical distinction between religious and secular reasons is too arbitrary to be able to justify the formal exclusion of religious reasons in a convincing way. Consider for example Habermas’ claim that religious reasons – but not secular ones – are *unintelligible* for non-members. I agree with Habermas that members of a particular faith community cannot expect non-members to be able to understand their doctrines and revealed certainties of faith, such as the doctrine of the holy trinity or of the resurrection of Jesus. However, if we use intelligibility as a criterion for valid argumentation, then it seems obvious that secular arguments may be invalid too. As Taylor points out, there are many types of secular argumentation that are difficult to understand for the general public, say, arguments relying on comprehensive philosophical or metaphysical doctrines, or on complicated economic or scientific theory (Taylor 2011). Therefore, if we exclude religious reasons on the ground that they are not generally intelligible, it seems arbitrary to exclude religious reasons *only*, and not unintelligible secular reasons *also*.

What about Habermas’ claim that religious reasons are infallible? Is this a sufficient reason for formally excluding them from parliamentary debates? In my view, it is not. Even if we accept the idea that religious reasons are infallible, it is still the case that many secular reasons are infallible too. For example, if the claim that ‘God exists’ is infallible, then the claim that ‘there is no God’ is equally infallible: proving the latter would disprove the former – and vice-versa. Unless we are willing to say that the former (religious) claim is fallible, we cannot consistently claim that the latter (secular) claim is fallible. Habermas may of course reply that, ultimately, both atheism and monotheism are based on infallible beliefs that evade discursive examination in the same way as religious claims. However, if this is his reply, then he can no longer use the argument from infallibility to exclude religious reasons *only*. If he wants to use the argument from infallibility in a consistent manner, then he has to exclude *all* reasons whose validity depends on infallible beliefs, including many types of secular metaphysical claims and beliefs. In my view, this would entail a

deeply problematic policing of people's political reasons, and would produce serious practical problems when it comes to deciding which reasons are acceptable and which are not.

Another problematic feature of Habermas' argument from infallibility is that he regards 'fallible' as synonymous with 'generally acceptable': "[all citizens must recognize] the difference between fallible public reasons (that is, those which can be accepted by everyone in principle) and infallible truths of faith" (Habermas 2013, 375). This is problematic because the notion of a fallible reason normally refers to a reason that can be confirmed or falsified through evidence or argumentation, not to a reason that is already accepted by everyone, or that everyone could come to accept 'in principle'. In other words, a fallible reason *may or may not* turn out to be convincing after discursive examination. Many sectarian, false, outrageous, harmful, or morally problematic arguments *can* be discursively examined, for example because they rely on empirical claims that can be tested in a fairly objective way. A racist claim about the superior qualities of the white race is fallible because there are rational ways to refute it; however, it certainly cannot be 'accepted by everyone in principle'.

Habermas may reply that he simply focuses on the specific segment of fallible reasons that are publicly shareable in the sense of being compatible with the moral status of each citizen as free and equal. Racist claims are therefore excluded from consideration from the outset. However, the problem remains that Habermas characterizes public or shareable reasons as *secular* per definition: "secular reasons can be expressed in a 'public' or generally shared language" (Habermas & Taylor 2011: 61). In this way, he creates the misguided perception that secular reasons are always shareable and 'in principle acceptable' among participants in the political public sphere. This conception is misguided because, as Habermas knows, secular reasons may be in conflict with the moral status as free and equal citizens just as much as religious ones. On this background, I submit, it would be more correct to say that *publicly shareable reasons are always secular, but secular reasons are not always publicly shareable*.

A third problem with the argument from fallibility is that Habermas exaggerates the extent to which secular, ethical reasons are fallible: "[r]eligiously rooted existential convictions (...) evade the kind of *unreserved* discursive examination to which other ethical orientations and worldviews, i.e. secular 'conceptions of the good' are exposed" (2008, 129). In *Between facts and Norms*, Habermas himself argued that because of their rootedness in substantial values and identities, ethical arguments cannot follow the same kind of rational evaluation as moral discourse, but, in *Between Naturalism and Religion*, he seems to have modified this view, and now argues that also ethical views can be exposed to 'unreserved discursive examination'. As Cooke notes, "it is noteworthy that Habermas, who distinguishes sharply between ethical validity claims and moral validity claims, here describes

ethical convictions in terms he usually reserves moral ones” (Cooke 2013, fn. 8). Perhaps Habermas has changed his view on ethical validity claims in order to justify the exclusion of religious reasons from formalized politics: if neither ethical nor religious reasons can be exposed to ‘unreserved discursive examination’, then excluding religious reasons only seems arbitrary. Correspondingly, if ethical claims *can* be exposed to discursive examination, then it seems more justified to include such reasons in the formal public sphere while excluding religious claims. In my view, however, also ethical validity claims sometimes evade discursive examination, either because they rely on postulates that are impossible to falsify or confirm by way of argumentation and evidence (objective infallibility), or because their proponents take them for granted as unquestionably true (subjective infallibility). As Craig Calhoun notes, “[b]oth religious orientations to the world and secular, ‘enlightened’ orientations depend on strong epistemic and moral commitments made at least partly pre-rationally” (Calhoun 2011, 83). Moreover, “secular reasons are also embedded in culture and belief and not simply matters of fact or reason alone” (Ibid., 82). If this is true, then, again, the argument from fallibility cannot be used in any straightforward way to single out religious reasons as the *only* problematic type of reasons, that is, the only type which must be ‘deleted from the protocol’.

All in all, therefore, Habermas’ exclusion of religious reasons is somewhat arbitrary in the sense that much of what can be said about religious reasons can also be said about (some) secular or non-religious reasons. Habermas could have strengthened his position had he, like Rawls, made a principled distinction between reasons that are publicly shareable (Rawls: political reasons) on the one hand, and reasons that are not shareable – *be they religious or secular* – on the other: “we must distinguish public reason from what is sometimes referred to as secular reason and secular values. These are not the same as public reason. For I define secular reasoning in terms of comprehensive nonreligious doctrines” (Rawls 2005, 452). Habermas could then agree with Rawls that religious reasons (as he understands them) are not publicly shareable, but avoid the strange claim that secular reasons are always fallible and shareable. As Habermas notes himself, a distinction needs to be made between “secular statements and reasons that should count [politically], and *secular worldviews that should count just as little as religious doctrines*” (2008, 141, fn. 48).

By admitting religious argumentation in parliamentary debates, we avoid the problem of arbitrary exclusion, and we make sure that religious motives and interests can be discussed in a transparent way in the political culture. However, legally admitting religious argumentation is not the same as condoning it or refraining from criticizing it. In line with Rawlsian and Habermasian intuitions, the deliberative approach I defend remains critical of the use of religious justifications in political disputes. One way of justifying this skepticism is in terms of a concern with freedom or autonomy. Citizens’ freedom is endangered when the public justification of laws and policies

proceed in a sectarian – i.e. religious – language. Such a language excludes minorities and dissenters from the political process, polarizes the population on non-political grounds, and makes it difficult for some citizens to conceive themselves as free and equal co-authors of the law. In that sense, the concern with freedom provides us with a pragmatic argument in favor of using a religiously neutral language in formalized political justifications. However, as I shall elaborate in the next section, the case against religious political justifications is not just pragmatic, based on empirical claims about freedom and domination, but also *moral*, based on a normative conception of respect for persons.

3.3 The informal public sphere and the ethics of citizenship

Lafont formulates the problem that religious reasons pose for deliberative democracy in terms of a tension between two obligations: the *cognitive* obligation to deliberate according to one's authentic cognitive stance and the *democratic* obligation to use reasons that others can understand and relate to as free and equal:

Whereas the cognitive obligation of judging proposed coercive politics on their substantive merits requires citizens to examine all reasons they consider relevant and give priority to those that support the better argument, whichever they may be, the democratic obligation of providing reasons acceptable to others requires citizens to give priority to generally acceptable reasons whether or not they are the most compelling in any given case (Lafont 2013, 231-232).

Habermas' solution to this dilemma is to expel religious argumentation from the formal public sphere while allowing it without restriction in the informal public sphere(s). In this way, religious believers can realize their political freedom without restrictions in social organizations, the media, and non-institutionalized forums for public debate, while accepting that the state and its institutions use a religiously neutral language. In this manner, religiously 'monolingual' citizens are able to influence the democratic process 'from below', freely prioritizing what they see as the better argument, while at the same time accepting an institutional translation proviso 'from above'.

One of the reasons Habermas gives in favor of including religious arguments without any restrictions in the informal public sphere pertains to the psychological health and integrity of religious citizens. This argument is used by several scholars who push for the inclusion of religious reason in democratic debates (Cooke 2013; Thomassen 2006), and is sometimes referred to as the "split identity" argument (Yates 2007, 881). These scholars (and also Habermas) are concerned for the ability of believers to participate in political debates *as* believers, without having to 'split their identities' into two parts, a secular-public and a religious-private part:

The liberal state (...) must release religious citizens from the burden of having to make a strict separation between secular and religious reasons in the political public arena when they experience this as an attack on their personal identity. (...) [It] must not transform the necessary institutional separation between religion and politics into an unreasonable mental and psychological burden for its religious citizens (Habermas 2008, 130).

On this background, Habermas argues that Rawls' version of the duty of civility is too restrictive and threatens to violate the religious 'mode of life' of devout believers: "we must not expect Rawls's proviso to apply to those of the faithful who cannot abstain from the political use of 'private' reasons without endangering their religious mode of life" (Ibid., 2008, 10). By admitting religious argumentation in the informal public sphere, Habermas believes to have weakened the requirements of public deliberation to such a degree that the split identity problem is overcome. This solution, however, is based on a misreading of Rawls. Rawls does *not* argue that religious reasons cannot be used in what Habermas calls the informal public sphere. What Rawls calls the 'background culture' corresponds more or less to Habermas' informal public sphere, and Rawls is very clear that the requirements of public reason only apply to judges, government officials (especially executives and legislators) and candidates for public office and their managers, not to ordinary citizens in the background culture. The objection that political liberalism restricts *informal* public debate is therefore inadequate: "[t]he idea of public reason does not apply to the background culture with its many forms of nonpublic reason. Sometimes those who appear to reject the idea of public reason actually means to assert the need for full and open discussion in the background culture. With this political liberalism fully agrees" (Rawls 2005, 443–444).

In my view, it is difficult to understand why Habermas takes such a different approach to religious reasons in the informal sphere. The 'injustice' and 'instability' that Habermas correctly sees as potential consequences of the *formal* use of religious reasons (see the previous section), are also potential consequences of the *informal* use of such reasons. If the majority population insists on the use of a specific religious vocabulary in the media or other channels of communication in civil society, then minorities may have difficulties with realizing their political freedom on equal and mutually shareable terms. Also, if different identity groups begin to frame their political disagreements as *religious* disagreements, that may lead to sectarianism, disintegration and the escalation of conflict – also in the informal sphere.

From a moral philosophical perspective, furthermore, one could ask why the ethics of citizenship should not apply for religious citizens in the informal public sphere. Respecting other persons as free in a political sense entails including them in a shared discursive universe that is accessible across cultural-religious divides. Respecting persons as free in a personal sense entails recognition of modern life style pluralism and the equal right to pursue (or not pursue) a cultural or

religious conception of the good. Respecting persons as reflexively free, finally, entails appealing to reasons that they can understand and evaluate *qua* rational persons. When presenting others with reasons they can accept *as* reasons, we appeal to their reflexive capacities, that is, their cognitive ability to evaluate validity claims. Based on the following quote from James Boettcher, we could say that respect for others as reflexive persons commits us in political disputes to appeal to reasons that can be evaluated according to standards that are *generally shared* by human beings in virtue of their common rationality:

For the purpose of interpreting Habermas, I shall simply assume the following definition (...): accessible political justifications are based on reasons which may be meaningfully evaluated in light of standards *shared by human beings generally*, such as reliable perception and observation, rules of inference, common sense, basic scientific and moral reasoning, historical evidence and shared democratic values. Religious traditions have different authoritative texts, social teachings and methods of interpretation, and citizens cannot be expected generally to share distinctively religious standards of evaluation for political claims (Boettcher 2009, 221-222, emphasis added).

The reasons we use to publicly justify policies, laws, and basic rights, I submit, should reflect the mutual recognition between free and equal citizens in these three dimensions (political, personal and reflexive freedom), *also* in informal political debates. That does not exclude religious argumentation in cases where such argumentation is natural or agreed upon, say, in theological disputes. However, when it comes to political disagreements about binding laws and policies, there is a form of disrespect involved in the use of controversial religious reasons.

My view that the ethics of citizenship applies also in the informal public sphere(s) resonates with some claims Habermas makes himself, for example when arguing that respecting others as “free and equal” commits us to present them with “good reasons” (2008, 212) in political debates. I interpret ‘good reasons’ as reasons we expect others to be able to understand and evaluate according shared, cross-cultural standards. On my account, furthermore, the good reasons we owe each other are required by the moral understanding of persons as *free* – reflexively, politically and personally.

However, if we take seriously Habermas’ claim that also ordinary citizens, and not just officials and elected politicians, are morally expected to present their political opponents with ‘good’ or ‘shareable’ reasons, then we may formulate a ‘strong reading’ as an alternative to the ‘weak reading’ of the ethics of citizenship. According to the weak reading, the ethics of citizenship should not be extended to the informal public sphere as this would entail an intolerable ‘personality split’ for some religious citizens. According to the strong reading, by contrast, the ethics of citizenship requires all citizens to address each other (as political opponents) in a mutually shareable (and

therefore religiously neutral) vocabulary, also in the informal sphere(s) of political opinion- and will-formation:

The neutral character of the ‘official language’ (...) for formal political procedures (...) is based on a *previous background consensus among citizens*, however abstract and vague it may be. Without the presumption of such a consensus on constitutional essentials, citizens of a pluralist society couldn’t go to the courts and appeal to specific rights or make arguments by reference to constitutional clauses in the expectation of getting a fair decision. How can we settle this background consensus in the first place, if not within a space of neutral reasons – and ‘neutral’ now in a particular sense. The reasons must be ‘secular’ (...) (Habermas & Taylor 2011, 65).

In this passage, Habermas clearly (and, in my view, correctly) extends the ethics of citizenship to ordinary citizens in the informal sphere who are supposed to form a secular ‘background consensus’ upon which the formalized political procedure rests. This extension, however, is in tension with the split identity argument, as mentioned above, which is accepted by Habermas himself. As we saw, Habermas (mistakenly) criticized Rawls for demanding too much of the faithful, that is, for compromising their personal identity and forcing them to split up their identities by insisting on non-religious political justifications in the informal domain.

In my view, however, the split identity argument is unconvincing. If one argues *as a Muslim* for legal restrictions on pornography or alcohol it should not be difficult to come up with other reasons than strictly religious ones, e.g. reasons related to public health, common morality, alcohol related violence, degradation of women, etc. To the individual Muslim, these reasons may get their ultimate meaning from a divine truth or command, but it seems plausible that some or all of them are *integrated* in her religious worldview – and not alien to it. Habermas is therefore right in saying that religious and secular reasons are interwoven *within* the religious worldview: “religious certainties of faith are interconnected with fallible convictions of a secular nature” (2008, 129). In other words, the religious citizen normally has a large reservoir of reasons at her disposal that perfectly fulfill the demands of secular deliberation: they are independent of revealed religious truth-claims, fallible, open to rational examination, and comprehensible to a non-religious (or otherwise religious) audience. Therefore, rather than assuming that religious discussants need to split their identity whenever they use a non-religious argument, it is natural to assume that they – like the rest of us – express *different dimensions* of their identity in *different contexts*.

What is also unconvincing about the split identity argument is the assumption that *only* the religious face situations in which their deepest beliefs need some kind of translation in order to gain political relevance, or situations in which they feel obliged to exercised self-restraint. This assumption is clearly stated by Habermas in several places: “[t]o date, *only* citizens committed to

religious beliefs are required to split up their identities, as it were, into their public and private elements. They are the ones who have to translate their religious beliefs into a secular language before their arguments have any chance of gaining majority support (2003b, 109, emphasis added). Indeed, a political argument that appeals explicitly to revealed Islamic or Christian teachings is unlikely to be successful as a political argument in contemporary West European democracies. However, why should we assume that *only* religious believers are burdened by the ethics of citizenship? Why should we assume that, say, wholehearted Freudians, New Agers, Hegelians, orthodox Marxists or eliminative materialists, do not face some of the same challenges when asked to formulate themselves in a generally shareable language? Will they not have to admit that some of their deeply held convictions are too controversial to be *politically* implemented in any direct way? Why should non-believers not have ‘fundamental beliefs’, which are difficult to explain in a commonly accessible language? What I am trying to argue here is that we *all* have to make some kind of distinction between what we authentically believe to be true, dignified, beautiful, etc., and what we can reasonably expect *others* to accept as valid argumentation in political debates.

One of the reasons why Habermas believes that secular citizens have no difficulties with the ethics of citizenship is that, unlike religious citizens, they do not draw their self-understanding from a tradition that makes validity claims to universal truth. Instead, Habermas argues, secular citizens, orient themselves according to ethical values, which are not seen as mutually exclusive, but simply as different ‘ways of life’. Secular citizens do not see other ways of life as ‘mistaken’ but simply as ‘different’. Put differently, due to the claims to universal truth inherent in their worldviews, religious citizens have a problem with prioritizing the ‘right’ over the ‘good’ in political discourse which secular citizens do not have:

For the consciousness of the secularized citizen travelling with light metaphysical baggage who can accept a ‘morally freestanding’ justification of democracy and human rights, the ‘right’ can without difficulty be accorded priority over ‘the good’. Under these conditions, the pluralism of *ways of life* in which each different worldview is reflected does not give rise to any cognitive dissonance with one’s own ethical convictions. For from this perspective, different forms of life only embody different *value orientations*. And different values are not mutually exclusive like different truths. So *secular consciousness has no difficulty in recognizing that an alien ethos has the same authenticity and the same priority for the other as one’s own ethos has for oneself*.

The situation is different for the believer who draws her ethical self-understanding from religious truths that claim universal validity. As soon as the idea of the correct life takes its orientation from religious paths to salvation or metaphysical conceptions of the good, a divine perspective (or a ‘view from nowhere’) comes into play which (or from where) other ways of life appear not just different but *mistaken* (2008, 309).

Again, I find this kind of distinction between two different types of ‘consciousness’ – secular and religious – unhelpful. It is true that secular political philosophy prioritizes worldview pluralism

above the commitment to a ‘correct’ way living, but not that all secular citizens – on any meaningful interpretation of that term – do. For example, atheists may very well find religious ways of life *mistaken* in the sense that they are based on false claims about the nature of reality, the existence of God, or man’s ultimate purpose in the world. Therefore, if atheists still want to comply with the ethics of citizenship, then they may face some of the *same* difficulties as religious citizens, i.e. they may have to admit that the concern with justice requires them to exercise some self-restraint when justifying their political positions to fellow religious citizens. Furthermore, if it was true that ‘secular consciousness’ never evaluates other life forms as mistaken but only as different, then substantial numbers of secular Europeans would hardly find it worthwhile to criticize and distance themselves from religion and religious ways of life in general, of from Muslim ways of life in particular. European resistance and aversion towards Muslims, I submit, are very much related to epistemic postulates about Islam as a religion, and to universal validity claims about the superiority or ‘correctness’ of one’s own values and traditions. By contrast, if Habermas’ analysis of secular consciousness was adequate, then secular Europeans would have no *evaluative views* about competing cultural and religious traditions, and so intolerance would hardly be a problem (‘secular intolerance’ would be a contradiction in terms).

I want to finish this section by emphasizing that even though the ethics of citizenship applies also in the informal sphere, religious reasons have a natural place and legitimacy here too. The informal sphere is (ideally) a place where a large and complex diversity of discussions can unfold, including discussions related to faith, worldview and religion. For example, if someone attempts to explain how the financial crisis or the ecological crisis looks from a particular religious perspective, or how her faith contributes to broader ethical, moral or political goals and concerns, then we certainly should welcome it and listen to it. The ethics of citizenship does not forbid us to publicly explain the religious basis of our political stance, or to try to convince others to accept our own faith, say, through proselytizing. The ethics of citizenship, as I understand it, only forbids us to insist in *political disputes* on the authority of a religious or otherwise comprehensive doctrine that others may reasonably reject. On my account, that does not mean that comprehensive doctrines can never be introduced in discussions about binding laws, rights and policies, but that sharable reasons must be *also* introduced – ‘in due course’ – as Rawls puts it.

3.4 The ethics of citizenship and the expectation of translation

Even though Habermas believes that the ethics of citizenship requires much more of religious citizens than of secular citizens, he still believes that it requires *something* of secular citizens too. Habermas emphasizes that religious traditions and ‘vocabularies’ contain insights, truths and moral

sensibilities that can be decoupled from particular religious doctrines and made available as a cultural resource for the population as a whole. In order to encapsulate these resources, Habermas expects non-religious citizens – i.e. atheists and agnostics – to participate in a cooperative translation process of religious truths contents together with their religious co-citizens: “a liberal political culture can even expect its secularized citizens to participate in efforts to translate relevant contributions from the religious language into a publicly accessible language” (2008, 310). In other words, secular citizens must remain cognitively open to the rational insights of religious speech, and they must make an effort to translate these insights into a mutually shareable language.

Habermas recent emphasis on the functional role of religion should be seen as a new response to his early thesis of the ‘colonization of the lifeworld’ (1984), which postulates an increasing penetration and take-over of our everyday norms, self-understandings and world-relations by the ‘system’, that is, economic and administrative power. In recent writings, Habermas emphasizes that religious vocabularies contain ‘semantic resources’, which are able to counterbalance the pressures from capitalism and state bureaucracy, as well from naturalistic worldviews and understandings of the human person, as manifested for example in genetic manipulation, which, according to Habermas, threaten to reify human relation and self-relations (2003b). Given that Western modernity is in need of the motivating and world-disclosing force of religious vocabularies, non-religious citizens should attempt to learn from religion and religious speech, rather than dismissing it as irrational or pre-modern as such:

There are also functional reasons for not overhastily reducing the polyphonic complexity of public voices. For the liberal state has an interest in unleashing religious voices in the political public sphere, and in the political participation of religious organizations as well. It must not discourage religious persons and communities from also expressing themselves politically as such, for it cannot know whether secular society would not otherwise cut itself off from key resources for the creation of meaning and identity (2008, 131).

I agree with Habermas that a “complementary learning process” (2008, 140) between believers and non-believers is called for in order for deliberative politics to function well. I also agree that such a process presupposes that non-believers do not reject *a priori* that religious contributions could have a “cognitive substance” (2008, 139) that transcends particular doctrines of faith. It is not just that religious traditions may contribute with something we need, but also that the willingness to learn is part of what it means to respect others as rational co-deliberators: “[m]utual recognition implies, among other things, that religious and secular citizens are willing to listen to and learn from each other in public debates” (2008, 3).

Nevertheless, some critics argue that Habermas makes excessive demands on non-believers in public deliberation. Consider for example Lafont's objection:

Let's take the example of the current political debate on gay marriage. It is hard to see why a serious engagement in this debate would require secular citizens to open their minds to the possible truth of religious claims against homosexuality. It seems to me that a perfectly serious way of engaging in that debate is to offer the objections and counter arguments needed to show why the proposed policy is wrong, if one thinks it is. Objecting to the unequal treatment involved in denying the right to marriage to a group of citizens, or appealing to anti-discrimination laws to justify opposition to this policy seem perfectly appropriate ways to participate in such public debate (Lafont 2013, 239).

According to Lafont, Habermas expects secular citizens to conceal their true opinions about religion, say, their authentic views on the religious opposition to homosexual marriage. By this, she argues, Habermas' ethics of citizenship violates their right to free speech, including the right to openly express their authentic cognitive stance. I agree with Lafont that it would be wildly unjustified to expect secular citizens to remain 'cognitively open' to particular interpretations of what the Bible or the Quran say about homosexuality, at least if 'open' means that one is expected to look actively for a way of making sense of these claims, or justifying them as true or right. It is therefore important to point out that the cognitive openness that is required of non-believers does not imply any duty to take an affirmative or uncritical stance to religious speech as such. Strictly speaking, Habermas only argues that there *may* be rational potentials in religious speech, and that the view that religion has *nothing* to offer an enlightened humanity is therefore false. In a response to Lafont, he therefore stresses that the ethics of citizenship does repress secular citizens' disbelief in religion, but encourages them not to dismiss public speech *merely* because it is religious. This is at least how I interpret the following passage:

Secular citizens can meet this obligation [the ethics of citizenship] without denying their own disbelief in any kind of religious teaching. They are only asked not to exclude the possibility that religious speech might contain traces of a lost or repressed, or otherwise unavailable, normative intuition that is compelling and still awaits a saving translation (Habermas 2013, 372).

In my view, Lafont's critique is nevertheless important because it points to a weakness in Habermas' understanding of religion and its role in modern societies. There is a tendency in Habermas to regard religion as either 'god' or 'bad': religion is *either* characterized as an intolerant fundamentalism, *or* as an inspirational source of meaning and moral-existential insight. Religion may of course be both, but the point is that it may be much more than this. Conservative religious views on the nuclear family, abortion, or homosexuality, may neither be fundamentalist nor contain the kind of epistemic insights that Habermas wants secular citizens to look for. Understood as a normative

requirement, the requirement of openness can therefore be maintained only in a very abstract sense, as in ‘do not dismiss all religious speech simply in virtue of being religious’. It cannot be maintained as a requirement to ‘take seriously’ or ‘remain open to’ every argument that religious citizens put forward in public discourse.

3.5 Thomassen, Cooke and the inclusivist critique of Habermas

So far, I have argued that the ethics of citizenship applies also in the informal public sphere, and also for religious citizens. This argument required a ‘strong’ reading of Habermas’ position on religious reasons in the informal sphere, as well as a critique of the ‘split identity argument’ as used by Habermas (3.4). In addition, I agreed with Habermas that the ethics of citizenship is incompatible with a secularist attitude that dismisses all religious speech as irrelevant *qua* religious (3.5).

It is nevertheless the case that some scholars will regard my Habermasian version of the ethics of citizenship as problematic, in particular ‘inclusivist’ philosophers who insist that religious reasons must be allowed to play a *direct and justificatory role* in political deliberation – *formally as well as informally*. In this final section, I address two such philosophers, Lasse Thomassen and Mave Cooke, both of whom take issue with Habermas for defending a too exclusive model that privileges secular citizens and disadvantages the religious. Thomassen and Cooke are not just arguing that religious justifications should be legally admissible, but that there is something wrong with the basic normative expectations that are built into Habermas’ ethics of citizenship. I nevertheless argue that their criticisms of Habermas as well as their own religious inclusivism are burdened with considerable problems and misunderstandings.

In his article, “The Inclusion of the Other? Habermas and the Paradox of Tolerance” (2006), Thomassen argues that Habermas (wrongly) marginalizes ‘the ethical’ and ‘the religious’, and privileges ‘the secular’. I will focus narrowly on three claims Thomassen makes in this article, none of which, I believe, survives critical scrutiny. The first claim is that Habermas’ translation proviso puts a restriction on the *whole* political life of a given society: “[according to Habermas] the claims of religion must be translated into political claims if they are to (...) have any (legitimate) place in the common political life of society” (2006, 450-451). This is obviously a misreading. For Habermas, our ‘common political life’ is by no means restricted to the formal public sphere, and the proviso *only* puts a burden on officials and elected politicians within the institutions of the state, not on religious citizens participating in political life more broadly, say, in the media or non-governmental political organizations. In his 2006 article, Thomassen does not even mention Habermas’ crucial distinction between the informal and formal public spheres, but gives the impression that, on Habermas’ account, religious reasons are illegitimate *always and everywhere* in

our political life.

The second claim made by Thomassen is that Habermas' model privileges the 'secular' and marginalizes the 'ethical'. According to Thomassen, Habermas' model forces everyone to adapt to "secular, political society" (Ibid., 452), which means that "a hierarchical distinction puts the political and the secular at the very center (and as a fundament) and provincializes the ethical and the religious (Ibid., 451). This is a strange claim for at least two reasons. First, for Habermas, *the ethical is secular*, which makes it hard to see how 'the secular' could provincialize 'the ethical'. As we have seen, Habermas distinguishes between ethical and religious worldviews precisely by referring to the secular nature of the first. It is therefore incorrect when Thomassen claims that, "for Habermas, religion provides a privileged example of ethical worldviews" (Ibid., 450). Second, as we have also seen, Habermas makes it very clear that the political life, even the *constitution*, of a democratic state is 'permeated with ethics'. Habermas by no means forbids the citizens of a democratic state to debate and articulate ethical conceptions of the good. What he argues is that ethical arguments should not be sectarian (say, ethnic or nationalistic), but shareable and inclusive: they must not privilege one particular group (say, Christians or ethnic Danes) at the expense of others (say, Muslims). Thomassen can of course argue that also sectarian or exclusive ethical arguments should be included in formalized politics, but the costs of this argument are of course high as it would make his position unable to criticize divisive rhetoric and incitements to discrimination.

Third, Thomassen argues that religious citizens are unable to articulate and defend their views and interest as long as they are prevented from using a genuinely religious vocabulary. He gives only one example of this claim, namely the religious 'anti-abortionist'. According to Thomassen, Habermas thinks that anyone who opposes abortion is a religious 'fundamentalist':

A good example of a fundamentalist from Habermas' own texts is someone who opposes abortion as a right (...) and believes that abortion should be illegal. This fundamentalist does not accept that her view on abortion is relative to an ethical way of life and must be limited by the pluralism of ethical points of view on abortion. (...) However, thinking of about abortion according to this distinction between ethical and political is precisely what the anti-abortionist cannot do. For her, it is not a question of political procedure, but of divine revelation transcending any ethical-political distinction (Ibid., 444).

Therefore, if forced to translate her views into a secular vocabulary, the anti-abortionist simply cannot articulate her own authentic point of view, for example in public or parliamentary debates. As evidence for this interpretation, Thomassen refers to the following passage in Habermas:

The possibility cannot be excluded that abortion is a problem that cannot be resolved from the moral point of view at all (...) [i]t might transpire that descriptions of the problem of abortion are always

inextricably interwoven with individual self-descriptions of persons and groups, and thus with their identities and life projects. Where an internal connection of this sort exists, the question must be reformulated differently, specifically in ethical terms. Then it would be answered differently, depending on context, tradition, and ideals of life. (...) the moral question, properly speaking, would first arise at the more general level of the legitimate (Habermas 1993, 59-60).

Let us first note that Habermas nowhere calls opponents of abortion ‘fundamentalists’.

Fundamentalism is a term Habermas reserves for religious groups who are willing to politicize their beliefs through violence and non-democratic means. Second, *pace* Thomassen, Habermas does not say that only opponents of abortion tend to base their views on substantial ethical or religious positions, but that the question cannot be resolved independently of such positions. In other words, *both proponents and opponents* may not be able to sufficiently decouple their arguments from context-bound identities and conceptions of the good. Third, whereas Thomassen thinks that an anti-abortionist necessarily bases her views on ‘divine revelation’, Habermas proposes a more complex understanding of the potential reasons people may have for opposing abortion. Consider for example the following passage:

Liberal regulations on abortion place a greater burden on devout Catholics or on any supporter of a pro-life position based on a religious or other worldview than on secular citizens, who, *even if they do not share the pro-choice position*, can live more easily with the idea that the right to life of the embryo may be trumped by the right to self-determination of the mother under certain circumstances (2008, 286 emphasis added).

Here, Habermas recognizes that also non-religious or ‘secular’ citizens may oppose the right to abortion, and that there are other reasons for doing so than ‘divine revelation’, for example intuitions about the right to life of the potential human person, the embryo.

What interests me here, however, is the argumentation of religious opponents of abortion. Is Thomassen right that such opponents can never articulate their authentic cognitive stance on Habermasian conditions? Can they not advocate their position openly and freely, as can their secular opponents? In examining this question, it is interesting that Waldron points out that Christian opponents of abortion tend *not* to base their arguments on ‘divine revelation’:

The argument against abortion, such as it is, is mainly a natural law argument based on the apparent continuity of fetal development and it is perfectly intelligible to a secular moral sensibility. The religious aspect is just the disciplined insistence on taking the continuity of human life (both in and outside the womb) seriously in light of what biblical faith tells us about the preciousness of human life generally (Waldron 2012a, 855).

Something similar can be said about the Islamic position, at least as interpreted by influential Sunni scholar, Yusuf Al-Quradawi: “Muslim jurists agree unanimously that after the fetus is completely

formed and has been given a soul, aborting it is *haram*. (...) it constitutes an offence against a complete, live human being (Al-Qaradawi 1994, 201). Quradawi does not refer to ‘divine revelation’, but describes an Islamic moral argument about when the human being has a soul – and moral and legal rights as such.²⁶

As March notes, it is precisely because non-believers do *not* need to accept particular revelatory claims, or the authority of certain clerical figures, that they can understand much of the religious opposition to abortion, torture and euthanasia, and accept such argumentation as morally relevant (March 2013, 529). Thus, Thomassen seems to be wrong that religiously grounded views about abortion are necessarily excluded from ‘secular’ deliberation. On Habermas’ conditions, arguing that ‘life begins at conception’ or that ‘human life is sacred’ does not count as *religious* argumentation: there is no reference to revealed doctrines, holy prophets or sacred scriptures, and there is no reference to membership in a specific community of faith. In fact, I doubt that Habermas would even characterize such arguments as ‘ethical’ since they do not in themselves presuppose the acceptance of a particular identity or conception of the good. At any rate, what is excluded in Habermas is the following type of argumentation: ‘*because* the holy Bible (or Quran) prohibits it, abortion should be illegal’. Unlike Thomassen, I agree with Habermas that such (religious) arguments are inappropriate when used to justify laws, court ruling and constitutional principles (Thomassen does not distinguish between different aspects of the formal public sphere. I therefore assume that he wants to include religious reasons also in laws, constitutions, ministries and courtrooms, in addition to parliamentary debates). Of course, there may be cases where religious citizens feel that they cannot express their political views without referring to ‘religious reasons’ in Habermas sense, but I maintain that Thomassen’s critique is exaggerated because it assumes that religious citizens are (always) unable or unwilling to express their political views in non-religious terms.

Another inclusivist who criticizes Habermas is Mave Cooke. Like Thomassen, Cooke argues that Habermas’ exclusivism excludes too much. Cooke agrees with the Habermasian (and Kantian and Rousseauian) conception of political autonomy, according to which citizens are politically autonomous only as long as they can view themselves as authors of the laws to which they are subject (Cooke 2006, 196). However, according to her, citizens with ‘otherworldly’ or ‘metaphysical’ worldviews are prevented from seeing themselves as co-authors of the law as long as their arguments are expunged from the formal public sphere:

²⁶ Please note that I am neither defending nor criticizing standpoints about abortion here, but simply analyzing their alleged ‘religious’ character.

Citizens with what Habermas calls ‘heavy metaphysical baggage’ are denied the possibility of attaching a *cognitive* sense to the laws and political decisions that they, in common with all other citizens, deem to be generally accessible. This is because context-transcending validity, for them, has an unavoidably otherworldly aspect. (...) [T]hey cannot see the laws and decisions as valid for reasons that express their own, metaphysically based, views of validity (Cooke 2006, 198).

Consequently, according to Cooke, religious citizens can only support secularly justified laws and decisions for pragmatic or strategic reasons. Religious citizens may be “rationally convinced of the pragmatic necessity *in a given context* of laws and reasons that are formulated in secular terms”, e.g. in order to “avoid religious strife” (Cooke 2007, 233), but they can never call such reasons their own: *only* citizens with secular or postmetaphysical worldviews can “aspire towards self-legislation on the basis of *rational insight*” (2006, 197). Therefore, allowing religious reasons in formalized deliberation means “removing one potential cause of social and political disaffection” (2007, 235). Cooke believes that this removal is particularly urgent for non-Western immigrants “for whom the Western experience of secularization as a historical achievement is remote or even alien. Such believers have not internalized the particular historical and cultural traditions on the basis of which the secular basis of political authority was once regarded as justified” (2007, 234).

In my view, Cooke’s claim that religious citizens are *never* receptive to secular (non-religious) justifications is simply false. Consider for example Ramadan’s position in *To be a European Muslim*. Here, Ramadan gives a ‘context-transcending’ explanation of the obligations Muslims have to respect European laws – even though these are *not* justified in Islamic, religious terms:

Implementing the *Sharia*, for a Muslim citizen or resident in Europe, is explicitly to respect the constitutional and legal framework of the country in which he is a citizen. Whereas one might have feared a *conflict of loyalties*, one cannot but note that it is in fact the reverse (...). The *Sharia* requires honest citizenship within the frame of reference constituted by the positive law of the European country concerned. How could one be more explicit?” (Ramadan 2002, 172, italics added).

The context-transcending aspect of this argument is of course the reference to sharia law, which is based on interpretations of the Islamic scriptures, the Quran and the Hadith. However, even if religiously justified, the argument certainly does not say that European laws or constitutions should adopt an Islamic vocabulary or otherwise religious vocabulary. On the contrary, it says that Muslims should respect the law *as it is*, given that “it does not impose on them to do or accept something against their religion” (Ibid., 171). For example, a constitution that permits Muslims to drink alcohol may be legitimate as long as it does not force them to do it (Ibid., 171). What Ramadan is concerned

with is the *content* of the law: does it permit Muslims to freely practice their religion? If it does, Muslims should respect and obey it, but not just for ‘pragmatic and strategic reasons’ (Cooke). The law is legitimate because individual Muslims have made a contract with a European country and its citizens when choosing to live in that country: “in social, political, and even financial fields, human affairs are based on agreements and contracts” (Ibid., 170); “Muslims (...) are bound by the covenants signed by them with other countries” (Ibid., 171). In other words, as I read Ramadan, there is a *religious* obligation for Muslims to respect the social and political contracts they have signed, given that these contrast are fair to Muslims and allow them to practice their religion, but the contracts – say, democratically enacted laws – need not be formulated in religious terms. They may just as well be formulated in terms of mutually recognized liberties, obligations and benefits of social and political co-operation.

V POWER, EXCLUSION AND THE CASE OF ISLAM

The final part of the thesis addresses a particular type of criticism that has been leveled against assumed ‘Western’ and ‘secular-liberal’ ideology by poststructuralists and postcolonialists. Thinkers rooted in these traditions argue that Western political philosophy normalizes ‘the West’ and marginalizes and dominates the ‘non-West’. I examine specific claims made against Habermas in particular, and Western norms and political practices more generally, and discuss whether these claims pose a problem for deliberative multiculturalism, as defended in this thesis so far. Is deliberative multiculturalism premised on a Western (or protestant) conception of religion that denies the practical, embodied and emotional aspects of a religious life? Is the commitment to freedom and free speech premised on Western narrative about the unenlightened and heteronomous ‘other’ – the Muslim? Does the commitment to reflexive freedom conflict with the right to live a traditional religious life?

Rooted in poststructuralism and postcolonialism, the two main authors I discuss, Talal Asad and Saba Mahmood, try to shed light on assumed hidden ways in which Western secular-liberal discourse dominates and marginalizes Muslims. In doing this, Asad explicitly criticizes Habermas’ understanding of the public sphere as a forum for critical debate and emancipation. I believe both authors make valid contributions, and raise important questions, related to the public role of religion and the integration of Muslims into Western societies. However, I also argue that their analyses are based on a series of misunderstandings, simplifications and exaggerations. I therefore defend Habermas’ deliberative multiculturalism against the accusation of Eurocentrism and hidden islamophobia.

1 Talal Asad: Secularism, free speech and Islam²⁷

1.1 The secular, secularism and the project of modernity

Asad’s work has had a profound influence on modern anthropology and postcolonial studies. It has been discussed by philosophers, sociologists, and scholars of religious studies, and used as a framework for ethnographic research and social critique.²⁸ According to Norwegian anthropologist, Sindre Bangstad:

²⁷ Some of the arguments in this chapter have been published in Jakobsen 2015.

²⁸ See for example Bangstad, Sindre 2009; Butler, Judith 2009; Flynn, Jeffrey 2014; Hirschkind, Charles & Scott, David 2006; Mahmood, Saba 2005; March, Andrew F. 2011 & 2012.

Asad's seminal contributions to this field of study [secularism and the secular] (...) have had a profound impact on how contemporary anthropologists conceptualize secularisms in theory and practice. That it has become commonplace in anthropological studies to (...) assert the problematic nature of the pretensions towards universality inherent in modern forms of secularisms speak volumes about the professional influence of Asad's work (2009, 188).

Asad is inspired by Michel Foucault with whom he shares not only an explicit suspicion of universalism and 'grand narratives', but also a genealogical and discourse analytical method of critique. Characteristic of this method is its claim to be purely descriptive: the genealogist simply investigates how we have come to think and act as we do, and does not attempt to prescribe how we should think and act. By displaying the historical contingency (the genealogy) of the assumptions and dispositions that form the implicit conceptual framework within which we live our lives, genealogical critique seeks to free us from the illusion that these assumptions are 'universal' or 'necessary': "[Genealogy is] a way of working back from our present to the contingencies that have come to give us our certainties" (Asad 2003, 16). Thus, by turning the Kantian interest in the necessary conditions for contingent experience on its head, the genealogist investigates the contingency of our experiences of necessity.

One of the main goals of Asad's genealogical critique is to show that the claims to universality in Western moral and political thinking are based on cultural contingencies, and how these contingencies serve particular interests. Behind the notions of human rights, democracy, and secularism, hide thick layers of western cultural history, which Asad terms 'the secular': "I take the secular to be a concept that brings together certain behaviors, knowledges, and sensibilities in modern life" (Ibid., 25). Thus, the secular describes the cultural premises not only of modern lifestyles and conceptions of the good, but also of liberal democracy as a system of political governance.

The secular is premised on a specific claim about human beings, namely that they are autonomous or 'self-owning agents' in the world. This claim prepares the ideological ground for the political implementation of human rights, such as freedom of religion or free speech: "[t]he human being is a sovereign, self-owning agent (...). It is on this basis that the secularist principle of the right to freedom of religion and expression was crafted" (Ibid., 135). As I shall come back to below, Asad argues that this understanding of human beings is at odds with Muslim understandings and practices. Furthermore, according to Asad, the secular presupposes a naturalistic and disenchanted understanding of the natural world: "[t]he domain in which acts of God (accidents) occur without human responsibility is increasingly restricted. Chance is now considered to be tamable. The world is disenchanted" (Ibid., 193). All in all, therefore, the modern worldview implies that "[m]ankind

dominates nature and each person fashions his or her individuality in the freedom regulated by the nation state” (Ibid., 193).

For Asad, *secularism* the ideology used by the nation state to govern its population and ‘regulate’ its freedom (in the sense of Foucault’s ‘governmentality’). According to this ideology, Asad argues, the individual is free to believe whatever she wants as long as she does not assert the public or political relevance of her beliefs. By defining religious belief as belonging to the private sphere, the nation state centralizes all power in a single political unity with a monopoly on violence. In order to do that, however, the state needs obedient citizens, that is, it needs to actively create a certain kind of secular self or ‘subjectivity’. The state *disciplines* the citizens by ‘seducing’ or ‘forcing’ them to internalize secular identities, beliefs, and ways of life: “[i]n an interdependent modern world, ‘traditional cultures’ do not spontaneously grow into or develop into ‘modern cultures’. People are pushed, seduced, coerced, or persuaded into trying to change themselves into something else” (Asad 2003, 154). Thus, for Asad, secularism is not really about religious tolerance or neutral political institutions, but about a type governance that pushes the governed subjects to *transcend* their particular identities and beliefs in order to make them identify with the state *as citizens*:

Secularism is not simply an intellectual answer to a question about enduring social peace and toleration. It is an enactment by which a *political medium* (representation of citizenship) transcends particular and differentiating practices of the self that are articulated through class, gender, and religion. In contrast, the process of mediation enacted in ‘premodern’ societies includes ways in which the state mediates local identities without aiming at transcendence (2003, 5).

According to Asad, furthermore, one of the consequences of secular citizenship as defined by the nation state is that religion loses its power to influence and transform human lives and relations. In the secular state, citizens are religious only “in the most vacuous sense” (Asad 1993, 49). Believers and nonbelievers may disagree on a cognitive level, but these disagreements have no *practical consequences*: “in modern capitalist society Christians and non-Christians, believers and non-believers, live more or less the same life” (Asad 2012, 49).

From a Habermasian perspective, one could here object that religious faith in contemporary democracies is nowhere as privatized and disempowered as Asad believes. If modern Christianity (across all its communities and confessions) is such as ‘vacuous’ spiritual formation, why would, say, abortion, gay marriage, or crucifixes in classrooms still fuel so many public controversies? What Habermas calls the ‘postsecular society’ (2008b) is characterized precisely by a growing (or at least undiminished) political use and public relevance of religion – for good or for worse. For example, Habermas notes how the “revivalist energies” (2008, 116) of the American religious right were

mobilized before and during the invasion of Iraq in 2003, and how religious communities and spokespersons continue to contribute to political debates and *as* religious. According to sociologist Peter Berger, to whom Habermas refers, the world is “as furiously religious as it ever was, and in some places more so than ever” (1999, 2). Finally, we should insist with Habermas that political secularism as well as the public role of religion takes on *different* forms in different constitutional democracies, say, in Western Europe and the USA (Habermas 2008). Asad’s grand narrative about ‘the secular state’ and ‘secular citizenship’ therefore needs modification and differentiation.

Asad is course right that some form of ‘transcendence’ – that is, some form of common identification and loyalty – is required in order for modern mass democracies to function well and avoid disintegration. As I have argued myself in this thesis, deliberative multiculturalism presupposes some willingness on behalf of (members of) subcultural communities to orient themselves towards the ‘general interest’, and sometimes to transcend egocentric or group specific interests in the name of the common good. However, on a Habermasian account, this transcendence cannot be imposed on willing subjects ‘from above’, by the state apparatus. Democratic citizenship and constitutional patriotism can only emerge from ‘from below’, that is, as the product of interaction, communication and learning in the lifeworld(s). Such learning processes may of course to some extent transform the respective subcultural and religious traditions, but transformation is not the same as destruction or oppression, nor is it something nation states can easily control.

Habermas ascribes the view that liberal democratic attitudes are a form of ‘forced adaption’ to Foucault, but, in my view, it also applies to Asad:

If those [democratic] attitudes were merely the contingent result of conditioning or forced adaption, then the question, how those cognitive preconditions for imputing a liberal ethics of citizenship are met, has to be answered *a la* Foucault – namely in the wake of a kind of ‘discursive power’ that asserts itself in purported transparency of enlightened knowledge. Of course, this answer would contradict the normative self-understanding of the constitutional state (2008, 138).

The Foucauldian understanding of modernity contradicts the normative self-understanding of the constitutional state because it regards the transition from pre-modern to modern forms of political government as nothing more than a transition from one form of power to another. The gradual shift to a form of political rule that respects democracy and human rights is not regarded as a moral, cultural, political or epistemic learning progress, but rather as a shift to a more subtle way of governing and controlling populations. In Asad, for example, medieval society is presented as *more* humane and diversity friendly than modern society: “[u]nlike the modern secular world of nation-states, medieval Christendom and Islam recognized a multiplicity of overlapping bonds and identities. People were not always expected to subject themselves to one sovereign authority” (2003,

179). Against this view, I insist with Habermas that ‘overlapping bonds and identities’ are better protected in liberal democracies with constitutional freedom and possibilities of political participation, than in medieval Christendom and Islam.

For Asad, secularism and the secular are the defining features of Western cultural, political and economic modernity. There are some affinities between Habermas’ and Asad’s understandings of Western modernity. Both authors consider “violent colonization and failed decolonization” (Habermas 2008, 115) to be an undeniable part of the history of modernity, and both insist on a self-conscious relation to the West’s violent past and present. Furthermore, like Habermas, Asad describes Western modernity as a *project* that includes human rights, democratic government, secularization of the state power, and some form of market economy. However, unlike Habermas, Asad understands the project of modernity as an elitist project that only ‘certain people in power’ are pursuing.

Modernity is a project – or rather, a series of interlinked projects – that certain people in power seek to achieve. The project aims at institutionalizing a number of (sometimes conflicting, often evolving) principles: constitutionalism, moral autonomy, democracy, human rights, industry, consumerism, freedom of the market – and secularism (2003, 13).

From a Habermasian perspective, it is strange to say that only powerful elites pursue the project of democracy and human rights. All over the world, disadvantaged and oppressed groups struggle for democratic influence and basic rights *against* powerful rulers or elites. Furthermore, whereas Asad sees everything ‘Western’ – from democracy and human rights to consumerism, islamophobia, modern warfare, and capitalism – as interlinked parts of the same project, Habermas tries to distinguish the pathological consequences of modernity, such as unbound capitalism and the commodification of human relations, from its emancipatory potentials, such as constitutional democracy.

What interests me is not so much Asad’s claims about the nation state or Western modernity as such. I personally find most of these claims exaggerated, oversimplified, and normatively problematic. What interests me is rather the argument that constitutional democracy is premised on a secular worldview (and a political doctrine of secularism) that *must* lead to domination and exclusion of Muslims: “the ideology of liberal democracy makes it difficult, if not impossible, to represent Muslims politically *as Muslims*” (Asad 2003, 173). Furthermore “Europe (and the nation states of which it is constituted) is ideologically constituted in such a way that Muslim immigrants cannot be satisfactorily represented in it” (2003, 159). For Asad, the current obstacles to inclusion and representation that Muslims face in the West are not explained in terms of particular prejudices or

irrational fears related to Islam and Muslims, and certainly not in terms of any unwillingness within Muslim communities, but in terms of the ideology of liberal democracy itself. The reason why Muslims are excluded and marginalized is not that Western democracies are not liberal and democratic *enough*, as Habermasians could argue. On the contrary, the reason is internal to liberal democracy as ideology and political practice.

1.2 'Western freedom' and Islam

For Asad, the secular is characterized by a strong belief in individual freedom, corresponding to a self or subjectivity that is “essentially suspicious of others” (2003, 135). The secular belief in freedom grounds and justifies the modern ideology of human rights, including the right to free speech and self-expression. However, for Asad, there is nothing innocent about the notion of human rights because it presupposes a comprehensive idea of *what a human being is*, that is, it presupposes a Western and secularized understanding of what it means to be “truly human” (Ibid., 150). Westerners (or ‘Euro-Americans’) believe that human beings “own themselves” like a private property (2009, 28), and that any interference with self-ownership is wrong. For example, culturally specific attitudes to pain, sexuality, and the body explain “the particular horror in Euro-America at the widespread custom of female genital mutilation in some African regions” and also “the belief that female circumcision, unlike the male variety, interferes with the sexual pleasure of the woman” (2003, 148-149). The belief in freedom also explains westerners’ (but apparently not Muslims’) aversions to child pornography – “even in cyberspace” (2009, 28). However, individual self-ownership and self-responsibility are not restricted to the human body: modern subjects also insist on their individual right to *think, believe* and *articulate* whatever they want, without interference by others. For Asad, however, this insistence is not only mistaken (because we are always formed by powers and discourses beyond our conscious control), it also turns a particular cultural doctrine into a universal standard for human maturity:

A subject possessing bodily integrity, *able to freely express himself or herself*, and entitled to choose for herself or himself what to believe and how to behave is not simply a ‘freestanding moral core of a political conception’ to which people sign on. It is itself a thick account of what being human is –and one that underpins human rights (2003, 150, emphasis added).

According Asad, the idea of a freely speaking and acting subject is closely related to the “secular idea of religion understood as a private spiritual matter” (2009, 41). According to this idea, religious faith is all about the private holding of a set of cognitive beliefs, that is, belief is thought of as something that goes on in the minds and hearts of individual persons, not as a public or political matter. In Western liberal democracies, Asad argues, the individual is granted a right to believe

whatever she wants, including a right to change her religion or to have no religion at all, as long as she respects the boundaries between the public and the private, that is, as long as she does not attempt to impose her beliefs on others but accepts that the state and its laws should be unaffected by religious belief. Here, there is a clear connection in Asad between the secular, understood as a complex of cultural certainties and sensibilities, and *secularism* understood as a political doctrine. Secularism, which for Asad is the central ideological component of Western liberal democracies, works precisely by protecting the citizens' private freedom to believe whatever they want while at the same time excluding religion from political power and influence. By this, individual nation states use the secular ideology of freedom and human rights to maintain power and govern their populations: "the state has the power to *use human rights discourse to coerce its own citizens* – just as colonial rulers have the power to use it against their own subjects. In defending its citizens' human rights it is only the state that can legally threaten to punish violators" (Ibid., 135).

From a Habermasian perspective, of course, freedom cannot be *enforced* on a population without violating freedom itself. The ideals of freedom that are intrinsic to democracy and human rights must be appropriated *from within* local cultures and traditions, which also means that even a 'good hegemon' cannot liberate oppressed populations by force:

When thousands of Shiites in Nasirya demonstrate against both Saddam and the American occupation, they express the fact that non-Western cultures must appropriate the universalistic content of human rights with their own resources and their own interpretation, one that establishes a convincing connection to local experiences and interests. This is also why multilateral will-formation in interstate relations is not simply one option among others. From its imposed isolation, even the good hegemon, having appointed itself as the trustee of general interests, cannot know whether what it claims to do in the interest of others is, in fact, equally good for all (2006, 35)

Let us take a closer look at Asad's claim that Western freedom is alien to Islam and Muslims. What matters in Islam, Asad argues, is not individual freedom but "practical rules and principles aimed at developing a distinctive set of virtues" (2006, 9). Therefore, Islamic religiosity does not work very well under the conditions of liberal democracy: Islamic faith is realized not as the holding of cognitive beliefs but as a 'habitus' or 'embodied practice': "[w]hat matters [in Islam] is belonging to a particular way of life *in which the person does not own himself*" (2009, 45, emphasis added). In Islam, therefore, communal belongings and attachments are prioritized over individual desires and beliefs – and also over the right to say things that are "contrary to Islamic commitment" (Ibid., 42).

For Asad, the French hijab ban is a paradigmatic example of how the secular nation state determines the boundaries of freedom for Muslim subjects in an authoritarian manner (Asad 2006a). From a Habermasian perspective, one can agree that French political language is tied to *secularism*

understood as a comprehensive cultural and political ideology. This ideology goes beyond the commitment to neutral political institutions and the mutual independence of church and state: it regards religion – or specific religions – as a threat to the identity and values of the nation, and it insists that religion belongs in the private sphere. “Secularists”, Habermas writes, “insist on the uncompromising inclusion of minorities in the existing political framework (...). From their viewpoint, religion must withdraw from the political public sphere into the private (...). [R]eligion must be tolerated, but it cannot lay claim to provide a cultural resource for the self-understanding of any truly modern mind” (2008a).

As already demonstrated, Habermas criticizes rigid and ‘militant’ variants of contemporary political secularism, including (interpretations of) the French variant. For him, religion *does* provide a cultural resource in modern societies, and religious citizens must be able to participate and be heard *as* religious. In that sense, Habermas shares Asad’s critical attitude towards triumphalist forms of political secularism, and their inadequate conceptions of religious faith. However, Habermas’ position certainly does not resemble ‘the liberal idea’, which Asad ascribes to liberal critics as well as defenders of the French ban:

The liberal idea is that it is only when this individual sovereignty is invaded by a body other than the representative democratic state that represents his individual will collectively, and other than the market, which is the state’s dominant civil partner (as well as its indispensable electoral technique), that free choice gives way to coerced behavior (2011a, 104).

For most liberal thinkers in the Western tradition, it is obvious (and well analyzed) that human freedom can be violated by ‘the democratic state’ and ‘the free market’, in addition to the more informal pressures from culture and religion. Thus, for Habermas, the French ban (and aspects of French secularism) is unjustified precisely because it violates the principle of liberal neutrality by interpreting constitutional freedoms in a biased way:

The essential moral content of the constitutional principles is secured through procedures that owe their legitimizing power to the fact that they guarantee the impartiality and the equal consideration of the interests of all. They forfeit this power when substantive ethical ideas infiltrate the interpretation and practice of the formal regulations. In this respect, the imperative of neutrality can be violated just as much by the secular side as by the religious side. The *Affair du foulard* is an example of the former (2008, 256-266).

On the deliberative account I defend, it is difficult to see what reason we would have to criticize the French ban – or, say, the Swiss ban on minarets – if we did *not* believe that human beings have a

right to form and pursue a (religious) conception of the good. If we did not believe that Muslims, *qua* human persons, have a legitimate interest in realizing their personal freedom *as Muslims*, why should we care about their constitutional rights? Illiberal restrictions of religious freedom are due to prejudiced, selective, or majoritarian readings of the system of rights, not to some internal logic in the discourse of liberal democracy.

Consider the position taken by Tariq Ramadan in *How to be a European Muslim*. Here, Ramadan mentions several obstacles and problems for European Muslims, such as distrust, discrimination and stigmatization, but he never mentions ‘Western freedom’, ‘free speech’, or ‘human rights discourse’, as an obstacle. What Ramadan regards as a problem is that Western constitutional rights are sometimes interpreted and used in biased or prejudiced ways, a tendency he relates to the image of Islam as presented in national and international media. This tendency, Ramadan argues, leads to fears and prejudices that permeate the political process in European democracies: “[i]t happens that the laws – which normally protect the rights of Muslims – are read, interpreted, and used, because of the suspicious atmosphere surrounding them, in a tendentious manner and they become the official and legitimate support of patent discriminations” (2002, 139). Thus, when Ramadan criticizes certain *uses* of free speech, he does not criticize the *right* to free speech as it is currently enacted in European legislation, nor does he pit Western free speech against Islam in the way Asad does. However, my point here is not to defend Ramadan’s particular interpretation of specific constitutional rights, but to demonstrate that the opposition Asad would like to see between Western secular-liberal freedom and Islamic faith is not necessarily shared by Islamic scholars.

Habermas would agree with Ramadan that the real problem is not Western constitutional liberties, but the way in which these liberties are sometimes applied in sectarian or biased ways. As Habermas puts it, “in our post-colonial immigrant societies, discrimination against minorities is usually rooted in prevailing cultural prejudices that lead to a selective application of established constitutional principles” (2008a, 26). Habermas furthermore emphasizes that we are only able to criticize selective applications of constitutional principles if we are committed to these principles in the first place. For example, if one does not regard free speech or religious freedom as human right, one cannot consistently criticize violations or biased interpretations of these rights. On this background, Habermas notes that ‘radical multiculturalists’ who regard human rights discourse as a Western intrusion into non-Western cultures are unable to articulate a coherent critique of constitutional biases and discriminations:

[Radical multiculturalism] robs itself of the standards for a critique of the unequal treatment of cultural minorities. (...) If one then does not take seriously the universalist thrust of these [constitutional] principles in the first place, there is no vantage point from which to understand how the constitutional interpretation is bound up with the prejudices of the majority culture. I need not go into the philosophical issue of why cultural relativism, derived from a postmodern critique of reason, is an untenable position (Ibid., 26).

Given that Asad – unlike Ramadan and Habermas – sees a general ideological tension between Islam and liberal democracy, he cannot criticize majoritarian applications of the system of rights as *illiberal* or *undemocratic*. Instead, taking the perspective of a detached discourse theorist, he analyzes such applications as manifestations of secular discursive power. However, the mere fact that power is exercised tells us nothing about its legitimacy. Often, the secular state exercises power in a legitimate way, say, by protecting the rights of minorities, or by realizing democratically enacted policies. It is therefore a weakness of Asad's account that it refuses to distinguish between legitimate and illegitimate political power. Consequently, it becomes unclear why, on his account, certain policies and laws deserve criticism, while others do not.

1.3 Free speech, Islam and radical multiculturalism

According to Asad, the ideology of free speech lies at the heart of the Western ideology of freedom. The ideology of freedom is associated with a celebration of the ability to make personal choices based on actual beliefs or interests (I have described this ability as *personal freedom*) as well as with the ability to reflect critically upon validity claims (I have described this ability as *reflexive freedom*). A culture that identifies with and seeks to protect freedom in these two meanings easily comes into conflict with a culture that does not. And, on Asad's account, this is exactly what happened in the Danish cartoon controversy.

It is of course true that in cases such as the Danish cartoon controversy, many Muslims disagree with many non-Muslims about the morality and legality of free speech, about religion and religious belief, the meaning and nature of freedom, the notion of critique, etc. In that sense, Asad may be right that 'Western' conceptions of human rights are not completely neutral or value-free, and that their underlying assumptions about human persons are 'thicker' and more controversial than some political philosophers – including Habermas – like to admit. Where Asad on the contrary goes wrong is when he uses this insight to defend a general and seemingly unsolvable conflict between liberal democracy and Islamic religiosity.

By dividing 'Muslims' and 'Westerners' into two more or less homogenous groups, the first of which is committed to an ideology of freedom that the second cannot live with, Asad's position comes close what Habermas describes as 'radical multiculturalism' (mentioned also in the previous

section). Radical multiculturalism sees cultures as semantically closed wholes with their own incommensurable rationalities and standards of evaluation. From the perspective of radical multiculturalism, defending the universal validity of democracy and human rights means imposing the standards of one culture (the West) on others (the non-West):

With the exception of unsteady compromises, submission or conversion are the only alternatives for terminating conflicts between [...] cultures. Given this premise, radical multiculturalists cannot discern in any universalist validity claim, such as the claim for the universality of democracy and human rights, anything but the imperialist power claim of a dominant culture (2008b, 7).

Asad fits the description of radical multiculturalism because he basically argues that liberal democracy is premised on Western, secular culture and only transferable to Islam by means of force – be it in the direct form of violence or in the more indirect form of discursive power (in Foucault’s sense). On this premise, it does seem that Muslim citizens in liberal democracies must choose between ‘unsteady compromises’, ‘conversion to western culture’, or ‘complete submissiveness’. It is at least difficult to see how, on Asad’s account, Muslims could be *included* in liberal democratic societies without being *converted* to western culture.

By problematizing Asad’s multiculturalism, I do not mean to say that Islamic and Western cultural norms are always easy to reconcile, or that prevalent interpretations of liberal democracy may not conflict with prevalent interpretations of Islam. Our present world abounds with conflicts and disagreements over interests, powers, and values that can be defined as Western or Islamic, respectively. My point is rather that Asad tends to give an oversimplified view of what it can mean to be a ‘Muslim’ or a ‘Westerner’. By doing this, he downplays differences and disagreements *within* Muslim and Western culture respectively, as well as the potential for agreement and mutual understanding *between* them.

Asad’s repeated use of the Islam-West binary wrongly suggests that Muslims cannot be Westerners – and vice-versa. His use of the same binary to analyze the Danish cartoon controversy, wrongly suggesting that Muslims agree internally about free speech and its limits: that (non-Muslim) Westerners also agree internally; and that Muslims and (non-Muslim) Westerners *never agree*. But this is not how the affected subjects usually experience cultural conflicts. As Benhabib notes, members of a particular culture or tradition typically do not experience it as a stable and clearly defined whole, but as a contested and evolving ‘horizon of narratives’:

Any view of cultures as clearly delineable wholes is a view from outside that generates coherence for the purposes of understanding and control. Participants in the culture, by contrast, experience their traditions, stories, rituals and symbols, tools, and material living conditions through shared, albeit

contested and contestable, narrative accounts. From within, a culture need not appear as a whole; rather, it forms a horizon that recedes each time one approaches it (2002, 5)

So, whereas Asad focuses on an assumed conflict between something called ‘The West’ and ‘Islam’, Habermas insists that mutual understanding *can* replace antagonism, and that the fusion of horizons *can* replace cultural isolationism. We do not have to agree with Habermas that reaching understanding is the inherent ‘telos’ of all human speech in order to agree that communication is at least possible, and that, sometimes, communication expands our horizons and enlarges our perspectives. As we know from everyday life, we often seek not only to achieve certain strategic goals, but also to reach an understanding with others regarding the legitimacy of our actions and utterances. Why should this in principle be impossible in intercultural conflicts? As Habermas puts it:

The constant deconstructivist suspicion of our Eurocentric prejudices raises a counter-question: why should the hermeneutical model of understanding, which functions in everyday conversations (...) suddenly break down beyond the boundaries of our own culture, our own way of life? (...) one can also show with Gadamer that the idea of a self-contained universe of meanings, which is incommensurable with other universes of this type, is inconsistent (2003, 36-37).

Asad sometimes characterizes Muslims who are in the grip of liberal democratic ideology as ‘Westernized’. However, as Bangstad notes (2009, 193), the notion of a Westernized Muslim is far from positive or even neutral within the framework of postcolonial thinking, and the idea of a ‘true’ or ‘authentic’ Muslim lurks in the background of such conceptions. Who has the authority to define what an authentic Muslim is? In my view, one does greater justice to the manifold *different* ways of being a Muslim by assuming – as Habermas does – that liberal democracy is not bound to a particular variant of Western culture or ‘the secular’, but is open to be interpreted and formed in different directions, also by Muslims.

According to Asad, however, there is something problematic about attempting to ‘de-essentialize’ Islam in this way. From an Asadian perspective, this maneuver easily turns into a kind of domination, exercised by the stronger part who wants to normalize the weaker part, that is, to reduce her (religious) otherness according to standards of (secular) sameness. For Asad, European assimilation of Muslims works exactly by destabilizing identities and cultural essences: “[t]he de-essentialization of Islam is paradigmatic for all thinking about the assimilation of non-European peoples to European civilization” (2003, 169). This is why he strongly dislikes Homi Bhabha’s suggestion that European Muslims need to engage in relations of “cultural translation” (Ibid., 180) and to “reinvent” (1993, 263) their own traditions in new social and political contexts. Bhabha

argues that Salman Rushdie's *The Satanic Verses* changed the vocabulary of the British national debate:

It has achieved this by suggesting that there is no such whole as the nation, the culture, or even the self. Such holism is a version of reality that is most often used to assert cultural or political supremacy and seeks to obliterate the relations of difference that constitute the languages of history and culture (...). Salman Rushdie sees the emergence of doubt, questioning or even confusion as being part of that cultural 'excess' that facilitates the formation of new social identities that do not appeal to a pure and settled past, or to a unicultural present, in order to authenticate themselves (quoted in Asad 1993, 262).

Bhabha's general description of the evolving and diverse nature of cultural traditions fits well with Benhabib's understanding of cultural narration, and Habermas' emphasis on cultural reflexivity and the 'fusion of horizons'. According to Asad, however, such language is the language used by 'ideological spokespersons of the nation'. Commentating on the passage from Bhabha, quoted above, Asad writes that:

It is a notorious tactic of political power to deny a distinct unity to the populations it seeks to govern, to treat them as contingent and indeterminate. The strategy of disaggregating subject populations in order to better administer them does not require a 'pure and unsettled past', all it requires is a manipulable re-creatable present. It is precisely the viewpoint of interventionist power that insists on the permeability of social groups, the unboundedness of cultural unities, and the instability of individual selves. *Since speech is the first and continuous condition of political dispute, it is in the interest of interventionist power to ensure that the effectively dissolved subject cannot speak even for herself, let alone for a group* (1993, 264, emphasis added).

Of course, preventing individuals or groups from speaking by intentionally 'dissolving their identities' goes against the very core of deliberative multiculturalism. However, I do not see that we need to choose between a completely dissolved subject with no communal belongings, on the one hand, and a static cultural essentialism, on the other. Recognizing Muslims as culturally embedded subjects cannot mean that we accept one single definition of Islam as the correct one. Asad seemingly wants representatives of the nation state to recognize the unity and continuity of the Islamic identity, but who exactly should the state listen to when trying to determine what the essence of Islam is? Conservative or liberal Muslims? Male or female? Homosexual or heterosexual? Old or young? Shia, Sunni, or Sufi? Rich or poor? Educated or uneducated? Imams, theologians or lay people? The task, as I see it, is to conceive of Islam (and other traditions) as an internally complex and historically changing tradition, while at the same time recognizing Muslims (like all others) as culturally situated individuals for whom specific beliefs, symbols and practices are important.

Asad's critique of Bhabha is grounded on a concern that critical speech – such as Rushdie's book – will make it impossible to live a consistent life as a Muslim: “[l]et us be clear (...) on this

matter of criticism: *no regular life* – let alone coherent ‘translation’ or articulation of ‘new social identities’ – can be practiced if it is continually subjected to ‘doubt, questioning and even confusion’” (1993, 265). It is perhaps true that cultural criticism can be exercised in a way (or to a degree) that makes it difficult for minorities to articulate their own identities and lead a ‘regular life’. Thus, on the deliberative account I defend, criticism must go hand in hand with attempts at mutual understanding, respectful communication and perspective taking. However, Asad seems to assume that ‘doubt, questioning, and confusion’ is always something Muslims are *subjected to* by outsiders. By this, he downplays how Muslims themselves (like all others) engage in interpretations, contestations and critical discussions about Islamic identity and belief. The fact that few Muslims appreciate the provocative way in which Rushdie’s book deals with specific Islamic taboos does not mean Muslims oppose doubt or questioning as such.

Even though Asad seems to understand his own project as purely descriptive one (the genealogist uncovers hidden assumptions and powers without evaluating them), his radical multiculturalism clearly has a normative side. Asad’s understanding of the West’s ‘de-essentialization’ of Islam goes hand in hand with the normative thrust of his radical multiculturalism, namely that minorities must be able to continue their traditions continuously and *unselfconsciously*: “the focus *should be* on what it takes to live particular ways of life continuously, co-operatively, and *unselfconsciously*” (2003, 178, emphasis added). According to Asad, minorities can only live undisturbed if majorities are permanently deconstructed so that “everyone may live as a minority among minorities” (Ibid., 180). In my view, this suggestion is problematic in at least two ways.

First, even if we accept the (problematic) claim that minorities want to live ‘unselfconsciously’, it is difficult to imagine how anyone could live ‘co-operatively’ and ‘unselfconsciously’ at the same time. Co-operating with citizens from different backgrounds, that is, citizens who hold different beliefs and have different values and interests than oneself, naturally makes one *conscious* of one’s own particularity, and it makes one aware of alternative views and practices. Co-operation with others may even motivate us to reflect on questions of validity and justification in our own tradition, or to rethink or revise aspects of it. In that sense, I submit, intercultural co-operation *induces* consciousness of both ‘self’ and ‘other’. At the same time, it is difficult to image how co-operation across cultural and religious divides could be successful unless the cooperating parties develop some degree of reflexive decentering (or reflexive freedom). What is required is not that we distance ourselves from our own beliefs and interests, but that we situate them within a broader concern for the common good, and the legitimate interests of others. In that sense, it seems that intercultural co-operation presupposes a morally conscious relationship to self and other.

On a Habermasian account, the required form of reflexivity does not imply a fallibilistic attitude to religion as such. As Habermas puts it, “religious convictions and global interpretations of the world are not obliged to subscribe to the kind of fallibilism that currently accompanies hypothetical knowledge in the experimental sciences” (1994, 133). What is required is that culturally and religiously embedded citizens deliberate with each other in a spirit of mutuality, aware of their own fallibility in moral and political matters. Thus, as Rostbøll notes, suspicions (à la Asad) that deliberative democracy expects too much of the citizens in terms of their reflexive skills and personal autonomy are misguided. If we completely dismiss the normative commitment to reflexivity and reflexive freedom, we are no longer able to argue that people of different backgrounds should deal with their conflicts and disagreements in a ‘critical-reflective’ way:

It is therefore misguided to object that deliberative democracy is wrong because it promotes a specific conception of the good life, for the conception of autonomy it is committed to does not pertain to what the good life is, but rather to what is equally good for all – given that people have different ideas about what is good for them individually. Any objection would have to be committed to the idea that it is wrong to aim at what is equally good for all in a *critical-reflective way*. Deliberative democracy does not – or at least need not – rely on autonomy as a conception of the individual good but only on autonomy as the way in which we determine the common good and become subject to the norms that this requires, i.e. on moral autonomy exercised in common (2011, 10).

What Rostbøll describes as the *content* of the ideal of reflexive freedom is not that everyone (expose their beliefs or ways of life to constant and pervasive critical reflection, but that everyone is able to deliberate and interact with others in a respectful way: “the content of the ideal is not that everyone must subject their conceptions of the good to critical reflection but merely that they are sufficiently self-reflexive to avoid arrogance and disregard for the perspectives of others” (2009, 638-639). On this background, Asad’s normative claim that cultural groups should be able to live ‘unselfconsciously’ seems to be incompatible with basic requirements of multicultural citizenship.

Secondly, Asad’s radical multiculturalism overlooks the fact that minorities themselves have internal minorities, and that the relation between minorities and majorities *within minorities* may be characterized domination, power struggles, and hierarchal structures. As we have seen, Habermas characterizes such asymmetries as ‘internal repression’ (part II.2.2). Therefore, although a Habermasian approach will go far in recognizing group differences and, based on these, different kinds of cultural exemptions and protections, it insists all the more uncompromisingly on the right of the individual to question, discuss, or revise its own cultural or religious tradition, even to leave it completely, e.g., through apostasy or religious conversion. The right to dissent – ‘the freedom to say yes or no’ (Habermas) – should be available to *all* minorities, and the last minority, I submit, is

always the individual. Given that open communication is vital for the ability of members of minority cultures to confront mechanisms of domination and subordination, deliberative multiculturalism strives to facilitate an open and anxiety free debate about cultural and religious traditions, not just in the political public sphere (where minorities are sometimes silenced), but also within minority groups (where minorities within minorities are sometimes silenced).

By seeing minorities' cultural ways of life as the primary focus of justice, Asad ignores the many ways in which defenders of cultural homogeneity and 'continuity' exercise ideological power by distorting or suppressing the free flow of communication, for example by immunizing particular beliefs or structures of power against internal discussion or criticism. Religiously justified domination and violence are very real phenomena, even within today's Europe, and also within some Muslim communities. For example, the French Affair du Foulard was not only about the secular state disciplining Muslims, but *also* about a legitimate concern with internal repression of Muslim girls:

In schools where some Muslim girls wear the headscarf-hijab and others do not, there is a strong pressure on the latter to conform. [...] [Muslim men's] pressure on young girls to conform can range from insults to community ostracism to violence. Fundamentalist Islamic groups have thus used schools to test and challenge the values of the French republic (McGoldrick 2006, 64).

So the case is complex. On the one hand, allowing girls to wear the hijab in schools will inevitably lead to instances where there is some social pressure on the girls to conform to standards of religious piety. On the other hand, a ban will inevitably violate the right of individual women to choose for themselves what to wear, and freely express their religiosity. Habermasian deliberative multiculturalism differs from Asad's radical multiculturalism exactly because it is concerned with *both* kinds of repression: the repression of cultural minorities through the apparatus of the state, as well as the repression of minorities or marginalized groups *within* cultural minorities.

1.4 The power of reflexive freedom

A paradigmatic figure in Asad's analysis of Western free speech is 'the worldly critic'. The worldly critic is both a personality type and a philosophical position according to which there can be no such thing as a religious taboo: "[f]or the worldly critic, there can be no acceptable taboos. When limits are critiqued, taboos disappear and freedom is expanded" (2009, 55-56). This view, Asad argues, is grounded on a particular ontology of the property-owning self that 'owns' its own speech, and is rooted in Christian theology and European enlightenment thinking. For Asad, the Christian idea of truth as *liberating* is internally related to the 'sacred' status that free speech has been granted in the West: "[t]he truth, said Jesus to his followers, will set you free. The unredeemed human condition is

lack of freedom; free speech – truthful speech – releases the human subject from his or her servitude” (Ibid., 34). Furthermore, the internal relation between truth and individual freedom is preserved in enlightenment thinkers such as Kant and Pierre Bayle, and adopted by modern Enlightenment thinkers such as Habermas. “For Kant”, Asad writes, “critique became the process of epistemological self-correction by strict reference to established rational limits and the fixed boundary between private faith and public reason” (Ibid., 50). Today, this project is translated into a ‘Habermasian story’ of self-liberation through public critique: “Kant’s ideas of public, publicity, and critical reason have become part of a Habermasian story of the progressively liberating aspects of secular, bourgeois society” (Asad 1993, 202). According to Asad, this ‘story’ presupposes and reproduces a specific view about who *deserves* critique, namely the unenlightened and not yet autonomous Muslim:

This [Kantian and Habermasian] criticism doesn’t merely liberate ideas from taboos, however; it also reinforces the existing distinction between the paradigmatically human and candidates for inclusion in true humanity who do not as yet own their bodies, emotions, and thoughts. It reinforces, in other words, the ideological status of European Muslims as not fully human because they are not yet morally autonomous and politically disciplined (2009, 55-56).

However, as should be clear from my discussions so far, there is no necessary connection between a Kantian or Habermasian commitment to freedom and free speech, on the one hand, and the view that Muslims are heteronomous and therefore ‘not fully human’, on the other. On the contrary, I have argued that there is a moral duty to respect human persons as *already autonomous*, that is, as rational agents who are capable of exercising freedom – reflexively, politically, and personally. In that sense, freedom is a “shared human quality” (Rostbøll 2009, 625), not a quality that some people have as opposed to others. That does not mean that freedom is not *also* something we can have more or less of. For example, as Rostbøll argues, some level of reflexivity needs to be cultivated in citizens’ character or personality in order for them to be able to engage respectfully and civilized with others. However, admitting that, in a certain sense, some people are more autonomous than others, says nothing about *who* deserves to be called autonomous and why. After all, one might argue that it was *Jyllands-Posten* and its defenders who failed to reflect critically upon their own culture and its claims to universality, and not Muslims (or at least not *just* Muslims). When confronted with examples of arrogance and paternalism towards others, we should therefore not blame the idea of reflexive freedom itself, as Asad does, but perhaps some particular *interpretations* of that idea. Furthermore, as Rostbøll argues, our commitment to autonomy as a ‘character ideal’ (Millian autonomy) is *morally restrained* by our duty to respect others as already autonomous (Kantian autonomy). In other words, Kantian (and, I would argue, Habermasian) respect is *not* compatible with

the view that Muslims are heteronomous subjects who need to be ‘politically disciplined’ by emancipated liberals.

For Asad, nevertheless, publications such as the Danish cartoons are seen by ‘worldly critics’ as necessary precisely because they target a religious group that is ‘not yet autonomous’ and ‘not fully human’. These critics believe that Muslims should be emancipated from their own beliefs through religious insult and offence:

More interesting than the defense of free speech as an absolute value in this case was the argument that it was even a good thing that pious Muslims felt injured, because being hurt by criticism might provoke people to reexamine their beliefs—something vital both for democratic debate and for enlightened ethics. The criticism of questionable (religious) beliefs is presented as an obligation of free speech, an act carried out in the service of education towards the truth, making truth the door to liberty (2011, 288).

I believe Asad gives a refreshing and provocative description of the likely assumptions of *some* defenders of the Danish cartoons and similar publications, for example when addressing the belief among some that it is a duty or virtue to offend Muslim sensibilities in order to stand up against religious fundamentalism and superstition. However, Asad mistakenly uses this description to say something about ‘Westerners’, ‘Europeans’ and ‘secular liberals’ *in general*. Put differently, the downgrading and dehumanizing views about Muslims that Asad ascribes to the worldly critic are frequently used to characterize the *entire* non-Muslim population in Western democracies. Take for example his claim that “(...) for both liberals and the extreme right the representation of ‘Europe’ takes the form of a narrative, one of whose effects is to exclude Islam” (2003, 165). According to Asad, this narrative points to Europe as an ‘unchangeable essence’ which distinguishes ‘us’ from ‘them’: “It is precisely because Muslims are external to the essence of Europe that ‘coexistence’ can be envisaged by ‘us’ and ‘them’” (Ibid., 165). If we leave the extreme right wing out of the question, the group of ‘liberal Europeans’ includes hundreds of millions of people, so the question is how Asad can conclude that all of them conceive of Europe as an unchangeable essence to which Muslims are external. Asad’s conclusion is based mainly on a discourse analysis of the 1992 *Time Magazine* cover story on Turkey’s attempt to become a member of the European community (Ibid., 161). Asad notes that his primary interest is in “analyzing the grammar of a discourse – as articulated in some uses of the word ‘Europe’ – rather than in tracing its empirical spread” (Ibid., 161). However, if empirical spread is not the issue, how do we get from particular statements about Europe and Muslims, to *all* liberal Europeans? Unfortunately, in my view, the way in which Asad makes general claims about ‘Westerners’ based on selective analyses of particular claims and texts is not very different from the way in which some self-described critics of Islam make general claims about ‘Muslims’ based on particular quotes from the Quran, or from this or that Imam.

If we accept Asad's generalizations about 'Westerners' and 'secular liberals', then it becomes difficult to explain why, in the Danish case, so many non-Muslims criticized *Jyllands-Posten's* publication and sympathized with the Muslim minority (see Klausen 2007). Why would many 'secular liberal' non-Muslims feel a need to apologize to Muslims, or to distance themselves from the cartoons, if they are disciplined – emotionally and ideologically – by 'the secular'?

1.5 The public sphere

For Asad, contemporary liberal democracies are based in a fundamental sense on violence and disciplinary power. He therefore rejects as naïve the idea that liberal democracies are about deliberation and rational discussion. In cases of disagreement, the nation state (supported by a democratic majority) will not listen to minorities, but will silence them with legal force "and the violence this implies" (2003, 6). According to Asad, "the nation state is not a generous agent and its law does not deal in persuasion" (Ibid., 6). Disagreements over law and politics are settled through legal force "and the violence this implies", not through democratic deliberation (Ibid., 6).

Importantly, since the exclusion of certain groups and 'certain types of claims' from public influence also works in subtle and disguised ways, Habermas' idealization of the democratic public sphere is blind to the effects of power:

Ever since Habermas drew attention to the central importance of the public sphere for modern liberal society, critics have pointed out that it systematically excludes various kinds of people, or types of claim, from serious consideration. From the beginning the liberal public sphere excluded certain kinds: women, subjects without property, and members of religious minorities (2003, 183).

As a response, let us first note that Habermas is very well aware of historical exclusions from the liberal public sphere, say, the exclusion of women and religious minorities. Furthermore, Habermas does not say that minorities and marginalized groups are *in fact* listened to, but that they *should be*: democratic inclusion is an ongoing project, which requires majorities and the already included to take the perspective of outsiders, minorities, and newcomers, and to perpetually question established borders between the 'public' and the 'private', so that hidden or suppressed perspectives can come to public attention. Being committed to the ideal of public deliberation does not entail any particular views about how the public sphere actually is.

Given Asad's focus on minorities and marginalized groups, one should think that he would have some sympathy for Habermas' vision of a multicultural and inclusive public sphere, at least as an ideal or regulative idea. However, Asad disagrees strongly: "it isn't enough to respond to this criticism [Asad's criticism of Habermas], as is sometimes done, by saying that although the public sphere is less than perfect as an actual forum for rational debate, it is still an ideal worth striving for"

(2003, 184). For him, such a response misses the point that “the public sphere is a space *necessarily* (not just contingently) articulated by power” (Ibid., 184). But what does that really mean? Does it mean that ‘power’ cannot be more or less transparent, more or less legitimate? Does it mean that specific power relations, say, particular mechanisms of economic distribution or particular relations between the sexes, cannot or should not be publicly addressed and criticized? Does it mean that we should *not* work towards greater inclusion of cultural and religious minorities in our political culture? If a critical and inclusive public sphere is not even an ‘ideal worth striving for’, then there is no reason to criticize the flaws, ideologies, or injustices that permeate actually existing public spheres. If we did not believe that all citizens *deserve* an opportunity to speak and be heard, why criticize the exclusion of cultural or religious minorities in the first place? Asad criticizes the view that “sound argument can fatally undermine the ideological justifications of rulers” (2012, 50), but what about his *own* arguments? Perhaps they cannot ‘fatally undermine’ rigid secularism, but if they could not change anything for the better, why make them? If Asad wants to criticize the very idea of public argumentation, then his own activities as a public intellectual make less sense. (In his critique of Foucault, Habermas uses the term of ‘self-reference’ to describe the aporias and self-contradictions that are produced when the genealogist attempts to analyze all normative claims as strategies of power, while omitting to articulate her own reliance on contestable claims to truth and justice (Habermas 1983). Using this notion, we could say that when Asad criticizes the ideal of rational argumentation, he also criticizes – or refers to – himself).

Furthermore, there is a tendency in Asad to rely implicitly on those ideas and norms, which he explicitly rejects due to their close alliance with ‘power’. Habermas sees the same tendency in Foucault, and uses the terms “self-reference” to describe the aporias and self-contradictions that are produced when the Foucauldian genealogist attempts to analyze all normative claims as strategies of power, while not articulating and justifying *her own* normative foundation (1995, 105, 193). In a similar vein, when Asad criticizes those who think that argumentation can challenge power, he also criticizes – or ‘refers to’ – himself.

Interestingly, Asad combines his critique of the (Habermasian) public sphere with what seems to be a defense of certain understanding of the conditions for the possibility of free speech:

Another way of putting it is this. The enjoyment of free speech presupposes not merely the physical ability to speak but to be heard, a condition without which speaking to some effect is not possible. If one’s speech has no effect whatever it can hardly be said to be in the public sphere, no matter how loud one shouts. To make others listen if they would prefer not to hear, to speak to some consequence so that something in the political world is affected, to come to a conclusion, to have the authority to make practical decisions on the basis of that conclusion – these are all supposed in the idea of free public debate as a liberal virtue (Asad 2003, 184).

Translated into my own terms, what Asad argues here is that *effective political freedom* requires much more than a juridical right to free speech, i.e. the status of someone who is worth listening to and communicating with. This is a point I have made myself throughout this thesis. I therefore agree with the argument, but not with the suggestion that this poses a problem for Habermas, or for secular thinking in general. It is true that Habermas presupposes inclusion, equality, non-domination and so forth, in the *idea* of public deliberation, but he clearly does not think that this idea describes social reality as it is. Articulating a normative idea allows us to analyze tensions between the idea and reality. If we had no normative ideas, there would be nothing to criticize because there would be no discrepancy between what *is* and what *should be*.

So what about Asad's assertion that the secular public sphere has no place for religious claims, and no sympathy for religious sensibilities and identities? Asad imagines that 'Euro-Americans' in general are so skeptical to religious passion and religious truth postulates that they cannot recognize any obligation to take religious attachments into account, neither in speech nor behavior:

[The] category of torture or cruelty could in theory be applied to the anguish and mental suffering experienced by people in societies obliged to give up their beliefs and act 'humanly' (in the sense understood by Euro-Americans). But by a curious paradox it is a secular relativism that prevents such an application of the category [of torture]. For that anguish is seen as the consequence of a passionate investment in the truth of beliefs that guide behavior. The modern skeptical posture, in contrast, regards such passionate conviction to be 'uncivilized' – a perpetual source of danger to others and of pain to oneself. Beliefs should either have no direct connection to the way one lives, or be held so lightly that they can be easily changed. Otherwise, secularism as a political arrangement does not work very well (Asad 2003, 115).

A Habermasian response would be that the democratic public sphere must not be blind or deaf to religious feelings and identities, including Muslim ones, in the way Asad suggests. Habermas' normative conception of the public sphere certainly does not fit with Asad's description the 'posture of modernity', which regards any form of passionate belief, and any form of insistence on religious truth, as 'uncivilized'. According to Habermas, the public sphere is not secular because it promotes some 'secular truth' that competes with religious truths, but because it accepts the fact of *pluralism* and reasonable disagreement, meaning that neither religious nor anti-religious views can claim to possess the whole truth or define the form and content of public discussions alone. On this account, what would count as uncivil would be to insist on the direct political implementation of one's own beliefs or customs, not to insist on the right to live one's *own* life based on religious passion, or guided by religious truths (in the dimension of personal freedom).

Asad is probably right that some forms of religious ‘anguish and mental suffering’ are unavoidable in liberal democracies, for example when it comes to critical or offensive speech about religion and the sacred. However, that does not mean that secularism regards all such suffering as morally irrelevant or ‘uncivilized’. We have already seen how Habermas is concerned with the ‘mental and psychological burden’ that secularism as an ideology may impose on religious believers, and how he wants to counterbalance this burden through an ethics of citizenship that obliges *secular* citizens to listen to religious citizens, and to participate in a ‘cooperative translation process’ with believers. It is therefore misguided when Luca Mavieli, drawing on Asad and Foucault, accuses Habermas’ of constructing a ‘purified’ public sphere that has no place for the kind embodied, religious sensibilities that he – like Asad – associates with Islamic faith:

Through mechanisms of containment – *separation* of informal and institutional public sphere and translation from religious to secular – he [Habermas] constructs a purified political space in which religious sensibilities can find a place only by conforming to the transcendental ethical standard of a secular post-conventional morality (Mavieli 2012, 128).

A ‘post-conventional morality’, according to Habermas, is a morality that does not impose the interests and beliefs of one particular group on all others: post-conventional norms are worked out *between* members of different identity groups who attempt to come to a mutual understanding. Mavieli suggests that such a morality excludes and represses religious citizens, in particular the non-European ‘other’ – the Muslim. But this suggestion is only convincing if Muslims are somehow unable or unwilling to orient themselves towards a non-sectarian consensus in cases of moral disagreement. The requirement that our *common* morality cannot be based directly on *Islamic* doctrines can only be a problem for Muslims if they oppose it, that is, if they truly desire an Islamic morality that is binding on all citizens. In my view, by implicitly suggesting that Muslims desire such a morality, Mavieli unwillingly confirms a widespread (false) prejudice about Muslims in general, namely that they are unable or unwilling to orient themselves towards mutually acceptable norms (or even that they work towards an Islamization of Western norms and values).

Second, why does Mavieli assume that post-conventional morality is somehow hostile to ‘religious sensibilities’? As I have demonstrated from different perspectives throughout this thesis, moral discourse aims at norms whose foreseeable consequences can be accepted by all affected parties, given their specific *interests* and *value-orientations*. Moral argumentation therefore includes discussions about embodied needs and desires, also when these are understood in terms of religious

sensibilities. There are many ways in which religious sensibilities can be expressed and discussed without engaging in ‘religious argumentation’ as understood by Habermas. For example, as Asad notes, “[w]hen the World Union of Muslim Scholars made its statement on the Danish cartoon affair (...) it used the word *isa’ah* (...) [which] has a range of meanings, including ‘insult, harm and offence’, that are applied in secular contexts” (Asad 2009, 38). This is just one example of how feelings of offense or moral injury can be articulated as morally relevant and commonly understandable, without referring to revealed religious doctrines and truths. My point is not that Muslims (or other believers) are never disappointed, or that they always feel understood, when participating in public deliberation. The point is that there is no necessary opposition between post-conventional moral argumentation and the inclusion of religious sensibilities in public deliberation. The moral limits of free speech are not – and should not be – drawn in a way that creates a ‘purified’ political space where citizens’ experiences and vulnerabilities cannot be addressed simply because they are related to religion.

2 Mahmood: free speech, moral injury and the Danish cartoons²⁹

Saba Mahmood is a former student of Asad, and one his most prominent successors. The conception of Islam as an embodied practice or habitus and the problematic dichotomy between ‘Islam’ and ‘the West’ that are constitutive of Asad’s work, can also be found in Mahmood’s. Like Asad, Mahmood uses a Foucauldian style discourse analysis to question what she sees as established secular liberal truths, and, like him, she regards Muslim ways of life as threatened by secular ideologies and political practices. In what follows I focus on her analysis of the Danish cartoon controversy in the article “Secular Affect and Religious Reason: An incommensurable Divide?” (2009).

2.1 Muslim moral injury

According to Mahmood, the Danish cartoon controversy was exemplary of the standoff between religious and secular worldviews in European societies (2009, 66). However, Mahmood’s interpretation of this standoff is unique because she rejects the assumption that the cartoon controversy should be understood as a clash between the liberal value of freedom of speech, on one hand, and a religious taboo, on the other. For her, regardless of whether we defend or criticize the cartoons, it is misguided to believe that the controversy had anything to do with “a moral impasse between what the Muslim minority community considers to be an act of blasphemy and the non-

²⁹ Some of the arguments in this chapter have been put forward in Jakobsen 2015a.

Muslim majority regards as an exercise of freedom of expression” (Ibid., 66). This description, she argues, is premised on “a [false] set of prior judgments about what kind of injury or offense the cartoons caused and how such injury might be addressed in a liberal democracy” (Ibid., 67). A central part of her argument relies on the claim that even ‘liberals and progressives’ who are sympathetic to Muslim sensibilities are incapable of *understanding* the type of moral injury involved. For Mahmood, ‘secular-liberal’ discourse operates on conceptions of subjectivity, religiosity and harm that render the European majority blind and deaf to Muslim religious pain. She therefore analyses the cartoon controversy as a matter of “difficulties entailed in translating across different semiotic and ethical norms” (Ibid., 89) and not as a conflict in which opposing parties *disagree* on the same subject (e.g., whether it is reasonable or necessary to insult religious feelings and ‘the sacred’ in a secular liberal democracy). For her, the debate over the cartoons was premised on a hegemonic ideology of what religion *is* and what constitutes moral injury: thus, she argues, “the concept of moral injury I have analyzed here remained unintelligible in the public debate over the Danish cartoons” (Ibid., 89).

It is difficult to know whether Mahmood’s discussion of religious pain is meant to apply to *all* Muslims or merely to *some*. At times she speaks of “*the* kind of religiosity at stake in *Muslim* reactions to the cartoons” (Ibid., 81, my emphasis), and at other times she discusses the feelings and reactions of “many Muslims” (Ibid., 78). At any rate, the type of injury that she highlights springs from a disturbance of what she calls a “relationship of intimacy with the prophet”, a relationship traditionally analysed in Islamic devotional literature (Ibid., 75). In this literature, the prophet’s words and deeds are understood not so much as commandments or doctrines, but as “ways of inhabiting the world, bodily and ethically” (Ibid., 75). Muhammad is a ‘moral exemplar’ whom the religious subject attempts to emulate in eating, sleeping, speaking, walking, dressing, and so forth: “these mimetic ways of realizing the Prophet’s behavior are lived not as commandments but as virtues where one wants to ingest, as it were, the Prophet’s persona into oneself” (Ibid., 75). Consequently, she claims, it is inaccurate to explain the injury of (many) Muslims in terms of blasphemy and religious law, such as the prohibition of idolatry in mainstream Sunni Islam:

The notion of moral injury I am describing no doubt entails a sense of violation, but this violation emanates not from the judgment that “the law” has been transgressed, but from the perception that one’s being, grounded as it is in a relationship of dependency with the prophet, has been shaken. For many Muslims, the offense the cartoons committed was not against a moral interdiction (“Thou shalt not make images of Muhammad”), but against a structure of affect, a habitus, that feels wounded (Ibid., 78).

It probably comes as a surprise to some practising Muslims that their relation to the prophet is “best captured in Aristotle’s notion of *schesis*” (Ibid., 76). Without describing this notion in detail, she argues that it is relevant because it captures a certain way of relating to an icon that is neither ‘communicative’ nor ‘representational’. Rather, this relation is ‘assimilative’, which means that the individual realises a set of pre-given bodily virtues through love for a perfect example. The schesis-model differs from modern forms of ‘protestantised’ and secular-liberal thought, which only conceptualise religious faith as a set of truth-claims in which the subject chooses to *believe*. Because secular-liberal thought lacks the resources to understand embodied religion, it cannot conceptualise *why* it hurts a (Muslim) believer to see satirical representations of Muhammad. The secular mindset insists that religious beliefs, unlike one’s gender, sexual preferences or skin colour, are only *beliefs* and can therefore be changed – “just as easily as one might change one’s dietary preferences or one’s name” (Ibid., 81).

Like Asad, Mahmood is a scholar of Foucault, in the sense that she analyses modern constitutionalism and legal thinking as a ‘disciplining’ mechanism of power. She therefore takes issue with European Muslims who appealed to European constitutional law in the Danish controversy:

To subject an injury predicated on distinctly different conceptions of the subject, religiosity, harm, and semiosis to the logic of civil law is to promulgate its demise (rather than to protect it). Mechanisms of the law are not neutral but are encoded with an entire set of cultural and epistemological presuppositions that are not indifferent to how religion is practiced and experienced in different traditions (Ibid., 88).

As I understand Mahmood, her point is that the battle is already lost when Muslims try to translate their injury into Western legal categories because these categories can neither articulate their pain nor protect them against injury. According to her, the legal concepts of crime and punishment, as well as the moral language of ‘blame, accountability and reparations’ that dominated public protests against the cartoons, are grounded in secular-liberal discourse and therefore fail to capture authentic Muslim injury:

This wound [caused by the cartoons] requires moral action, but its language is neither juridical nor that of street protest, because it does not belong to an economy of blame, accountability and reparations. The action that it requires is internal to the structure of affect, relations, and virtues that predisposes one to experience an act as a violation in the first place (Ibid., 78).

All in all, Mahmood’s analysis leads to the normative conclusion that the European majority needs to revise its protestant and cognitivist understanding of religion in order to be able to take into account

the pain felt by (many) Muslims when confronted with ridicule of their prophet. In other words, the descriptive analysis of Muslim religious pain turns into a normative appeal based on a notion of ‘cultural and ethical sensibility’:

Ultimately, the future of the Muslim minority in Europe depends not so much on how protocols of free speech might be expanded to accommodate its concerns as on a larger transformation of the cultural and ethical sensibilities of the Judeo-Christian population that undergird the cultural practices of secular-liberal law (Ibid., 89).

The ‘larger transformation’ Mahmood urges also applies to philosophy and critical theory itself: “insomuch as the tradition of critical theory is infused with a suspicion, if not a dismissal, of religion’s metaphysical and epistemological claims, it would behoove us to think “critically” about this dismissal” (Ibid., 91). In other words, critical theory *excludes* something from the theorization, notably the hidden pain and suffering of religiously attached Muslims.

2.2 Contextualising religious pain

In my opinion, Mahmood accomplishes an important task in reminding us that Islamic faith may involve much more than prohibitions, commandments and *sharia*, particularly at a time when European public discourse on Islam is narrowly focused on Islamic law and its compatibility with liberal democratic principles. Also, in line with basic intuitions in Habermas’ deliberative multiculturalism, I agree with her that ethical and religious sensitivity must be exercised in multicultural societies, and that citizens need to make attempts at understanding each other, including each other’s experiences of social pain and moral injury. At the same time, her account is not unproblematic. In my view, the most serious problems stem from a lack of *contextualization*.

First, Mahmood’s account lacks a *psychological* context because it fails to situate Muslim moral injury within a broader conception of *human* vulnerability. Mahmood turns Muslim religious pain into a mystery by arguing that Muslim inner life is a unique category and thus incomprehensible to ‘secular-liberals’. However, Muslims are not alone in feeling attachment to icons, symbols, texts, and places, and they are likewise not alone in experiencing hurt or distress when these attachments are publicly mocked or insulted. Thus, in his discussion of Mahmood’s text, March notes that “the idea of emotional pain is really no mystery here at all. We feel pain at all kinds of things for all kinds of reasons. We attach ourselves to all kinds of symbols, figures, persons, and ideals in the assimilative way Mahmood describes, as the recent furor over ‘Ground Zero’ as ‘hallowed ground’ demonstrates” (2011, 807-808). If this is correct, then Muslim moral injury shares a strong ‘family resemblance’ (Wittgenstein) with other kinds of moral injury that human beings experience when the

things they care about are ridiculed, mocked or defamed. If Habermas is right that the *human mind* – and not just the Muslim mind – is culturally constituted, and that the integrity and self-identity of human persons depends on cultural contexts of communication and mutual recognition, then we should not exaggerate the difference between Muslims and non-Muslims and their ability to feel pain and moral indignation due to their identities, values and deepest beliefs.

Second, Mahmood's analysis lacks what I call a *socio-political* context, that is, her focus on religious pain ignores the fact that moral injuries are always experienced and interpreted in specific social and political contexts. Saudi-Arabian Muslims were probably not injured in exactly the same way as Danish ones. Even though the Danish controversy had a transnational and global context, it also had local, national and regional contexts. Take Danish Muslims as an example. It seems reasonable to assume that, for many of them, the controversy was not only about the particular injury of the cartoons, but also about their own future and place in Danish society: they were injured not only because the prophet was satirized, but also because they saw the publication as a demonstration of their status as a disesteemed minority in a particular socio-political context. Perhaps some protesting Muslims did not even feel offended or shocked, but nevertheless saw the publication as part of a political and cultural struggle for (and over) recognition. Mahmood's focus on Muslims' subjective relationship to the prophet therefore needs to be supplemented with something like Honneth's focus on the 'struggle for recognition' or Habermas focus on 'political culture'.

In addition to the lack of psychological and socio-political context, we may speak of a lack of *normative* context. There is something problematic about the direct way in which Mahmood uses the notion of moral injury as a foundation for moral and criticism. She demonstrates that the cartoons injured (many) Muslims and she uses this demonstration to call for a transformation of the ethical sensibilities of the Judeo-Christian population of Europe. By this, however, she faces some of the same problems as the early Honneth (see my discussions in part IV.2.1). Like the early Honneth, Mahmood seems to take it for granted that moral injuries are always products of an objective injustice or moral wrong. Thus, Mahmood does not guard against a reader inferring that Muslim religious feelings should *never* be offended. Therefore, unless she is willing to claim that Muslim religious feelings should always be protected against injury, she must explain why Muslim offence was justified in this case, but not necessarily in all others. March expresses this point by arguing that Mahmood needs to discuss in more detail what the moral wrong of the Danish cartoons consisted in, and what the desired ethics of cultural sensitivity requires of us:

What 'transformation of the cultural and ethical sensibilities of the majority Judeo-Christian

population' do we wish to see exactly – that they purify themselves of racist attitudes towards fellow citizens of Muslim cultural backgrounds, that they not misuse the secular license to insult religion as an alibi for creating a hostile environment for fellow citizens of Muslim cultural backgrounds, or that they actually commit to *never* offending distinctly religious sensibilities held by Muslims by not transgressing against the sacred? (...) This is the precise question which I believe she [Mahmood] needs to answer (March 2011, 820).

In my own contextual criticism of *Jyllands-Posten's* publication, there was no assumption that Muslim religious feelings must always be protected, or that they are always justified (part IV.2.4). Unlike Mahmood's critique of the cartoons, which relies on an assumption about the moral wrongness of religious offence, my main concern was *contextual*, based on an interpretation of the discursive context in which the cartoons emerged. Mahmood perhaps takes this 'normative context' for granted, but she does not refer to it in any explicit or justificatory sense. On the contrary, the lack of normative context in her analysis seems to suggest that it was the experience of religious pain itself – and not the context in which it emerged – which was intolerable.

2.3 A flawed understanding of religion?

Finally, what about Mahmood's argument that the Danish cartoon controversy was caused by a flawed *conception of religion* on behalf of secular liberals, and that those who defend the right to publish such material cannot *understand* Muslim religiosity and Muslim religious pain? Of course, some people (and some secular philosophers) understand religion in a reductionist, cognitivist, 'protestantized' or otherwise biased way, ignoring what Asad and Mahmood refer to as the embodied and practical dimensions of Muslim faith. Nevertheless, I am not convinced that this kind of Muslim religiosity was 'unintelligible' for most non-Muslims – critics as well as defenders of the cartoons – in the Danish cartoon controversy:

For many liberals and progressives critical of the Islamophobia sweeping contemporary Europe, Muslim furor over the cartoons posed particular problems. While some of them could see the lurking racism behind the cartoons, it was the religious dimension of the Muslim protest that remained troubling. Thus, even when there was recognition that Muslim religious sensibilities were not properly accommodated in Europe, there was nonetheless an *inability to understand* the sense of injury expressed by so many Muslims (Mahmood 2009, 68).

For Mahmood, the western use of free speech to insult Islam is a result of the Western incapacity to understand what Islam *is*. Like Asad, as we have seen, she argues that Islamic religiosity is a 'habitus' or 'embodied practice', that is, a way of living through which the believer follows a moral exemplar – the prophet – in one's daily life. In spite of Mahmood's claim that Islamic faith is incomprehensible for secular-liberal thought, her description of this faith fits quite well with Habermas' description of the pious life as a 'path to salvation': "to follow a path to salvation means to follow, in

the course of your life, an exemplary figure who draws his authority from ancient sources or testimonies” (2011, 62). Habermas does not characterize faith merely as a matter of cognitively beliefs, but as a *way of living*, inspired by the teachings and actions of an iconic religious figure such as Jesus or Mohammad. He speaks about “the integral role that religion plays – i.e. its ‘seat’ – in the life of a person of faith”, namely that “[a] devout person conducts her daily existence *on the basis of faith*. Genuine faith is not merely a doctrine, something believed, but also a source of energy that the person of faith taps into *performatively* to nurture her whole life” (Habermas 2008, 127).

My point is not that Habermas has understood something special about Muslim faith, but that the kind of religiosity that Asad and Mahmood reserve for Muslims in order to contrast it with ‘protestant’ and ‘Kantian’ models is neither uniquely Islamic, nor *unintelligible* for Western non-Muslims. Of course, some people have a distorted view of religious faith in general, or Islamic faith in particular, but the ongoing controversies over free speech, Islam and religious offence, cannot be reduced to a clash between two different understandings of what religion *is*. Mahmood argues that even those who sympathized with Muslims in the Danish case were unable to *understand* that Muslims are emotionally attached to the prophet and vulnerable as such. But I think the opposite is closer to the truth: even those who defended the cartoons and did not sympathize with Muslim protesters understood that Muslims are emotionally attached to the prophet (and that they therefore likely to be *offended* rather than to simply disagree at a cognitive level). As March puts it in a critical comment to Mahmood: “[f]air-minded persons on both sides can understand the other well enough; they just value each side of the equation differently. Value pluralism means precisely that not all political and moral conflicts are a matter of mere misunderstanding” (2012, 338).

Mahmood’s analysis of the Danish controversy is premised on a problematic antagonism between protestantized and Islamic religion. In order to make her analysis work, she has to reduce protestantized (Western) religion to cognitive beliefs, and Islam to embodied practices. But, even if she is right that Islam focuses more on practical virtues, ritual and social belonging than on belief, is it really true that Muslims are uninterested in theology and revealed doctrine? Can Muslim moral injury be understood properly *without* reference to theology and belief? If Muslims did not believe that there is a God, that Muhammad is his chosen prophet, and that Muhammad’s words are therefore not to be understood as his own personal views but as a revelation from God, why would they take him to be an exemplary figure in the first place?

March, who is a scholar of Islamic law and Islamic political thinking, refutes Mahmood’s reductionist understanding of Islam, arguing that Islam cannot be meaningfully distinguished from other religions in terms of a constructed distinction between theology and belief, on the one hand, and embodied practices, on the other: “if there is a historical religion that has minimized emphasis on

theology and belief, Islam (across its various sects and traditions) is certainly not it” (2012, 326). If March is right that Islamic religiosity includes cognitive, doctrinal elements as well as more practical and embodied elements, then the Habermasian understanding of religion seems more appropriate than the Asadian and Mahmoodian, also when it comes to Islam. Habermas does not deny the practical and embodied aspects stressed by Asad and Mahmood, but he *supplements* these aspects with a focus on revealed doctrine and cognitive belief.

Habermas’ emphasis on faith as a living practice centered around an ‘exemplary figure’ poses a problem for Asad and Machmood’s dichotomy between Islamic and protestantized faith. It also problematizes the accusation that Habermas himself relies on a Eurocentric understanding of religion, which has no place for Muslim religious sensibilities. Drawing on Foucault and Asad, Mavieli writes that

Habermas’ understanding of religion is (...) fully inscribed in the Kantian and Durkheimian ‘functionalist’ tradition which, on the one hand, reduces faith to the role of guardian and provider of a morality that the secular subject, albeit knowledgeable, fails to comply with and, on the other hand, disregards how much faith may be part of a mode of knowledge, such as the one advocated by Foucault, which includes ‘sensuous, experiential and emotional dimensions’ (2012, 129).

It is not correct that Habermas reduces faith to its function as a provider of moral insights, even though religion *also* has this function. For Habermas, religious faith is a ‘source of energy’ that inspires and motivates believers on a daily basis – and not just in a (Kantian) moral sense. It is furthermore not correct that Habermas is blind to ‘sensuous, experiential and emotional dimensions’ of religious belief. Habermas’ emphasis on *worship*, *ritual*, and *community*, naturally includes embodied and experiential aspects of a pious life, in addition to cognitive ones.

VI CONCLUDING REMARKS

The first part of this thesis presented a general overview over Habermas' theories of rational discourse and deliberative democracy (part I). In the second part, I attempted to spell out three distinct (though interrelated) dimensions of Habermas' normative conception of freedom – reflexive, political and personal freedom – and I demonstrated the relevance of each dimension for Habermas' deliberative multiculturalism. I concluded that Habermas' multiculturalism provides a fruitful, critical framework for analyzing different kinds of *cultural domination*: the domination of cultural minorities by majority populations and constitutional states, but also the domination of minority members by their own communities and their authoritative spokespersons (Part II).

In the three subsequent parts, I applied Habermas' framework to a particular research question, namely how we should *justify and use free speech in culturally diverse societies*. In my discussion of the first part of this question (how to justify free speech), I argued that Habermas' framework can be used to articulate a philosophically robust defense of constitutional free speech, based on a normative concern with reflexive, personal and political freedom. However, I also argued that such a defense can only succeed if grounded on a moral conception of human persons as free and equal (or equally free). By this, I distanced myself from Habermas' exaggerated proceduralism, and from his insistence on a 'morally freestanding' justification of legal norms (part III.1). I also argued that the use of Habermas' theory of freedom to justify free speech must be decoupled from the strong requirement of rational consensus. Referring to public controversies over free speech and its limits, I argued that rational consensus is neither obtainable in multicultural conflicts, nor meaningful as a standard of legitimacy. Instead, I appealed to a less demanding understanding of *overlapping* consensus: different citizens should agree on the human right to exercise freedom in all three dimensions (reflexively, politically, and personally), but they may do so for different and mutually conflicting reasons. Finally, I argued that a less consensual approach to the question of legitimacy implies a less harmonious (and more conflictual) understanding of freedom. I agreed with Habermas that the 'dogmatic core' of the deliberative approach should be articulated in terms of a normative commitment to freedom, but not that freedom should be defined as the ability to obey only those laws that one has given oneself in a democratic procedure.

With regard to the legal limits of free speech, I argued that the deliberative approach is principally compatible with some forms of hate speech regulation, as long as these restrictions are subject to ongoing democratic deliberation, but not with restrictions on blasphemy and religious offence (Part III.4).

In my discussion of the second part of the research question (how to use free speech in culturally diverse societies), I used Habermas' framework to articulate different kinds of concerns

about the way in which we, as democratic citizens, make actual use of our right to free speech. In part IV, I analyzed two interrelated but analytically distinct types of concern: a social philosophical concern and a moral concern. The first concern made empirical claims about the necessity of mutual recognition between members of different identity groups in order to protect everybody's freedom – reflexively, politically and personally. The second concern made moral claims about the requirements of mutual recognition (or respect) between citizens who regard each other as free and equal (or equally free). In both cases, the examples I used were related to the case of religion in the public sphere, and sometimes specifically to the case of Islam. I argued that, on secular premises, there is no direct duty to 'respect religion' or religious feelings. Correspondingly, there is no direct moral right to be spared from religious offence or 'moral injuries' related to one's religious identity. Nevertheless, I did not argue that religious feelings and beliefs are morally irrelevant. On the deliberative account I defend, everyone's basic welfare *counts*, morally speaking, not as brute facts that must be accommodated at all costs, but as starting points for discussion and mutual perspective taking oriented at the *common good*.

I concluded that Habermasian freedom *requires* something of us – or makes claims on us – as active speakers and listeners in the public sphere: the same concern with freedom that justifies free speech also commits us to moral norms of reciprocity, inclusion and civility in deliberation.

Discussing the public use of free speech in multicultural contexts, I addressed particular criticisms of Habermas' approach. In part IV, I defended Habermas against (a) critics who argue that he holds a naïve conception of how the public sphere works and therefore fails to understand phenomena such as hate speech, cultural prejudice, and violence (Bangstad and Vetlesen); (b) critics who argue that he himself contributes to the public misrecognition and stigmatization of Muslims and Islam (Yolande Jansen); and (c) critics who argue that his model of public deliberation excludes and marginalizes religious believers, in particular Muslims (Lasse Thomasson and Maeve Cooke).

However, on particular points, I also disagreed with Habermas' normative understanding of public deliberation and the 'ethics of citizenship', in particular when it comes to the use of religious reasons in political debates. I agreed with Habermas that justificatory references to religious scriptures and revealed doctrines are morally disrespectful and potentially harmful in multicultural political disputes. However, with Rawls, I argued that such references may be appropriate as long as they are supplemented with more general political reasons (for example, Catholics may refer to specific interpretations of their faith when making a public statement against torture, but, in addition, they are asked to supplement these interpretations with generally accessible reasons). Furthermore, I did not accept Habermas proposal to formally ban the use of religious reasons in parliamentary debates. Here, I insisted with Rawls that the ethics of citizenship is moral duty, not a legal one, and

that Habermas' distinction between secular reasons (which are allowed in parliament) and religious reasons (which are not allowed) is philosophically and normatively problematic. When formally restricting the free speech of particular segments of citizens, the underlying justification must be very strong and morally founded, which cannot be said of Habermas' theory about the inherent difference between secular and religious argumentation. Finally, I argued that the ethics of citizenship applies also in the informal public sphere, and that, therefore, Habermas' proposal to include religious reasons without restriction in the informal sphere conflicts with his own intuitions about respectful deliberation among citizens who 'owe each other good reasons'.

We may conclude from my discussions that free speech and multiculturalism *must not* but *can* come into conflict. On the one hand, given that Habermas' multiculturalism is ultimately concerned with human freedom, and not with the protection of cultural identities or traditions, it goes hand in hand with extensive constitutional free speech guarantees. Habermasian multiculturalism cares about the ability of cultural minorities to live according their deepest beliefs and participate in political life on equal terms, but it also implies a right to question or criticize any cultural practice or belief, including a right to criticize or reject to the tradition in which one has been brought up. In that sense, there is no necessary conflict between free speech (understood as a legal right) and multiculturalism (understood as a normative political vision) because they spring from the *same* normative source, namely freedom. On the other hand, given that deliberative multiculturalism' implies demanding norms of mutual recognition and communicative inclusion, it is correct to say that multiculturalism and free speech *can* come into conflict. This is because constitutional free speech allows citizens to say many things that distort the communicative relations upon which deliberative multiculturalism depends.

I have probably not discussed in sufficient detail why such disruptions of communication should nevertheless be legally allowed. Why not simply prohibit misrecognition and cultural stereotyping? Nevertheless, I have articulated some possible directions for an answer to this question. First, given that the very definition of 'misrecognition' and 'stereotyping' are highly controversial and subject to permanent reinterpretation and renegotiation in the public sphere, freezing one particular understanding runs the risk of freezing the majority's particular position into the law and the criminal system. Second, a too restrictive regulation of undesirable speech runs the risk of prohibiting what should not be prohibited; for example, in the wrong hands, a legal ban of 'religious offence' may be used by to suppress critical speech about the more problematic aspects of religious tradition and religious authority. Third, as Habermas repeatedly emphasizes, the desired virtues and cognitive attitudes cannot be produced by the state or through the law, but must spring from the citizens' own motivations and normative self-understandings. If the state interferes too soon

in the cultivation of communicative virtues and attitudes, it may have a counterproductive effect in the sense that these skills are conceived as an external force or demand, not as the product of an ‘internal’ learning process. Finally, legal restrictions on political speech may alienate large groups of speakers from the political process, or fuel them with resentment against the political system as a whole; for example such restrictions may produce conspiracies and aggressions on behalf of those who are being prevented from expressing the truth as they see it. On this background, I submit, it is more productive to encounter misrecognition and cultural stigmatization through public argumentation and counter-argumentation – perhaps even through listening and attempting to understand the assumptions, fears, and hopes that motivate public aggressions towards specific cultural-religious groups.

In the final part of the thesis (part V), I critically addressed the poststructuralist and postcolonial criticism of Western ‘secular-liberal’ ideology, as articulated by Talal Asad and Saba Mahmood. Against Asad’s one-sided focus on the democratic public sphere as a place of power and domination, I argued that the public sphere also is (and should be) a forum for cross-cultural discussion, learning and mutual understanding. There is no contradiction or naivety (or Western dominance) involved in focusing – as Habermas does – on power *and* communication. I also took issue with some of Asad’s claims about the alleged islamophobic nature of ‘Western’ understandings of freedom and free speech, and about the assumed incompatibility of Western and Islamic mentalities and norms. In the case of Mahmood, I focused on the lack of political context in her analysis of the Danish cartoons controversy. Finally, using Habermas’ understanding of religious faith as an example, I argued that secular-liberal justifications of free speech about religion and the sacred need not be premised on a reductionist and overly cognitivist view of religion, as Mahmood claims they are.

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