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Conceptualising minority rights

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1. Introduction

This project takes its original starting point in Benedict Anderson´s idea of 'Imagined Communities'[1]. Even if I am personally somewhat sceptical towards Anderson´s technological dialogic materialism; his general argument that communities and nations are basically imagined entities perpetuated by stories told through such cultural product as novels, newspapers, museums and maps has proven highly resilient. The Indian literary critic Homi Bhabha further develops the view that nations are imagined entities, and hence something that has to be narrated[2]. In this way all participants in society partake in the nation-building process through the stories they tell about their own nation. If this is an accurate view of what the nation is like and how it is secured continued existence through time, it should follow that different stakeholders within society should be able to influence the national self-conception via the stories they contribute to the overall narration. In this way, such narrative contributions to society should be able to alter the ideological shape of the nation. If it is indeed so, this approach could prove to be a useful way for for example minority communities to affect national developments with regards to recognition and rights for minority cultures.

It might be argued that Anderson and Bhabha´s ideas of nation-building through narration is too vague a concept to support an empirical investigation. It is true that they hardly point to any concrete examples of pronounced national self-conception, but finding my support in the ideas of the political philosopher Adeno Addis[3], I shall argue that we can indeed decipher the national self-narration through a number of societal institutions. Addis mentions three: the media, law and educational institutions. The empirical assumption thus comes to be that we can read any changes in the national self-perception by investigating for example the debate about and portrayal of minority groups within national media, concrete changes in law texts, and changes within the national educational system.

If it is acceded that such institutions may provide a useful indicator of whether real changes in the national self-perception have really occured, it becomes possible to conduct not only a normative but also an empirical investigation of how minorities may affect the democratic debate within society in such a way as to change the narration of the nation. Alternative stories may always be told, but the test of their success seems to lie in institutional changes.

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[1] Benedict Anderson, *Imagined Communities*, Verso, London, 1983, 1991
[2] Eg. in Homi K. Bhabha (ed), *Nation and Narration*, Routledge, London, 1990
[3] For reference, see note 17

2. Minority Rights

Minority rights is a highly contested concept within both political theory and normative philosophy, and recent writing on the subject abound. I shall not here attempt to account for all positions within this debate, but limit myself to two overall subsets of normative theoriticians. The traditional division within the debate runs along the dichotomy of liberals versus communitarians. For the sake of convenience, I shall stick to the traditional division for now, in an attempt to provide an overview of current positions within the debate

2.1 Liberal approaches to minority rights

Liberalism is the first general political theory within which minority rights will be discussed. I shall not here go into historical liberal positions on the concepts of freedoms and rigths, but rather limit myself to fairly recent contributions to the liberal debate on this topic. I shall first discuss the position of Rawls, which is often taken to be the epitome of a comprehensive liberal theory, also including arguments about minority rights. This position shall be compared to Will Kymlicka´s, which by many minority rights advocates is seen as a refinement of the liberal position, whereas other traditionally individualist-based rights liberals see it as a distortion of liberal ideals. Either way, Kymlicka´s ideas have certainly been very influential on the normative debate, as have the views of Rawls.

2.1.1 Rawls

John Rawls´ book *A Theory of Justice* from 1971[4] (revised in 1999) is an attempt to create a coherent liberal theory of justice in society from a basic level. Rawls´ starting point for developing a theory of justice is what he terms ‘the veil of ignorance’, as described in *A Theory of Justice* pp.118-123. This ‘veil of ignorance’ symbolises the idea that one can imagine a society in an original foundational position, in which we are to choose what is just and fair. To do so, it is necessary that individual members of society do not in advance know their position within the overall society, only that they shall have to abide by its rules. Rawls himself describes the veil and the reason for introducing it in the following way:

> Somehow we must nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage. Now in order to do this I assume that the parties are situated behind a veil of ignorance. They do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations.

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[4] John Rawls, *A Theory of Justice*, revised edition, Oxford University Press, 1999

That is, they shall set up a system of justice and social distribution prior to knowing whether they themselves will be part of the majority or belong to a disadvantaged minority; without knowing their possible preferences or even their conception of the good life. In this way Rawls attempts to override any egoistical deliberations and assures that attitudes such as for example racism will be highly irrational.

On the basis of this original position, Rawls derives two principles on which to found society[5]. The first principle is that each person is to have an equal right to the most extensive system of personal liberties compatible with a similar system of liberties for all. The second principle is that social and economic inequalities are permissible, but only insofar as they are arranged to be to the greatest benefit of the least advantaged in society, and that (public) offices are open to all under conditions of equal opportunity. This provision of permissible inequality is built into the theory to secure an element of competition and incitement to progress, while at the same time attempting to secure social justice for everyone.

Thus the first principle is concerned with individual liberal rights, and Rawls says that these rights in cases of conflict should have priority over the rights based on the second principle, which he terms the 'difference principle'. In this way, there is what he calls a 'lexical' priority of the first principle over the second one, which means that the terms of the first principle should always be fully complied with *before* turning to the content of the second principle. Consequently, individual freedom is non-negotiable - even in cases where a limitation might further for example increased possibility of access to attractive positions for some otherwise disadvantaged groups. From the point of view of minority rights, often conceptualised in terms of group rights, the question then seems to arise whether such group rigths would not come into conflict with the individually based rights accorded moral priority by Rawls.

To sum it all up in some of Rawls´ own opening words: "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override" (p.3). The aim of social justice, and hence of Rawls´ theory of justice, is to secure everyone an equal starting point. The question then remains to be answered how this would affect his view on minorities and their rights within society.

Communitarians often attack Rawls´ position on the grounds that because of the priority of individual rigths, it cannot bring justice to oppressed minorities. This dissatisfaction with the theory probably arises out of a misunderstanding. Rawls´ theory aims to describe the founding principles

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[5] The following paragraph is based on Thomas Mautner (ed), *The Penguin Dictionary of Philosophy*, Penguin Books, London, 1997

of a just society, not principles for rectifying a society that has already run off the track, so to speak. Affirmative action programmes for African-Americans would hardly have been necessary if America had in fact been founded by a constitutional assembly acting under a veil of ignorance. In that sense, one can ask whether it is just for minority rights advocates to criticise Rawls for not leaving enough room for differential treatment; but simultaneously the question arises what we can in fact use Rawls´ theory for, if not for attempting to rectify current wrongs. There has certainly been a heavy critique of Rawls, mainly from the communitarian camp. The main point of criticism, and the main point of contention between the liberal and the communitarian camp in general, is the notion of the individual. Whereas liberals typically stress individual liberty and freedom, as Rawls certainly does with his two rules of priority, communitarians typically stress the fact that individuals are part of a larger society, a notion often referred to as the 'embedded self'. Rawls certainly does not deny that society has a shaping impact on individuals, he only claims that substantive decisions about the good life should be left to individuals to decide, rather than be dictated by society.

2.1.2 Kymlicka

Another figure on the liberal scene when it comes to discussions of minority rights, is the Canadian philosopher Will Kymlicka. Some argue that Kymlicka is not a real liberal, but as he identifies himself as such, I shall also do so. In the introduction to of one of Kymlicka´s books *Liberalism, Community and Culture*[6], he says that the book is written for two reasons: discomfort with communitarianism and discomfort with liberal disdain for minority rights. To me this seems a fairly accurate rendering of Kymlicka´s overall project. As opposed to Rawls, Kymlicka has not attempted to develop a comprehensive liberal doctrine, he has rather focused specifically on the questions raised by the minority rights debate. In this way he has made significant contributions to the debate through a number of published and edited works on the theme.

While still remaining within an overall liberal framework, Kymlicka has for example attacked the traditional liberal notion of the neutrality of the liberal state, which he claims is and has always been an illusion. For one thing, any liberal state has to decide on a language in which to conduct its everyday proceedings. In this choice lies a significant value shaping potential, which might imply profound effects on minority communities within the state, as non-native speakers of the chosen language face potentially devastating alienation from the state apparatus. Another example is the fact that many supposedly liberal states place taxes on gambling, whereas there will often be state

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[6] Will Kymlicka, *Liberalism, Community and Culture*, Clarendon Press, Oxford, 1989.

subsidies for opera. This seems to be a clear example of anything but value neutrality. Having thus punctured the traditional liberal claim for state neutrality as a reason to oppose minority rights, Kymlicka goes on to consider more positive arguments for indeed according such rights.

In opposition to a liberal like Rawls, Kymlicka does claim that the state should not necessarily be value neutral among different conceptions of the good life. We have to face the fact that we are living in states that carry with them a certain cultural history, with everything this implies from majority languages, judicial traditions and histories of war and conquest. Bearing this in mind, it is necessary to ensure that current laws take account of such facts and attempt to rectify wrongs that spring from these facts. It is in this vein that Kymlicka makes his important distinction between the rights of indigenous (what he terms 'national minorities') and immigrant minorities, something he also refers to as his historical argument[7].

> The process of integrating into another society is difficult and costly, and it is unfair and unreasonable to expect national minorities to pay this price. The integration of immigrants is the result of a voluntary choice to emigrate, and it is the only viable path to achieve equality and freedom. By contrast, to expect the members of national minorities to integrate into the institutions of the dominant culture is neither necessary nor fair. Freedom for the members of national minorities involves the ability to live and work in their own societal culture.[8]

How does this affect Kymlicka´s overall view on group rights? Kymlicka does in general allow for the allocation of certain group rights, also some that may not immediately conform with traditional liberal perceptions of individual freedom. One could say that Kymlicka argues for a contextual definition of justice, and he thinks this is progress in comparison to the earlier liberal debate. Contextual in the sense of taking account of historical circumstances for particular national groups. Like Rawls, Kymlicka thus argues that in deciding on what is just and fair, we need to take account of natural endowments versus private life style choice. Where Rawls and Kymlicka part ways is perhaps mostly in terms of what should be viewed as choice in this context.

Where should we place the claims of minorities on the 'choice – circumstance' divide? Is their minority affiliation a morally arbitrary circumstance for which we should give them recognition, or is it merely a question of free choice which they should bear the burdens of themselves? In *Liberalism, Community and Culture* Kymlicka says that "It must be recognised that the members of minority cultures can face inequalities which are the product of their circumstances

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[7] Will Kymlicka, *Multicultural Citizenship, A liberal Theory of Minority Rights*, Clarendon Press, Oxford, 1995, p.117 ff
[8] Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, Oxford University Press, Oxford, 2001, p.55.

or endowment, not their choices or ambitions" (p.190). Kymlicka advances three arguments to support special group rights:

- A right and need for recognition
- Promote individual freedom of choice and autonomy
- Diversity is intrinsically valuable, promote human creativity

Here Kymlicka strongest argument seems to be the second one, especially as understood in the context that to truly have freedom of choice, also for members of minority cultures, such minority cultures must be protected so as not to limit the range of options for their members. On the other hand, Kymlicka himself describes the third argument above as not really a normative but rather a descriptive one – i.e. it might be an argument in support of minority rights *post facto*, but as a principle of justice it hardly works[9].

To contrast this with Rawls´ views on minority rigths, the most important difference seems to be that Rawls´ theory is not built on the notion of meritocracy. In other words, Rawls does not take account of the current state of the liberal society with its possible historical luggage of wrongs against minorities. Are history-based appeals to groups and hence group rights illiberal? Rawls would probably say that they are - he rather starts from a basic point of egalitarian treatment of *all* members of society, and hence rejects that some people should merit different treatment than others to begin with. Hence, one could say that he would probably agree with the normative content of arguments two and three above, whereas he would most likely dismiss the first, as it seems to imply a certain amount of meritocracy, which Rawls generally rules out. Of course, this disagreement between the two stems from a far more fundamental difference in approach, as Rawls´ theory builds on what he terms an 'ideal theory' foundation, which in itself precludes anything resembling Kymlicka´s 'argument from history'. This also accords with Kymlicka´s own interpretation of their differences, as he says in *Liberalism, Community and Culture* p.177 that he does not think that Rawls and Dworkin rule out that cultural membership may be a primary good, they just do not consider the possibility that the political and cultural community may not coincide. And hence the question of a right to recognition would never arise.

I shall go on to focus on the fundamental normative questions or problems that may arise in extension of Kymlicka´s standpoint. The main problem identified by Kymlicka is the perceived risk that these policies will lead us on to a slippery slope – i.e. will they require us to condone illiberal practices among immigrant groups? An often cited example in this connection is clitoridectomy.

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[9] See *Multicultural Citizenship* pp.121-123

We certainly need to think about the logical extension of these rights and policies, as the stakes appear to be high. Will multiculturalism be a Trojan horse undermining our most sacred principles of freedom and equality? One way of getting around this problem is to distinguish, as Kymlicka does, between *internal* and *external* restrictions in relation to minority rights. He explains this distinction as follows:

a) internal restrictions are the rights of a group against its own members, and can be used to protect against internal dissent.

b) external protections are the rights of a group to protect itself from the impact of external pressures.

Whereas Kymlicka to a certain extent endorses b), he thinks that as liberals we ought to be sceptical towards a). He puts this in the following way: "A crucial task facing liberal defenders of minority rights, therefore, is to distinguish between 'bad' minority rights that involve *restricting* individual rights, from the 'good' minority rights that can be seen as *supplementing* individual rights"[10]. This idea of *supplementing* individual rights is perhaps best interpreted as providing the necessary means for members of minority cultures to participate in cultural life (their own or that of the majority) on an equal footing with everybody else. Examples would include possibilities for interacting with the state in one´s mother tongue, affirmative action programmes, state subsidies for cultural undertakings etc.

To sum up, Kymlicka is on the whole favourable towards extending minority rights; as he says in the introduction to *Politics in the Vernacular* (p.2) "People talk about 'troublesome minorities', but behind every minority that is causing trouble for the state, we are likely to find a state that is putting pressure on minorities". In the vein of Anderson and Bhabha´s ideas about nation building through narratives, Kymlicka views minority rights as a defensive strategy in response to state nation-building. To give Kymlicka the last words:

> Sustaining a societal culture in the modern world is not a matter of having yearly ethnic festivals, or having a few classes taught in one´s mother tongue as a child. It is a matter of creating and sustaining a set of public institutions which enables a minority group to participate in the modern world through the use of its own language. (*Ibid* p.159)

2.2 Communitarian approaches to minority rights

The general differences between liberals and communitarians have already been hinted at above, as a fundamental difference between according moral priority to individuals, versus holding a view on

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[10] *Politics in the Vernacular*, p.22

the individual as necessarily 'embedded' – i.e. seeing cultural affiliations as constitutive of individuality, and hence also as containing moral significance in themselves. A more explicitly philosophical formulation of this difference could be articulated as follows: Rawls´ theory *presupposes* that the liberal society is based on originally morally responsible individuals, and in turn the liberal society *produces* such individuals. Whereas on the communitarian scheme, the social and political society also has to produce a *common value horizon* which will facilitate the *acquisition* of such moral competences for individuals.

2.2.1 Taylor

A central factor in communitarian philosopher Charles Taylor´s reasoning about minority rights is his subscription to the 'embeddedness' approach to individuals, and hence also his accordance of moral significance to cultural affiliations. In this vein, he launches a severe attack on what he terms the atomist view on individuals, which in his opinion is the predominant view within the liberal camp. Against this view, Taylor stresses the dialogical nature of human beings. As he says in 'The Politics of Recognition' p.32 "The crucial feature of human life is its fundamentally dialogical character", in other words, we are shaped by the dialogues (in the broadest sense) we take part in.

One can say that there are three elements to 'the good life' as defined by Taylor:

1. Creation/construction and discovery: to relate creatively to one´s life and discover/uncover the good
2. Originality, an outstanding configuration of *my* good life
3. Opposition to the immediate rules and norms of society, relate critically to the norms of society

Taken together, these elements signify the radical dialogical character og human life within the community: there is an individual side to each question, but also a significance bearing horizon to all choices. Several goods are simply impossible to realise without the interaction with others/the community.

These considerations are what leads Taylor to formulate his prescriptive political theory, as expressed primarily in the essay 'The Politics of Recognition'[11]. Here he says on one of the opening pages that 'due recognition is a vital human need'[12], which really is a normative statement

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[11] This essay is published in the book *Multiculturalism, Examining the Politics of Recognition*, by Princeton University Press, New Jersey, 1992, 1994, edited by Amy Gutman and including a number of important critical reactions from various theoriticians. It is this publication and the page references from it I shall be referring to throughout this paper.
[12] *Multiculturalism* p.26

disguised as a descriptive one. One might obviously ask, 'how so vital?'. The answer lies in the embeddedness view described above. In other words, partaking in a dialogical culture, presupposes a certain degree of fairness within such a dialogue. Hence the need for recognition: one´s right to participate in the dialogue must necessarily be recognised by fellow interlocutors, otherwise justice is violated.

Based on this premiss of dialogues as a good, Taylor makes an argument for the intrinsic value of groups and cultures. He does so in pronounced opposition to liberalism, which he describes as just not good enough to support a politics of recognition. He says that "…just the fact that people can *choose* different ways of being doesn´t make them equal", and adds "There must be some substantive agreement on value, or else the formal principle of equality will be empty and a sham"[13]. This idea of groups and cultures as being intrinsically good *qua* their status as 'embedding' for individuals has been attacked from several sides, especially as the view seems to entail a prescription for preserving and nourishing such cultures. For example Kymlicka argues against Taylor that "groups aren´t the sorts of beings to have moral status, they don´t feel pain or pleasure"[14].

The main argument liberals seem to be against, and which they with some justification attribute to communitarians in general, can be set up as follows:

1. Communities are goods (i.e. they have value)
2. Therefore they ought to be protected
3. Therefore communities have rights (to existence etc)

The problem with this type of argument is *who* is to decide *what* rights are to be given to *which* communities. I do think the liberal call for caution concerning such arguments is well placed, certainly if one takes into account the complicated issue of minorities within minorities, for example oppression of women in North American Indian bands accorded extensive cultural rights. But as opposed to Kymlicka, Taylor is not much concerned with such 'internal minorities', and hence he does not take a stand on this complicated issue. To put it simply, Taylor presupposes that the presently ongoing life is a good, and in that vein, language, culture and political participation are all considered primary goods by Taylor, as opposed to Rawls, who considers these merely instrumental goods.

Taylor´s subscription to the embeddedness view takes a particularly poignant expression in his arguments for *survivance*. Originally a concept developed within French speaking Quebec, but

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[13] Charles Taylor, *The Ethics of Authenticity*, Harvard University Press, Cambridge, Massachusetts, 1991, pp.51-52.
[14] Will Kymlicka, *Liberalism, Community and Culture*, p.242

extended by Taylor to include in principle all sorts of communal/cultural attachments. In 'The Politics of Recognition' Taylor accounts for this principle as including a moral obligation to preserve cultural multiplicity, not only for present generations but also for future ones. In this way, the French speaking community in Quebec not only has a moral *right* to have its culture protected from swamping by the surrounding Anglophone Canadian society, it also has a moral *obligation* to make sure that the French culture will persist for future generations to benefit from. Hence we have the rather perverse situation that in the event that all French Canadians decided that upholding a French culture in the face of a dominant and all-pervasive Anglophone culture was too psychologically costly, they would still have to maintain their traditions, in order to fulfill the obligation of leaving a rich cultural tradition for future generations! This is certainly a view that has provoked many liberals.

One can try to formalise Taylor´s overall argument, and ask whether the following is a valid argument?:

1. x is considered a good
2. and x is only possible in the context of y
3. hence y is good

Put this way, the dodginess of the argument is spelled out, as well as its conservative elements, which again relate to the question of intergenerational justice. This is clearly an argument for retaining the existing culture in its present form because it is viewed as a good in itself.

Possibly in an attempt to take the sting out of the disagreement between the liberals and communitarians, Kymlicka assesses Taylor´s 'The Politics of Recognition' in the following way: "Taylor´s lecture is better understood as a sermon to (Americanized) English-speaking Canadians, and his argument is not that American-style liberalism is wrong for most groups in the U.S., but rather that it is wrong for countries like Canada whose central dilemma is how to deal with minority nationalisms"[15].

Different assessments and comments on the essay can be found in the 1994 publication of 'The Politics of Recognition', published as *Multiculturalism*, where a number of commentators have made contributions. One of these commentators is Anthony K. Appiah, who in the preface voices the concern that the politics of recognition 'scripts too tightly individual lives' (p.xi), and in his concluding essay he asserts that "Between the politics of recognition and the politics of compulsion, there is no bright line" (p.163), which I very much agree with. Another important

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[15] Will Kymlicka, *Politics in the Vernacular*, note 3, p.272

commentator on Taylor´s essay is Jürgen Habermas, whom I refer to here, as he will make an important reappearance below. Habermas argues against what he terms a 'preservation of species by administrative means' (p.130), and he continues with the words that: "… 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". This sentence nicely sums up both my personal and the general theoretical reservation concerning Taylor´s 'politics of recognition'.

2.2.2 Sandel

Like Taylor, Michael Sandel´s principal objection to liberalism concerns its view of the person. In his book *Liberalism and the Limits of Justice*, Sandel criticises the supposed independence of the original position as described by Rawls, and asks whether such detachment is at all possible? According to Kymlicka, Sandel argues against this idea by way of an argument concerning 'our deepest self-perception':

> Rawls´view of the 'unencumbered self' does not correspond with our 'deepest self-understanding' in the sense of our deepest self-perception. According to Sandel, if the self is prior to its ends, then we should, when introspecting, be able to see through our particular ends to an unemcumbered self. But, Sandel notes, we do not perceive our selves as being unencumbered: Rawls´ view of the self as 'given prior to its end, a pure subject of agency and possession, ultimately thin', is 'radically at odds with our more familiar notion of ourselves as being 'thick with particular traits' (Sandel 1982: 94, 100)[16].

At the overall level, Sandel´s book *Liberalism and the Limits of Justice* is a thoroughgoing analysis and criticism of Rawls´ philosophical anthropology as found implied in the original position. Here Sandel shows how Rawls´ position is incoherent in its apparent distinction between voluntarist and cognitivist conceptions of agency as it occurs in the original position. Because none of the participants in the original position know anything about their preferences, they have no distinguishing traits. They are all alike in their 'pure self' forms, because they do not yet posses any preferences. Because of this, we cannot consistently talk about a situation of *choice* in the original position, but rather a condition of *discovery*. According to Sandel, Rawls confuses choice with discovery here, which radically alters the basic premises of his project of justice as fairness, in that it ultimately ends up being an argument in favour of a strong ontological conception of the person. Hence Sandel concludes on p.132: "What goes on in the original position is not a contract after all, but the coming to self-awareness of an inter-subjective being". Which seems to be a far cry from Rawls stated project!

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[16] Will Kymlicka, *Conteporary Political Philosophy*, p.212

On p.64 Sandel comments on how this affects Rawls´ view on the role of the community: "The assumptions of the original position thus stand opposed in advance to any conception of the good requiring a more or less expansive self-understanding, and in particular to the possibility of community in the constitutive sense"; and further "On Rawls´ view a sense of community describes a possible aim of antecendently individuated selves, not an ingredient or constituent of their identity as such". This thus guarantees the subordinate status of the community, which Sandel very much disagrees with Rawls about. However, Sandel also states that Rawls´ theory implies a greater valuation of community than Rawls himself is probably willing to admit, a statement which might refer to Rawls´ professed subscription to value pluralism as well as his commitment to create a *communal* culture conducive to individual choice of values.

In contrast to this, Sandel wishes to promote a politics of the common good, which enables us to 'know a good in common that we cannot know alone' (Sandel 1982, 183). Mulhall and Swift mockingly point out that the communitarian attack on what they term liberal 'asocial individualism' is at bottom really a case of the chicken before the egg!

2.3 Assessment of arguments for and against minority rights

Kymlicka writes in *Politics in the Vernacular* that it was only up until the early 1990s that the debate was this stark contrast between liberals and communitarians. This is the debate described above as essentially evolving around the question of the priority of individual freedom: is the individual morally primary to the community or vice versa? According to Kymlicka, the early debate over minority rights was influenced by the view that if one were a liberal one would oppose minority rights as a dangerous and unnecessary departure from the proper emphasis on the individual. Kymlicka also states that recently liberals are not necessarily any longer opposed to minority rights, and there has been a great debate within the liberal camp itself over the meaning of liberalism.

So if we have to leave the debate between the communitarian and liberal camps at this stand-off, the question is how to proceed further from here. Perhaps a more pragmatic approach would prove fruitful. Such a pragmatic approach may be found in Adeno Addis´ essay 'On Human Diversity and the Limits of Toleration'[17]. The basic question running through Addis´ essay is "What constitutes getting along in a multiethnic and multicultural polity?" (p.115). Addis points to

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[17] Adeno Addis, 'On Human Diversity and the Limits of Toleration' in Ian Shapiro and Will Kymlicka (eds.), *Ethnicity and Group Rights, Nomos XXXIX, Yearbook of the American Society for Political and Legal Philosophy*, New York University Press, New York, 1997.

the concept of toleration, and says that it is seen by some as a bridge to link liberalism and pluralism; however, "there must be principles, common bonds and institutions that must have the allegiance of all members of the political community" (p.117). So toleration cannot do the trick alone, but it does extend the deliberative aspects of democracy. There are, however, also hidden costs to toleration: "to tolerate is not necessarily to respect" (p.120); here Addis points to the danger of paternalism which results in non-equal participaion in the debate or the polity. "Toleration might affirm a notion of pluralism, but it is too thin to cultivate and sustain any sense of solidarity" (p.122).

This sense of solidarity is to be cultivated through deliberative democracy, and here institutional dialogues are necessary. Addis has in mind particularly three institutions: the legal, education and communication processes. He elaborates on these, saying that "…in the communication process, as in other areas, we should not treat the market status quo as neutral" (p.123). Hence Addis generally recommends comprehensive affirmative action to create a sense of shared identity. He further elaborates in favour of a deliberative model: "A genuine sense of shared identity, social integration, in multicultural and multiethnic societies will develop only through a process where minorities and majorities are linked in institutional dialogue" (p.128).

Addis lists three concrete proposals for how to faciliate such dialogues (see pp.134-35). The first principle is that rational decisions must be based on full information, so that both the majority and minority communities contribute to paint the picture of the area under debate. The second suggestion is that the regulations of common life – formal (law), as well as informal – needs to take account of as many traditions as possible. Addis´ third and last principle is that rational information always has to be integrative, not in the sense of leading to unity of purpose, but in the sense of opening an integrative or inclusive dialogue, and through this creating incentives to critical reflection and coherent ordering of interests. The above three points can be boiled down to the following: full information, plurality and inclusiveness of view points. To sum up, what Addis is in effect proposing is a model of deliberative democracy.

3. Deliberative democracy

Based on Addis´ three ideals of full information, plurality and inclusiveness of view points above, one must conclude that accountability becomes a key concept. According to Heine Andersen´s presentation of Jürgen Habermas in the anthology *Classical and Modern Social Theory*[18],

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[18] Heine Andersen and Lars Bo Kaspersen (eds.), *Classical and Modern Social Theory*, Blackwell, Oxford, 2000.

Habermas´ main project is to seek a method to establish a common ground for understanding. The continuous problem perspective in Habermas´ theory is his focus on the conditions for a free and democratic dialogue in the modern capitalistic industrial society.

Interestingly, Habermas conjoins with early liberal capitalist ideas about the citizen as an enlightened person possessing independent rationality and power of judgement, which is a necessary condition for deliberating through reasonable arguments and regulating communicative action. Habermas introduces four requirements for the ideal conversational situation, the situation he also describes as the 'masterless dialogue'. The four premisses run as follows:

- Everybody kan partake in the discussion
- Everybody can introduce and problematise any claim
- Everybody can freely express his/her attitudes, wishes and needs
- Nobody may be prevented through force from exercising these rights

Based on these premisses for an ideal conversation, Habermas presents two claims about the kind of discourse which would develop from this: First of all, any person who pretends to engage in argumentative discourse must accept these rules, and, secondly, these rules imply the foundation for discourse ethics. Hence anybody who attempts to argue against any of the above four rules commits a performative error, and if so, we do not have to take the person seriously as a partner in a dialogue.

Habermas´ description of the ideal communicative situation has nothing to do with a substantive view on ethics. Rather, this is a prescription for a *procedural* ethics, which means that Habermas leaves room for substantive disagreement among conversational partners about the good, as long as they adhere to the procedural rules of discourse ethics. In this way it is his claim (or hope!) that conversational partners will arrive at a consensus about the good, through a fair dialogue which will be unaffected by the instrumental regulators of power and money, which rule the system-world. Thus, Habermas´ theory does not prescribe concrete moral judgements, only the rules by which such judgements can be assessed through dialogue. Importantly, we arrive in this way at a situation where only interested parties feel inclined to take part in the dialogue, and hence it is possible to reach consensus about moral norms which only apply to these interested parties. Thus, moral norms can apply to specific areas and need not necessarily be part of an overall (statewide) consensus. To me, this seems to open up important new doors for the debate over minority rights.

In Habermas´ understanding of language as a capacity to coordinate action, lies an important indicator to how minority communities might attempt to gain political influence via the already established and acknowledged democratic channels. Whether this is an effective course of action remains to be seen. One possible obstacle relates to the danger, also identified by Habermas, that dialogues are becoming increasingly specialised. We tend to hear expert opinion on anything from what to eat to how to go to war. David Ingram in the essay 'The Subject of Justice in Postmodern Discourse: Aestethic Judgement and Political Rationality'[19] writes that "Both philosophers [Habermas and Lyotard] hold that the pluralizing dynamics of social rationalization encourage forms of specialization that threaten to impowerish lay persons´ capacities for autonomous moral reflection" (p.270). I.e. the danger exits that the system-world is increasingly colonising the life-world, as Habermas puts it. (It should be noted here that Habermas and Lyotard are otherwise quite different, even if Ingram does see some affinities). Ingram writes further about the problem of specialised discourse "If citizens cannot become experts, they can at least acquire the knowledge and critical skills necessary for holding them accountable" (p.280). This does indeed seem to place quite a lot of responsibility on citizen shoulders, the question remains whether it is feasible to expect citizens to acquire these skills, and whether all citizens are in fact capable of obtaining them even if they want to. Here we are back at Habermas´ traditional liberal assumption about the rationality of individual agents.

Leaving the question of whether this is a just assumption to make aside, I turn now to the issue of whether or not the model of deliberative democracy is just in itself. The question of legitimising the deliberative democratic model is a two-edged sword in the sense that we both have to ask whether the model in itself is legitimate; but also whether it may help to serve as a legitimising factor in a society that would otherwise be deemed illegitimate. This raises the further question of which kind of society would support a deliberative democratic model. Is this possible only within a certain sort of late-modern society? And by extension: Is Habermas´ model only a sort of tool kit to repair late-modern society with?! On both accounts, for reasons of fear of Eurocentricism, I should certainly hope not! But otherwise it is also possible to argue against this charge in a formal logical way, here taking the case of minority rigths as an example:

- X: the acquisition of minority rights

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[19] This essay is included as chapter 10 in Maurizio Passerin d´Entreves and Seyla Benhabib (eds), *Habermas and the Unfinished Project of Modernity. Critical Essays on 'The Philosophical Discourse of Modernity'*, Polity Press, Cambridge, 1996.

- Y: the existing society

  (which supports the unfolding of the deliberative democratic debate)[*]

The argument then runs to the effect that:

1. X is good
2. (the good of X can only be realised through a medium)*
3. (Y is one such medium)*
4. Y furthers X

From this does *not* follow the conclusion that Y is the only possible condition for fulfilling the exertion of X[20], notice the implied premiss that Y is *one* such medium. Late-modern society may be a *sufficient* condition to further a deliberative democratic model, but it is not a *necessary* one; logically speaking other types of societies may fulfill the same requirements.

In relation to my research agenda, the question now remains whether the Australian and New Zealand societies do support such a deliberative democratic model. This, I think, can only be verified empirically by conducting research into instituonal dialogues within these countries. Addis says on p.136-37: "The challenge here is not to the normative desirability of dialogue as I have outlined it, but to its institutional feasibility". I can think of three possible answers to this question:

1. It is feasible (as simple as that!)
2. Even if not feasible, it will act as a standard to measure the democratic process
3. We have in fact institutionalised this dialogue, for example in judicial processes

Which of these is the more likely answer I shall attempt to find out through interviews with participants in these democratic dialogues and through analysing changes in laws etc.

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[*] The lines in parantheses indicate implied premisses
[20] Much less that Y is a good in itself, cf. p.10