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**SITUATING LIBERALISM IN THE MODERN
WORLD**

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ABSTRACT

It has become commonplace to argue that the liberal-communitarian debate, which has characterised Anglo-American political thought for the last two decades, has now been exhausted. However, there is little consensus over who actually had the better of the debate or alternatively, how, and even whether, it is possible to synthesise some of the key insights of the two conflicting schools of thought. In this thesis, it will be argued that this can partly be explained by the fact that the debate was largely misconceived in the first place. This is due firstly to the fact that the ideological differences within the two camps are so vast as to render the terms virtually meaningless as binary categories. Secondly, some of the key protagonists on both sides of the debate actually display some of the same faults. This will be shown by juxtaposing Rawls's political liberalism with Sandel's civic republicanism. While these two projects are usually regarded as antithetical, it will be shown that both enterprises are similarly flawed due to their mistaken assumption that it is possible to transcend the foundationalism / anti-foundationalism dichotomy by legitimising normative political theory with reference to perceived historically shared understandings alone rather than metaphysical foundations. The thesis will then consider Habermas's communicative ethics, which offers a different account of how to redeem normative political theory without presupposing metaphysics. It will be argued that, while Habermas is correct to resist the post-modernist critique which rejects the possibility of universalist conceptions of morality per se, he fails to assuage the criticisms of a diverse array of liberal sceptics who dispute the possibility of dispensing with metaphysical foundations altogether. The thesis will conclude that Rawls's, Habermas's and Sandel's normative projects are all weakened by their underestimation of the level of ideological competition, which all strands of the liberal tradition confront in the public sphere.

For my late Grandmother (Grunders) whose love, devotion and sheer sense of fun not only greatly enriched my childhood but will also serve as a source of inspiration for the rest of my life.

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INTRODUCTION

Deontological Liberalism versus Utilitarianism

Contemporary communitarianism, at least in its philosophical guise is generally associated with the writings of four prominent political theorists who became famous at the beginning of the 1980s, namely, Michael Sandel, Alasdair MacIntyre, Charles Taylor and Michael Walzer.¹ One can also with some qualifications include Benjamin Barber in this list.² This philosophical movement is inspired by its attempt to challenge and provide an alternative to the egalitarian liberalism espoused by John Rawls in his seminal work *A Theory of Justice* and the libertarian liberalism of Robert Nozick, which was equally famously articulated in *Anarchy State and Utopia*.³ The latter work was composed as a rejoinder to the former by attempting to demonstrate that the programme of economic redistribution proffered by Rawls was incompatible with his professed commitment to individual liberty. However, for political theorists whose work has become subsumed under the label communitarianism there has been a much greater emphasis on the philosophical similarities which exist between the two works.

Both Rawls and Nozick were in agreement that the traditional philosophical foundations which had underpinned liberal political thought were inadequate. Both theorists intended to show that in contrast to the claims of arguably the most famous figure in the liberal pantheon, John Stuart Mill, utilitarianism could not offer a sound anchor for liberal principles such as respect for individual rights because it could not take seriously the distinction between persons. As the principal objective of utilitarian thought is to maximise the general welfare, utilitarians end up treating society as an organic whole. As a consequence, both Rawls and Nozick

argued that under a utilitarian scheme, some individuals could be used as a means to the happiness of others, thereby compromising each individual's right to be treated as an end in himself.⁴ At the same time, neither Rawls nor Nozick wished to forfeit the features of utilitarianism which accounted for its appeal to many classical liberals; namely, its abstention from judging people's values which seemed to encourage a spirit of tolerance at variance with much of the history of Western political thought preoccupied as it has been with asserting the possibility of discerning a particular conception of the good life which society should be structured to promote and indeed inculcate in the citizenry at large.

The problem which contemporary liberals such as Rawls and Nozick sought to draw attention to is that while utilitarianism's concern to maximise overall happiness precluded it from making qualitative distinctions between people's ends, its emphasis on the importance of aggregating individual preferences meant that the success of individual rights was dependent on empirical foundations that were both unreliable and potentially unfair. While Mill accorded a high weight to justice and individual rights and thus opposed consequentialism, his ultimate reason for doing so was that the requirements of justice "stand higher in the scale of social utility, and are therefore of more paramount obligation, than any other".⁵ Thus, Mill aimed to give a special weight to justice and individual rights while retaining a teleological foundation by arguing that the sanctity of rights could be legitimised through its correlation with the human end which served as the underpinning of all moral and political theory, namely that of achieving happiness.⁶

The fundamental problem with this line of reasoning in the eyes of Rawls and Nozick is that from their perspective, empirical principles such as maximising utility are an inadequate basis for preserving morality for two principal reasons. Firstly, defending rights on instrumental grounds leaves them precarious and contingent rather than absolute; secondly, such a defence cannot respect the inherent dignity which all humans possess. As a consequence, the principal innovation of deontological liberals such as Rawls and Nozick was to resuscitate the Kantian deontological tradition in which the right rather than being relative to the good as was the case with utilitarianism was instead independent of it. Kant argued that it was impossible to root the moral priority of justice in the realm of empirical contingency. The moral law is prior to all empirical interests and therefore cannot presuppose any particular conception of the good. The fundamental difference between deontological and teleological ethics is, as explained by Kant, that the basis of the moral law is to be found in the subject not the object of practical reason. No empirical end but rather 'a subject of ends, namely, a rational being himself, must be made the ground for all maxims of action'.⁷ Thus, from a deontological perspective, priority is accorded not to the ends we choose but rather our capacity to choose them

By adopting this line of reasoning, both Rawls and Nozick asserted that liberalism can only be defended by providing an account of rights that does not depend on utilitarian maxims or indeed, any particular conception of the good.⁸ Rawls makes this argument explicit towards the end of *A Theory of Justice* where in claiming that teleological doctrines are 'radically misconceived', he states:

It is not our aims that primarily reveal our nature but rather the principles that we would acknowledge to govern the background conditions under which these aims are to be performed...We should therefore reverse the relation between the right and the good proposed by teleological doctrines and view the right as prior.⁹

In accordance with this philosophical distinction between the right and the good, Kantian liberals proposed a distinction between a framework of rights and liberties which were inviolable and conceptions of the good which were permitted within that framework. As a consequence of this, they were able to allocate moral priority to the principles of right and justice without favouring any particular conception of the good which the state would be duty bound to enforce. Therefore, the Kantian conception of the person which perceived the self as free and independent that Rawls and Nozick aimed to retrieve, led to the instantiation of a political ideal in which considerations of justice always assume priority over other more particular aims. In the eyes of Kantian liberals, rights possess an absolute or at least a primary status, which even a democratically elected polity cannot override. Thus, for example, liberals who espouse the deontological ethic will defend the right to free speech not on the grounds that free speech possesses any intrinsic worth in itself such as for example being integral to the good of political participation as was the case with the civic republican perspective or that it was essential to establishing the difference between true beliefs and false ones as utilitarians such as Mill might argue. Rather, from a Kantian perspective, it was defended on the basis that to restrict freedom of speech would hamper individuals' ability to pursue their own ends and determine for themselves which beliefs they wished to subscribe to. The protection of individual autonomy was thus what was considered paramount.

Deontological Liberalism's Philosophical Incoherence

The principal purpose of communitarianism as embodied in the works of the theorists listed above has been to contest the foundational priority which deontological liberals have given to the right in relation to the good on both philosophical and sociological grounds. Thus, most communitarian political theorists propound the following 'truths' which as articulated by (the classical liberal) David Rasmussen can be summarised as follows;

that human beings are naturally social; that ethical relativism is an inadequate moral theory; that liberty cannot be defined or understood without an ethical commitment; that any theory of rights capable of motivating human conduct must ultimately be based on a conception of the human good; and that rights are not ethically fundamental.¹⁰

Communitarians have argued that in the light of these truths, contemporary liberalism is philosophically incoherent in that it fails to appreciate that the good is prior to the right (in the sense that moral norms are derived from and justified in terms of the good). Furthermore, as a consequence of this fact, liberalism is sociologically incapable of nurturing the very liberal culture, which its proponents are so anxious to promote. The argumentative strategy employed by the communitarians can be likened to what logicians call "modus tollens". If p, then q; not -q therefore not -p. In other words, if one is to hold that the right is prior to the good then the 'truths' outlined above must be denied. However, these truths cannot be denied. Therefore, it is erroneous to adhere to the view that prioritising liberty can be the central concern of normative political theory. Instead, what is at stake is a conflict between competing conceptions of the good life.

Framing the debate this way is arguably a more fruitful way of getting to grips with what lies at the heart of the liberal-communitarian dispute and in particular, to assessing to what extent the communitarian critique of liberalism succeeds, than presenting it as one polarised between liberals who prioritise individual liberty at the expense of community and communitarians who do the opposite. The problem with the latter view is that it leads one to assume that communitarians are cultural relativists who conflate the ontological fact that individuals are nurtured within particular communities with the normative claim that these communities ought to be valorised irrespective of the substantive ideals which animate them, which might, for example, include slavery or racial intolerance. As this thesis will show, one leading communitarian theorist, Sandel has attempted to distance himself from this depiction of communitarianism by asserting in contrast to MacIntyre that shared understandings are insufficient to ground a theory of justice. Following Aristotle, Sandel asserts that the values of a community can only be judged in terms of the moral ends which they serve. Thus, although Sandel does not frame it in these terms, the good life, on his account is a transcendent value rather than one which can be reduced to the ends which a particular community may subscribe to.¹¹

At the same time however, as Rasmussen points out, it is open to liberal theorists to concede that the good is prior to the right and therefore agree with the communitarian critique of deontological liberalism without at the same time accepting that this in any way diminishes liberalism's key normative tenets. As Rasmussen argues, the 'truths' outlined in the quotation above which communitarians claim illustrate liberalism's incoherence can in fact be used as a means for advocating the central primacy of liberty. As we shall see, if the liberal-

communitarian debate is reformulated as one concerning the philosophical and cultural prerequisites for the maintenance of a liberal political order, then it still possesses much contemporary relevance. In the process, however, such a reformulation will entail the collapse of the rigid boundary lines which often seem to distinguish liberals from communitarians. This is not a consequence of the fact that an ideological consensus has been achieved between the two sides as has been commonly assumed (at least if one infers from this that either side has been shown to be victorious or alternatively, that both sides have converged on common ground). Rather, it is because the degree of internal heterogeneity encompassed within both the liberal and communitarian movements is so vast. Key ideological and philosophical disputes are often better explained by exploring the affinities between liberal and communitarian strands of thought which converge on the embrace of a notion of autonomy (whether individual or communal) as the central conception of the good and those which reject it, as shown in more detail below. Before I do this however, it is important to flesh out more clearly what is allegedly at stake between the two sides.

In accordance with the structure developed by Benjamin Barber in the first part of *Strong Democracy*, it is useful to understand the communitarian critique of liberalism as one consisting of an attack on liberalism at four different levels.¹² These can be described in short as a repudiation of contemporary liberalism's foundations, (what Barber calls liberalism's pre-conceptual frame), entwined with an attack on the epistemological and psychological assumptions which allegedly animate contemporary liberal thought. Finally, and largely as a consequence of the first three perceived deficiencies in modern liberalism, communitarians claim that

liberalism is an impoverished normative theory whose defective conception of human nature means not only that it fails to account for the importance of the value of community, but also cannot even supply the motivational resources requisite to the promotion of individual liberty.¹³ To start with liberalism's foundations, communitarians have often accused modern liberals such as Rawls and Nozick of employing the same form of deductive reasoning which enamoured their predecessors in social contract philosophy. Both theorists have sought to establish inertial frames which can serve as the foundation for political theorising, a non-negotiable rest position which is pre-moral without being arbitrary or non-moral. In the case of Rawls, the construction which performs this task is the "original position" which is composed of fictitious persons who devoid of any particular characteristics or special psychologies, reason from principles which all can be expected to accept.

Although, much more implicit than in Rawls's theory, the sacredness of individual autonomy constitutes Nozick's rest position. The advantage of forging chains of reasoning such as those of Rawls and Nozick is that the consensus which cannot be achieved from discussion over competing intuitions, can instead be attained by arguing from a starting premise which all rational people can concur with through to determinate political conclusions which, however unpalatable, (because it is the final link in the chain of reasoning), they are duty bound to accept. The inertial frame thus becomes the very epitome of rationality, aptly described by Arthur Lovejoy as 'uniformitarian rationality' in which by commencing from an immutable origin, one can follow a chain of reasoning through to determinate political conclusions.¹⁴ The flaws in this strategy as communitarians are quick to point out is

that while they unleash their philosophical weaponry in defence of their reasoning from A to N, they leave A undefended because it is the condition for reasoning about justice rather than a component in the theory of justice. Communitarians believe that this reductionist chain of reasoning results in liberal theorists conjuring an epistemological frame which produces a propensity towards philosophical dualism in which theory is separated from concrete reality. As Barber states, “The knower is cut off from the known, epistemology is isolated from ontology, thought is radically differentiated from action, and fact and value are identified as residents of hostile universes”.¹⁵

As I will show in Chapter One, these observations are particularly pertinent to Sandel’s critique of Rawls. Many communitarian critics extend their critique of liberalism by arguing that its affection for deductive reasoning and its embrace of a speculative mode of thinking in which speculative foundations are contrasted with concrete realities is complemented by a conception of human nature which promotes an asocial individualism in which society is nothing more than an arena for naked egoisms to squabble. MacIntyre claims that liberals write “as though we had been shipwrecked on an uninhabited island with a group of other individuals, each of whom is a stranger to me and all the others”.¹⁶ Finally, communitarians argue that the pre-conceptual, epistemological and psychological frames taken together, far from securing liberty actually breed dangerous cultural pathologies such as fundamentalism as deracinated individuals seek meaning and identity in sectarian groups which are inimical to liberal ideals. In all these respects, contemporary communitarians accuse modern liberals of repeating the mistakes of their philosophical ancestors such as Hobbes and Locke.

Liberalism's Epistemological Blindness

The communitarian thinker who will receive the most attention in this thesis is Michael Sandel, who articulates the most sophisticated critique of the deontological liberalism of which he regards Rawls as the exemplar. Sandel's critique ought to be differentiated from the conventional critique of liberalism in that he does not accuse Rawls of the sins which are often attributed to liberals such as the claim that he promotes rational egoism. *In Liberalism and the Limits of Justice*, Sandel dissected Rawls's attempt to retrieve deontological liberalism from the untenable metaphysical assumptions which Kant had saddled it with. Rawls believed that the notion of a prior and independent self had to be 'detached from its background in transcendental idealism' and recast within 'canons of reasonable empiricism'.¹⁷ The Kantian conception in its original form suffered from obscurity and arbitrariness by positing a noumenal being, whose rescue from contingency could only be bought by denying it its human situation. Thus, in Sandel's words, 'Rawls takes as his project to replace Kant's deontological teaching by replacing Germanic obscurities with a domesticated metaphysic more congenial to the Anglo-American temper'.¹⁸ This is what Sandel calls 'deontology with a Humean face'.

Sandel does not believe Rawls's project succeeds, for it either fails as deontology or reproduces the disembodied subject, which Rawls had tried to avoid. It is important to understand, however, the sense in which Sandel believes Rawls's project fails, as this has often been misunderstood. A claim often made by critics of liberalism, particularly by those who focus on what they regard as its psychological frame outlined above, is that the trumpeted independence of the deontological subject is incoherent and or devalues such communitarian sentiments as altruism and

benevolence. On this view, liberals disregard the fundamentally 'social' nature of man, the fact that we are conditioned beings 'all the way down'.

Thus, the claim by deontological liberals that in contrast to their predecessors their key assumptions do not presuppose 'any particular theory of human motivation' and is thus neutral as to what values a political order should affirm is rejected because prioritising the individual subject biases the conception in favour of individualistic values at the expense of communal virtues. As Sandel rightly notes, deontological liberalism is not vulnerable to this objection because it misunderstands the nature of the neutrality which it claims to provide. It does not claim to be neutral in that it admits all values and ends, but only that it prescribes a foundation that is not dependent on any particular values or ends. Cooperative virtues are not inconsistent with this liberalism. The psychological objection fails therefore to appreciate that the deontological view is making an epistemological rather than a psychological claim to neutrality.¹⁹ In understanding this, Sandel's critique ought to be differentiated from other critics, most notable MacIntyre's, which tends to conflate the epistemological and psychological critiques or at least does not adequately distinguish between them in the way that Sandel's does. Sandel instead concentrates his focus on Rawls's epistemological claim arguing that his Kantian conception of autonomy as a being that freely chooses his own ends slips into a metaphysics where it is held that it is possible to define a self independently of all the ends that he may possess. Sandel questions whether it is possible to determine the identity of a human self through reference to its capacity for agency alone. He argues that identity also encompasses the actuality of a person's choices in which individuals weave their life plans into a coherent narrative which shapes their conception of

themselves. Thus, as Benhabib, concurring with Sandel says, “the conception of selves who can be individuated prior to their moral ends is incoherent. We could not know if such a being was a human self, an angel or the Holy Spirit.”²⁰

Renouncing Kantian Metaphysics

Much of the ferment generated by the liberal-communitarian debate originated from the attempt by liberals to respond to this Sandelian critique of the Kantian conception of the person. This conception of the self allegedly presupposed an unencumbered self in which the values and ends espoused by individuals were chosen voluntarily rather than being constitutive of one’s identity. What was of particular interest was how Rawls himself would respond. As Sandel notes, Rawls had two options open to him. He could either defend the priority of the right over the good by reaffirming the Kantian conception of the person or he could detach it from the Kantian conception of the person altogether.²¹ In subsequent articles which culminated in the publication of *Political Liberalism*, Rawls unequivocally took the latter course. Rather than focusing on the debates which were prominent at the time Rawls wrote *A Theory of Justice*, namely, utility versus rights and libertarian versus egalitarian conceptions of distributive justice, he instead focused his attention on the issues prompted by the third wave of debate inaugurated by communitarian critics of liberalism. In particular, he aimed to show that contrary to the Communitarian critique, liberalism as he conceives it can be defended without presupposing any controversial conception of the person at all. Rawls now claimed that the case for liberalism was political rather than metaphysical and thus, the priority of the right over the good could be defended by the fact that in liberal democracies, reasonable people cannot be expected to converge on any particular conception of the good. As

people will always subscribe to incommensurable religious and philosophical worldviews, it is pointless to try and obtain agreement as to which one embodies the truth and preferable to try and seek agreement on principles of justice instead which can be disaggregated from any particular conception of the good.²²

As political liberalism does not depend for its justification on any one of these moral or religious conceptions, it is presented as a “freestanding” view which “applies the principle of toleration to philosophy itself”.²³ It is imperative on this account to isolate the political from the non-political sphere in order for the distinction between the political conception of justice and comprehensive conceptions of the good to be sustained. Rather than drawing upon doctrinal claims, his political liberalism is founded on ideas ‘implicit in the public political culture of democratic society’.²⁴ Rawls’s revised political conception of justice has produced an even more voluminous literature than even *A Theory of Justice*. Post-modern liberals such as Richard Rorty praised Rawls for jettisoning metaphysical notions such as the nature of selfhood and attributed to him the Deweyan view that liberal theory could dispense with philosophy and derive its normative substance instead with reference solely to the disciplines of history and sociology. Indeed, Rorty even claimed that it was misleading to think of Rawls’s view as ‘right-based’ as opposed to ‘goal-based’. As the notion of ‘basis’ was not at issue, only the extent to which he has succeeded in systematising the shared understandings of modern societies, his theoretical approach was actually closer to Walzer’s than Dworkin’s.²⁵

Other political theorists agreed with Rorty that Rawls’s later work represented a retreat from the Kantian universalism of *A Theory of Justice*, but regarded this as an

occasion for regret rather than rejoicing.²⁶ *A Theory of Justice* had acquired such acclaim because it appeared to resuscitate the tradition of ethical and political reflection embodied in the works of thinkers such as Aristotle, Hobbes and Kant which had lain dormant for many decades due to the influence of logical positivism. Now, Rawls in recasting his theory of justice had seemed to abandon the attempt to provide a morally compelling universal theory and substituted for it the inherently conservative aim of showing that liberal ideals were in conformity with our current social understandings. Thus, Rawls had reduced the justificatory task to the practical one of discovering an ‘overlapping consensus’. Rawls thus agreed with the communitarians that elucidating ideas of justice is a form of social and historical phenomenology rather than the positing of a noumenal realm. This enabled liberals to trump communitarians at their own game by arguing that they better reflected current communal practices than they did.

Indeed, not only had liberals trumped communitarians at their own game. They also seemed to have turned the tables on them by showing that it was in fact they who were wedded to abstract, ahistorical conceptions of human nature which were divorced from the communities in which individuals lived their everyday lives. Theorists such as Sandel and MacIntyre, while disputing the Kantian notion of the person still believed that normative philosophy could not do without a theory of the moral subject that was non-contingent.²⁷ While communitarians eschewed liberalism’s rationalist epistemology, they were wedded to an empirical realism which required the same degree of generalization from concrete reality as the liberal mode of abstraction. In addition to its critique of Rawls for example, *Liberalism and the Limits of Justice* posited “an empirical reality independent of our understanding,

conditions of our existence that hold regardless of whether we recognise them” such as the constitutive nature of our communities.²⁸ The problem with this position is that it risks the accusation that the ideal community of communitarian theorists is as much of a cipher as the disembodied Kantian subject which they excoriate, ignoring the reality of conflict, hierarchy and exclusion implicit in real communities. This accusation is buttressed by the fact that whereas liberals’ conception of the political sphere is formal in that it represents the mechanism for the application of individual rights, communitarians’ conception of the political sphere is formless in that it is never theorised.²⁹

The publication of *Democracy’s Discontent*, Sandel’s second major work has often been perceived as a response to this criticism. In the same way that *A Theory of Justice* tried to justify a deontological theory without transcending an empirical foundation, so *Liberalism and the Limits of Justice* called for historical reflection while proceeding by philosophical abstraction. Thus, in both works, the philosophical presuppositions of the authors stifled their normative projects. In *Democracy’s Discontent*, Sandel appears to jettison his earlier empirical realism substituting historical inquiry for logical analysis. This has even led one theorist to conclude that Sandel has repudiated philosophy as the foundation of political theory.³⁰ While he still wishes to challenge contemporary liberalism, his emphasis has switched from a philosophical critique to one showing that contrary to the claims of modern liberals, notions of individual rights defined in a negative sense are not exhaustive of America’s shared understandings.

The apparent discrediting of foundationalism in favour of contextualism is not confined to political theory. Nearly thirty years ago, Thomas Kuhn stunned the scientific community when he explained scientific revolutions in terms of paradigm shifts rather than a progressive accumulation of knowledge.³¹ Thinkers across diverse disciplines started to speak in terms of historicity rather than progress, undecidability rather than certainty, thick description rather than explanation, and of common forms rather than universals. Thus, an erstwhile Kantian like Rawls could converge with a former Marxist such as MacIntyre in rejecting universal truths.³² The question which needs to be addressed now is to what extent this transformation was genuine. It is the contention of this thesis that at least in relation to Rawls and Sandel, their apparent shift away from foundationalism has been exaggerated. Both theorists are torn by the tensions between their commitment to substantive philosophical ideals (political liberalism in the case of the former, civic republicanism in the latter) on the one hand and a commitment to cultural diversity on the other. Furthermore, because they also believe that the latter can either be assimilated to or at least coexist with the former, they tend to underestimate the challenge which radical pluralism poses to their theories.

In order to understand these tensions, it is necessary to elucidate a conflict which has become particularly prominent in the liberal tradition although as I will show it also impacts upon communitarianism as well. This is the debate over whether autonomy or diversity should serve as liberalism's normative guiding principle. This debate is of more fundamental importance to current philosophical concerns than the one between political and comprehensive liberalism or indeed between foundationalism and historicism. In particular, the necessity of having to come

down on the side of autonomy or diversity or finding a way of synthesising the two values illustrates the impossibility of abstaining from making substantive judgements as Sandel's capacious republicanism and Rawls's political liberalism in their different ways attempt to do.

Two Conceptions of Liberalism

A common assumption which has underpinned the liberal philosophical tradition since its inception is the possibility of reconciling autonomy and diversity within a single theoretical framework, a belief which extends from the classical liberals through to Rawls (in both his earlier and later work). This assumption has become increasingly tenuous in recent years as especially in relation to multiculturalism and religion, it has become commonplace for liberal theorists to prioritise one over the other. Thus, one group of liberal thinkers which includes theorists such as Amy Gutmann, Stephen Macedo, Susan Moller Okin, Don Herzog and Will Kymlicka have argued that the central liberal commitment is to promote autonomy.³³ For example, Herzog says, "Parents need to teach their children to be critical thinkers...Children taught the skills of questioning their own commitments are better off. They can sculpt their own identities".³⁴ Defenders of another kind of liberalism articulated by thinkers such as Chandran Kukathas, William Galston and John Gray have argued that the central liberal commitment is to protect cultural diversity.³⁵

The debate has crystallised around the question of whether the state should tolerate or even respect the right of internal groups to diminish the individual autonomy of their members and preclude them from reconsidering and revising their beliefs. On

one side of the debate the liberal feminist Susan Moller Okin has argued that the maintenance of cultural and religious minorities means tolerating patriarchal traditions which are anathema to women's freedom. At the other extreme, Kukathas has outlined a version of liberalism defined purely in terms of toleration and freedom of association in which cultural and religious groups are insulated from state intrusion even if their traditions and practices are violent.³⁶ Therefore, one strand of liberalism sees the state as an essential means for safeguarding liberty against sectarian communities whereas the other regards those communities as the arenas in which liberty is nurtured. This debate between autonomy and diversity is not simply a product of contemporary theory but is integral to the historic development of liberalism although it has often been obscured by the contrast between libertarian and welfare liberalism or negative and positive liberty and more recently by the dispute between political and comprehensive liberalism. As Jacob Levy correctly states, the distinction between autonomy and diversity does not correlate with the distinction between Berlin's two concepts of liberty. Rather, it is a difference of understanding over what constitutes the principal threat to negative liberty which for both sides remains integral to the liberal tradition.³⁷ Those theorists who emphasise diversity see the centralised state as the principal threat to individual freedom whereas the proponents of autonomy are concerned to avoid thick religious and cultural communities circumscribing the freedom of their members. This dispute is not only of a philosophical nature but also one with important social-institutional elements for it concerns the extent and normative importance attached to the political community in a liberal social order.

Comprehensive or 'Civic' liberals such as Stephen Macedo argue that the state has the right to inculcate in citizens the civic virtues requisite to the sustenance of a liberal democratic polity. Macedo concurs with communitarians that liberal regimes no less than other regimes depend on citizens possessing the appropriate civic virtues. He thus assigns an important role to the political community in socialising individuals into conformity with liberal convictions. Diversity liberals reject the political community being given such an overarching role. They argue that by circumscribing freedom of association in this way crucial aspects of human existence are rendered subordinate to the civic sphere. Thus, contemporary liberals such as Macedo repeat the errors of civic totalism which liberalism was meant to correct. Irrespective of which side one thinks has got the better of this debate it should be clear how it transcends the conventional liberal-communitarian categories. Both sides can be described as communitarian although they differ greatly over which communities should be prioritised (the political community in the case of one, local communities in the case of the other). Both sides also advance comprehensive theories, which reject the possibility of state neutrality and affirm instead competing theories of the good. Thus, civic liberals such as Stephen Macedo affirm an Enlightenment monism while diversity liberals articulate a notion of tolerance which in the case of Galston and Gray at least, is underpinned by a substantive commitment to value pluralism.³⁸

At first sight it may seem that Rawlsian liberalism is closer to the latter position than the former. Rawls's recognition of the existence of irreducible pluralism in the non-public sphere means that he rejects the idea of the political community as an architectonic association. As Chapter Three will show, in the third and relatively

neglected part of *A Theory of Justice*, Rawls argued that his principles of justice could be made congruent with our private worldviews through employing a moral psychology similar to that of Lawrence Kohlberg's. It was Rawls's recognition that such a view presupposed a comprehensive conception of the good that led him to write *Political Liberalism* where he attempted to defend his principles of justice without appealing to a comprehensive conception of autonomy.³⁹ Nonetheless, his continuing commitment to a normative monism leads him to prioritise the political community within which all other communities are subsumed. This is further buttressed by an advocacy of a conception of autonomy (although he now defines it as solely political) and an insistence on the importance of political stability consistent with his previous work. There remains a stress on the need to constitute diversity in order to ensure the social reproduction of liberal citizens which draws him back into the arms of Enlightenment liberalism. His conceptual aim of forging an ideal of political liberalism as a free-standing doctrine while retaining its monistic determinacy cannot be reconciled.

The debate over whether political theory should favour a conception of autonomy or one of toleration is not confined to the liberal tradition. It is also one which affects the communitarian tradition although it is much more implicit. This is because while communitarians are very eloquent in attacking the priority of the right over the good, they are much vaguer over which conception of the good ought to be proffered instead. Pursuant to this, communitarians are just as divided or just as ambivalent as to the status which ought to be attached to the political community as liberals are. Whereas MacIntyre clearly rejected the political community as a locus for conceiving an alternative to liberalism, Sandel is much more ambivalent. The

reason for this ambivalence can be adduced to his oscillation between a republican conception of autonomy which privileges the political community over other communities and the notion of an encumbered self which takes root in constitutive communities which may or may not value civic attachments. In the end, Sandel seems to come down on the side of the former. As Thomas Hurka states, communitarians tend to conflate the perfectionist thesis that the state may legitimately pursue objective human goods with the relativist thesis that what is good in a community may be determined by its own traditions and values.⁴⁰ In his recent work, Sandel is at pains to disentangle these two conflicting notions of the good over the right and affirm only the former thesis thus differentiating his position from Walzer with whom he is often associated.⁴¹ This attempt at a clarification of his normative alternative to liberalism however is problematic for two principal reasons. Firstly, there is his ongoing reluctance to acknowledge the extent to which this position also commits him to the need to abstract from and revise peoples' particular ends in the way that he has accused liberals of doing. Secondly, as Chapter Two will show, Sandel is extremely vague about which objective theory of the good should be installed as an alternative to liberalism. This vagueness is not simply an idiosyncratic defect in Sandel's project but is testament to the wider ambiguity in communitarian thought over whether it wishes to reconceptualise liberalism on teleological grounds or offer a substantive alternative to the liberal tradition altogether.

Beyond the Autonomy-Toleration Debate: Habermas's Discourse Ethics

While it can be argued that conceptualising much of contemporary political theory as one best explained by the conflict between the competing goods of autonomy and

toleration, it still leaves unaddressed the question over which side of the debate has got the better of the argument. This thesis will defend the claim that both autonomy and tolerance are integral components of the liberal tradition and thus both sides are wrong to try and define each other out of the debate. In order to try and find a normative theory which will better synthesise these two aspects of liberal philosophy I will, in the final part of the thesis, interrogate the body of ideas encompassed within communicative ethics which receives its most influential exposition in the work of Jurgen Habermas. Habermas's discourse theory of morality has been perceived by many commentators as a welcome corrective to the defective metaphysics which characterises both the liberal and communitarian positions- atomism in the case of the former, holism in the case of the latter. More specifically, Habermasians have argued that the fundamental achievement of discourse theory has been to transcend the foundationalism- anti-foundationalism dichotomy which continues to enmesh thinkers in both the liberal and communitarian schools of thought. In contrast, the seeming virtue of communicative ethics is its apparent ability to foster a non-foundationalist and pluralistic understanding of political discourse while simultaneously redeeming a universalist, cognitivist and formalistic conception of justice.⁴²

Habermas employs a transcendental-pragmatic mode of justification to accomplish this feat by arguing that practical discourse contains within itself certain operative presuppositions which have normative content. Thus, according to Habermas, as soon as anyone enters into argumentation they already accept certain normative rules of discourse which they cannot eschew without lapsing into performative contradiction. Consonant with this attempt to ground a principle of universalisation

on the basis of propositions embedded within the rules of argumentation is a refashioning of Kant's categorical imperative. Following Kant, Habermas continues to sharply differentiate between beliefs and values which are universalisable and those which are particular with only the former retaining moral legitimacy. However, his position is distinctive in that it replaces the Kantian model of solitary moral consciousness with a 'dialogical' model in which questions of social justice rather than being redeemed a priori are instead subject to appraisal in public discourse. Discourse theory is thus distinguished from conventional reformulations of Kantian liberalism such as Rawls's, in that rights are not derived a priori from a monological procedure such as the original position. Instead, they attain legitimation by reference to actual dialogic processes conducted within the public sphere, processes which themselves contain a normative commitment to human rights. By this seemingly circular reasoning, it would appear that Habermas has resolved the controversies which bedevil modern political thought such as the perceived conflict between individual rights and popular sovereignty more successfully than two of the other options canvassed in this thesis; Namely, Sandel's pluralistic republicanism and Rawls's political liberalism.

The selection of Habermas's communicative ethics as a more plausible candidate for adoption by pluralistic, post-metaphysical societies than either Kantian liberalism or communitarianism is one that will be greeted with scepticism by a variety of conflicting schools of thought. Most of these criticisms focus on his continuing belief in the possibility of salvaging the legacy of the Enlightenment without presupposing metaphysical foundations. These criticisms have been aimed from two different directions. On one side, post-modern and value-pluralistic critics

such as Stanley Fish and John Gray have castigated his position as representing a rationalist flight into utopia.⁴³ Fish in particular has argued that Habermas's faith in the consensual powers of human reason as a basis for the legitimation of moral norms does little more than reproduce the prior Enlightenment bias for excluding difference and particularity from the public sphere. From Fish's perspective, Habermas's discourse ethics is disabled in a similar fashion to classical liberal conceptions of morality by its erroneous insistence that citizens can divorce themselves from concrete conceptions of the good in order to critically reflect upon them from an impartial perspective.⁴⁴ As an uncompromising social constructionist, Fish claims that this is an impossible feat to perform. Habermas's position has also been assailed from within the liberal tradition by both the autonomy and diversity promoting liberals discussed above. Liberal proponents of a substantive conception of autonomy have taken issue with Habermas's view that it is possible to redeem a universalist notion of morality while simultaneously eschewing metaphysical foundations.⁴⁵ They argue that his attempt to dissolve normative hierarchies in which political discourse is beholden and therefore shaped by antecedent moral norms cannot be achieved. From their perspective, Habermas's own theory of intersubjective recognition requires a prior substantive, foundational commitment to liberal principles of rightness which shapes the form which democratic deliberation takes. Therefore, in the eyes of autonomy-promoting liberals, it is erroneous to believe that the Enlightenment project with its commitment to moral ideals such as critical rationality and the fallibility of worldviews can be reduced to collective self-rule as Habermas argues. Rather, not only are the moral ideals which inform the Enlightenment project and collective self-rule conceptually distinct, but the latter,

when still attached to particular worldviews which resist sublimation into universal modes of discourse, may even undermine the former.

A similar argument has been pushed from the opposite direction by diversity promoting liberals. Their fear, most clearly articulated by William Galston, is that Habermas's discourse theory represents a paradigmatic example of a prevalent view amongst political theorists that tacitly views public institutions as plenipotentiary and thus assigns to the political sphere a general authority over subordinate associations.⁴⁶ Galston calls this 'civic totalism'.⁴⁷ Galston would acknowledge that the species of civic totalism embodied by Habermas's communicative ethics should be differentiated from those adumbrated by Aristotle, Rousseau and Hobbes, all three of which are underpinned by a comprehensive conception of what is required for human flourishing.⁴⁸ However, it shares in practice with them a belief in the ultimate primacy of politics. Furthermore, by affirming the view that the only limits on democratic power are the requisites of democracy itself, Habermas, is in effect, drawn away from limited government- which views rights as a bulwark against political authority- towards civic totalism whereby rights are subjected to public scrutiny. Thus, both autonomy and diversity promoting liberals, despite their conflicting metaphysical foundations, are united in condemning Habermas's attempt to reduce liberalism to democracy, which he calls the co-originality thesis, affirming instead that liberal principles must be securely anchored on substantive foundations of some kind.

In this thesis, it will be argued that the postmodernist critique, at least in the form articulated by Stanley Fish, against Habermas's communicative ethics fails. Fish's

argument that Habermas's distinction between ethical norms that are universalisable and those which are parochial cannot succeed because all norms lack objective status, is flawed. It is perfectly possible to distinguish between post-conventional modes of moral reasoning, i.e. modes of reasoning that require individuals to subject their own worldviews to critical reflection and conventional moralities which abjure such comprehensive reflexivity. Fish's failure to acknowledge this can be adduced to the fact that his starting premise, anti-foundationalism, is in itself neutral between competing worldviews such as secular rationalism and religious fundamentalism as it regards both as articles of faith, neither one any more true than the other. By adopting the same neutralist standpoint that he castigates liberals for, he cannot differentiate between comprehensive moralities which assume a reflexive position and those which cannot.

At the same time, however, it has to be recognised that responding to Fish's critique in this way also serves to validate the concerns outlined above by autonomy and diversity promoting liberals as to the impossibility of liberalism (in this case, in the form of Habermas's discourse theory) assuming a neutral position in relation to metaphysical worldviews. In order for discourse theory to succeed even at a conceptual level, it requires for its operation, prior substantive commitments such as for example, universal moral respect and egalitarian reciprocity. This, of course would appear to legitimate the concerns of diversity promoting liberals who would point out that even liberal societies are suffused with illiberal communities which would resist subjecting their norms to external critique and would further argue that asking them to do so when they represent no threat to the wider liberal society is in itself a betrayal of the key liberal norm of toleration. It will be argued that

Habermas's failure to account for this fact due to his view that the ascent to modernity has rendered metaphysical worldviews obsolescent is a major defect in his theory. Furthermore, this defect cannot be remedied as Benhabib argues, by simply jettisoning Habermas's rationalist epistemology, for it still leaves intact a commitment to a secular, universalist and reflexive culture which will disadvantage traditionalist conceptions of the good.⁴⁹

Liberalism in an Age of Globalisation

Sandel's republicanism, Rawls's political liberalism and Habermas's discourse ethics all represent distinctive efforts to move beyond the liberal-communitarian debate by proffering rival political theories which each claims is best equipped to deal with the complexity of post-modern societies. It is therefore striking to note that all three attempts are hamstrung by the same theoretical and empirical defects. To take two examples that will be explored at some length in this thesis; Firstly, all three theorists are overly sanguine about the possibility of rendering religious conceptions of the good compatible with their preferred philosophical worldviews. They assume too easily that religious belief systems can be harmonised with their understanding of the form which public discourse should take in post-modern societies, whether that discourse be republican, liberal or democratic. Secondly and in part related to this, all three theorists tend to assume that the onset of modernity has been coupled with the hegemony of the liberal political tradition and thereby underestimate both the extent to which liberalism has engaged the public sphere not as a hegemonic ideology but rather as an intellectual competitor which has both confronted and been shaped by alternative ideological worldviews. The failure to recognise this has led Sandel, along with other communitarians, to attribute to

liberalism sins which it has not committed and made both Rawls and Habermas complacent about the prospects of retrieving a normative consensus on Kantian liberal principles without the supporting edifice of Kantian foundations.

Value pluralists such as John Gray have interpreted the failure of the liberal and communitarian traditions to achieve a rational normative consensus on Kantian principles of justice or a unified conception of the common good in a way which adequately addresses the degree of pluralism embedded within post-modern societies as a reason for dispensing with the Enlightenment project altogether.⁵⁰ Rather than trying to retrieve the metaphysical foundations which previously sustained the Enlightenment project prior to the attempts by Rawls and Habermas to relocate it on non-metaphysical grounds, we should simply acknowledge that the ineradicable existence of competing agonistic identities renders redundant all universal metanarratives including that of Enlightenment liberalism. On this view, neither liberal nor communitarian modes of thought have adequately incorporated into their philosophies the insights of late modern value-pluralism because liberal individualist and communitarian conceptions of the human subject converge in a blindness to the reality of moral conflict. It will be argued that Gray is correct to castigate theorists such as Rawls and Habermas for being overly optimistic in thinking that their neutered versions of the Kantian project can be made synonymous with the cultural evolution of late-modern societies.

Gray is however, far too pessimistic about the prospects for salvaging Kantian liberalism in the twenty-first century which can be partly attributed to his failure to recognise the extent to which value pluralism not only pertains to moral conflicts

between incommensurable moral worldviews but also to conflicts *within* these worldviews. As the last chapter will demonstrate, an intriguing example of a comprehensive doctrine harbouring divergent ethical beliefs is that of modern Catholicism. One principal reason to account for this ethical diversity is the influence which Kantian liberalism has come to exert in the evolution of Catholic thought as evidenced for example in its embrace of the value of religious freedom and its restrictive understanding of just war theory. In regard to the latter instance, The Catholic Church's migration towards a *de facto* pacifism most clearly embodied in its opposition to the Iraq war is a particularly powerful demonstration of the extent to which the Enlightenment project, notwithstanding communitarian, post-modernist and value pluralist criticisms to the contrary, remains more relevant than ever to the era of late modernity.

Conclusion

This thesis will conclude that, for all their apparent differences, Sandel's civic republicanism, Rawls's political liberalism and Habermas's communicative ethics are all characterised by the same basic failing. This can be described as their inability to comprehend the extent to which the existence of reasonable pluralism in post-Enlightenment societies challenge not only the likely practical success, but also, more importantly, the philosophical coherence of their respective political theories. All three political theories privilege a civic conception of autonomy which translates into a very expansive notion of the public sphere to the detriment of the concrete and the particular. This results in the vitiation of one of the alleged virtues of all three theoretical conceptions: Namely, their greater ability to accommodate cultural diversity than comprehensive liberalism. This may not be immediately

apparent in the case of Rawls's and Habermas's political thought because they claim that their versions of liberal theory differ from comprehensive liberalism in extricating public reason from reliance on any sectarian comprehensive doctrine. In contrast, it will be argued in this thesis that they both surreptitiously smuggle epistemological and metaphysical assumptions into their conceptions of public reason, assumptions which manifest themselves in a democratic totalism which accords lexical priority to the political over the non-political sphere.

The substantive nature of Rawls and Habermas's projects is often disguised by their apparent conviction that the normative substance of political liberalism is consistent with the historical evolution of late modern societies towards a post-metaphysical standpoint. This argument not only negates the ideological competition which liberalism as a political doctrine continues to encounter within even Western societies. It also fails to acknowledge the existence of competing conceptions of liberalism, conceptions that manifest themselves in divergent understandings of the relationship between the public and non-public spheres. The civic conceptions of liberalism embraced by all three thinkers canvassed in this thesis (including Sandel's liberal republicanism) greatly overestimate the possibility of ideological consensus within the public sphere. In addition, they are also equally defective in their insensitivity to the level of intrusion that they permit within the background culture of civil society. It will be argued however, that the remedy to this civic totalism embodied within all three thinkers' projects can be located within the liberal tradition itself. One can appreciate the many insights which the postmodernist and value pluralist critiques of contemporary liberalism have yielded in recent years, most notably, its scrutiny of the perceived Enlightenment monism which continues

to animate contemporary proponents of liberalism. However, its wholesale rejection of the notion of public reason is not to be recommended. While the conceptions of public reason adumbrated by Rawls, Habermas and Sandel are indeed defective in that they posit an abstract political realm in which conflicts between comprehensive doctrines can be either transcended or resolved, post-modernist and value-pluralist critics make the opposite error. Their agonistic conception of the public sphere presupposes the existence of conflicting ideological vocabularies thus yielding an understanding of politics as one characterised by radical indeterminacy. However, replacing a unitary ideal of public reason with a conception of the political which negates public reason altogether is no solution to confronting the problem of crafting a normative framework which respects the existence of reasonable pluralism. A more fruitful alternative would be to limit the scope of the public sphere a priori by imposing the extrinsic constraints supplied by a substantive ideal of negative liberty. While such a stance would fatally undermine Rawls's and Habermas's attempts to reconcile liberalism with democracy on a philosophical plane, the more capacious notion of the public sphere which would result, is more faithful to liberalism's aspiration to reconcile the Enlightenment project with the ineradicable existence of cultural diversity.

Introduction Endnotes

¹ Michael J Sandel, *Liberalism and the Limits of Justice*, (Harvard University Press, 1982), Alasdair MacIntyre, *After Virtue*, (2nd edn, University of Notre Dame Press, 1984), Charles Taylor, *Sources of the Self*, (Harvard University Press, 1989), Michael Walzer, *Spheres of Justice*, (Basic Books, 1983).

² Benjamin Barber, *Strong Democracy*, (University of California Press, 1984). The last theorist is not always included in the list of prominent communitarians possibly because in contrast to the others he attempts to expunge political theory of metaphysics altogether whereas the others do not. However, I have included him here because his work contains some of the most eloquent criticisms of modern liberalism advanced from a communitarian perspective

³ John Rawls, *A Theory of Justice*, (Harvard University Press, 1971), Robert Nozick, *Anarchy, State and Utopia*, (Basic books, 1974).

⁴ John Rawls, *A Theory of Justice*, pp3-4

⁵ John Stuart Mill, *Utilitarianism, On Liberty and Considerations On Representative Government*, (Everyman's Library, J.M Dent London, 1993), p66

⁶ Sandel has perceptively argued that Mill's position can be understood as one whereby he affirms deontology in the moral sense in which individual rights are accorded moral priority while rejecting it in its foundational sense. Whereas Kant embraced the full deontological ethic which accorded not just moral priority to justice but also foundational priority, Mill argued for both the possibility and desirability of detaching the two. See Michael Sandel, *Liberalism and the Limits of Justice*, p3

⁷ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, (trans. H.J. Paton, New York, 1956), p105.

⁸ The conceptual affinity between Rawls and Nozick in respect to their attitudes towards utilitarianism can be seen by comparing the following two quotes; "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override...The rights secured by justice are not subject to political bargaining or to the calculus of social interests", Rawls, *A Theory of Justice*, pp3-4. There is no *social entity* with a good that undergoes some sacrifice for its own good. There are only individual people...with their own individual lives. Using one of these people for the benefit of others, uses him and benefits others", Robert Nozick, *Anarchy, State and Utopia*, pp32-33.

⁹ John Rawls, *A Theory of Justice*, p560.

¹⁰ Douglas Rasmussen, "Liberalism versus Community"? *Acton Institute for the Study of Religious Liberty*, vol 9, no.1, (January and February 1999). Accessed at www.acton.org.

¹¹ Michael Sandel, "Review of Political Liberalism", *Harvard Law Review*, May 1994, pp1767-1769.

¹² Benjamin Barber, *Strong Democracy*, pp1-115.

¹³ Benjamin Barber, *Strong Democracy*, p115.

¹⁴ Arthur Lovejoy, cited in Barber, *Strong Democracy*, p31

¹⁵ *ibid.*, p55.

¹⁶ Alasdair MacIntyre, *After Virtue*, pp250-251

¹⁷ Michael Sandel, *Liberalism and the Limits of Justice*, p10

¹⁸ *ibid.*, p11

¹⁹ *ibid.*, pp10, see also p61

²⁰ Seyla Benhabib, *Situating the Self*, p162

²¹ Michael Sandel, "Review of Political Liberalism", p1770

²² John Rawls, *Political Liberalism*, p175

²³ *ibid.*, p10

²⁴ *ibid.*, p135

²⁵ Richard Rorty, "The Priority of Democracy to Philosophy", in *Objectivity, Relativism and Truth*, (Cambridge: Cambridge University Press, 1991), pp175-186, p178

²⁶ See for example Phillip Petit and Chandran Kukathas, *Rawls: A Theory of Justice and its Critics*, (Stanford: Stanford University Press, 1990).

²⁷ See for example, Richard Rorty, "The Priority of Democracy to Philosophy", p178

²⁸ Amy McCreedy, "The Limits of Logic, A Critique of Sandel's Philosophical Anthropology", *Philosophy and Social Criticism*, vol 25, no.4, (July 1999), pp81-102, p81

²⁹ J. R. Wallach, "Liberals, Communitarians and the Tasks of Political Theory", *Political Theory*, vol.15, no.1, (November 1987), pp587-611

³⁰ Amy McCreedy, "The Limits of Logic", p83

³¹ Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago: Chicago University Press, 1997).

³² James T Kloppenberg, *The Virtues of Liberalism*, (Oxford University Press, 1998), p38

³³ Amy Gutmann, "Civic Education and Social Diversity", *Ethics*, vol. 105, no.3 (April 1995), pp557-579, Stephen Macedo, *Liberal Virtues: Citizenship, Virtue and Community in Liberal Constitutionalism* (Oxford: Clarendon Press, 1990), Susan Moller Okin, "Is Multiculturalism bad for Women", in Cohen, Joshua; Howard, Matthew; and Nussbaum, Martha C. eds. *Is Multiculturalism Bad for Women?* (Princeton, N.J.:Princeton University Press, 1999). Don Herzog, *Happy Slaves: A Critique of Consent Theory*, (Chicago: University of Chicago Press, 1989), Will Kymlicka, *Liberalism, Community and Culture*, (Oxford: Oxford University Press, 1989).

³⁴ Don Herzog, *Happy Slaves*, p242.

³⁵ Chandran Kukathas, "Liberalism, Communitarianism and Political Community", *Social Philosophy and Policy*, vol 13, no.1, (1996), pp80-105, "Two Constructions of Libertarianism", *Hayek Memorial Lecture*, Austrian Scholars Conference, Auburn University, 31 March 2001, William Galston, "Two Concepts of Liberalism", *Ethics*, vol 105, no.3, (April 1995), pp516-534, "Value Pluralism and Political Liberalism", *The Institute for Philosophy and Public Policy*, vol.16, no.2, (Spring 1996), John Gray, "Pluralism and Toleration in Contemporary Political Philosophy", *Political Studies*, vol 48, no.2 (June 2000), pp323-333

³⁶ Susan Moller Okin, "Is Multiculturalism bad for Women"? Chandran Kukathas, *The Liberal Archipelago*, (Oxford University Press, 2003).

³⁷ Jacob T Levy, "Liberalisms and Liberal Freedoms: The Significance and Permanence of the Autonomy-Toleration debate", *Presentation*, May 6 2001. Accessed at www.

³⁸ See for example, Stephen Macedo, *Diversity and Distrust*, (Harvard: Harvard University Press, 2000), William Galston, *Liberal Pluralism*, (Cambridge: Cambridge University Press, 2002), John Gray, *Two Faces of Liberalism*, (New Press, 2000).

³⁹ John Rawls, *Political Liberalism*, p34

⁴⁰ Thomas Hurka, "Review of George Sher, *Beyond Neutrality: Perfectionism and Politics*" (Cambridge: Cambridge University Press, 1997), in *Ethics*, vol.109, no.1, (Oct 1998), pp187-190

⁴¹ Michael Sandel, "Review of Political Liberalism", pp1766-1767, see also Michael Sandel, *Liberalism and the Limits of Justice*, ppix-xi

⁴² This is the project pursued by Seyla Benhabib in *Situating the Self*.

⁴³ Stanley Fish, "Review of Shane O'Neill's *Impartiality in Context: Grounding Justice in a Pluralist World*", (Albany, N.Y. State University of New York Press, 1997) in *Jurist*, vol.1, no.7 (Oct 1998). John Gray, *Enlightenment's Wake*, (London: Routledge, 1995), p125

⁴⁴ Stanley Fish, *ibid.* ,

⁴⁵ See for example, Charles Larmore, "The Moral Basis of Political Liberalism", *Journal of Philosophy*, vol.26, no.12, (Dec 1999), pp599-625

⁴⁶ William Galston, *The Practice of Liberal Pluralism*, (Cambridge: Cambridge University Press, 2005), p26

⁴⁷ *ibid.*, p24

⁴⁸ *ibid.*, pp24-25

⁴⁹ Seyla Benhabib, *Situating the Self*, pp49-51

⁵⁰ See for example, John Gray, "Pluralism and Toleration in Contemporary Political Philosophy", pp327-328

CHAPTER ONE: SANDEL'S ELUSIVE CIVIC REPUBLICANISM

Introduction

In the 1980s, Michael Sandel published *Liberalism and the Limits of Justice* which, by virtue of its penetrating analysis led to his establishment as one of the most important communitarian critics of deontological liberalism.¹ Sandel attempted to engage this species of liberalism, of which he regarded Rawls as its most articulate exponent, at a philosophical level. In particular, he claimed that the philosophical assumptions underpinning deontological liberalism are incoherent and presuppose a defective conception of human nature, both morally and empirically. Sandel made two crucial claims about deontological liberalism which have generated much controversy and provoked a significant amount of defensive reaction amongst liberals. Firstly, he posited the teleological argument that the priority of the right over the good, which lies at the core of the liberal enterprise, is conceptually flawed because justice is relative to the good, not independent of it. More significantly, he advanced the distinctively Communitarian view that the liberal vision of human nature in which man is viewed as an autonomous agent unencumbered by prior moral ties fails to appreciate the importance of constitutive attachments of community in the development of a moral subject. Thus, Sandel claimed that liberal theory was premised on a set of implausible metaphysical views about the nature of the self.

One of the most ironic features of the Liberal-Communitarian debate is that the Communitarian critiques of liberalism, including Sandel's, were soon to be criticised, (especially by theorists who considered themselves anti-foundationalists) for exhibiting the same level of abstraction in their work that they had excoriated

liberal theorists for.² Thus, while Sandel eloquently attacked the disembodied Kantian self that he believed underpinned the liberal enterprise; his own conception of the moral subject was arrived at through philosophical reflection rather than through grounding normative theory in concrete empirical circumstances. As a consequence, Sandel was accused of replacing a disembodied Kantian self with an equally disembodied Communitarian self, an ideal-typical abstraction which had just as little relationship to the actual social and cultural contexts which real humans inhabit. In particular, a charge that became just as prevalent against Communitarian as well as liberal theorists was that they had failed to properly execute the task of *political* philosophy. For example, it was pointed out that the political dimension was as undertheorised in Sandel's writings as it was in Rawls's. As John Wallach notes, "Where liberal theorists offer a constrained view of the political realm, communitarian critics such as MacIntyre and Sandel barely have a view of it at all. What was too formal in Rawls becomes quite formless (for MacIntyre and Sandel)."³

The indeterminacy which characterises the political nature of Sandel's project led to two objections being placed against his theory as it was formulated in *Liberalism and the Limits of Justice*, conventionalism and utopianism. Both of these suspicions can be adduced to the acontextualism and ahistoricism which permeated his conceptual framework. In relation to the first charge, that of conventionalism, Sandel was often criticised for failing to provide an external standard to adjudicate between desirable and undesirable constitutive communities and for not taking sufficient note of the intolerance and exclusivity which characterise many tightly knit communities.⁴ John Gray provides a plausible explanation for this oversight. The problem with all communitarian critics of liberalism is that they invoke a

community that no one has ever lived in. Whereas, real communities are characterised by distinctive hierarchies and bigotries, communitarians presuppose an ideal community divorced of the practices of subordination and exclusion. In other words, noumenal selves have been replaced by noumenal communities.⁵ Thus, Sandel's failure to spell out the political implications of his work has led him to be accused of both communal relativism and abstract universalism.

In many respects, *Democracy's Discontent*, his most recent work, can be seen as an attempt to respond to these criticisms and to clarify the normative implications of the communitarian project at least as far as he perceives it.⁶ Rather than attacking liberalism exclusively from a metaphysical and epistemological angle, he attempts to interweave conceptual analysis with an historical interrogation of the political culture of the United States over the past three centuries with the purpose of demonstrating how the philosophical defects of Rawlsian liberalism which he delineated in *Liberalism and the Limits of Justice* are responsible for the malaise which he believes currently afflicts public life in the United States, principally, a sense of "loss of self-government and an "erosion of community."⁷ Sandel claims that the notion of the unencumbered self which animates contemporary liberalism and has acquired the status of being the hegemonic public philosophy in American culture is particularly ill-equipped to address these discontents. He concludes that we ought to embrace civic republicanism as an alternative. For Sandel, the intellectual resources which this tradition provides—a public philosophy that eschews conceptions of ourselves as rational, atomistic agents and instead yields a conception of freedom and personhood which emphasises the importance of communal attachments and participation in democratic self-governance—are

necessary ingredients for repairing badly flawed American political institutions. The greater part of *Democracy's Discontent* is dominated not by an abstract analysis of philosophic texts, but rather by an analysis of judicial opinions, political speeches, etc thus illustrating the centrality of republican citizenship to American history. The purpose of this exercise is at least in part to show that far from exhausting America's shared understandings, the current pervasiveness of liberalism is in fact a fairly recent and pernicious development.

It can be argued that one reason why *Democracy's Discontent* has been greeted favourably in so many quarters on both the left and the right is that it attempts to address a theme prominent in social theory since Max Weber. This is what Tom Hoffman describes as the paradoxical predicament of the modern individual who despite his extrication from traditional theological and philosophical belief systems remains as unfree as ever. He is oppressed by the very social structures which liberated him from traditional institutions, the bureaucratic state and the market. As these institutions owe their existence to the public philosophy of contemporary liberalism, Sandel argues that it is essential to jettison this philosophy and retrieve a richer conception of liberty which embodies the needs of individuals for community and collective self-government.⁸ Sandel's thesis can thus be construed as positing civic republicanism as a normative response to this resurgence of Weberian despair within the specific context of American consumerist society. This chapter will argue that unfortunately, civic republicanism, at least as Sandel develops it, is wholly ill-suited to this task. The substance of Sandel's position is beset with numerous problems, both theoretical and empirical.

Perhaps the most significant problem pertaining to Sandel's thesis is the sharp dichotomy which he posits between civic republicanism and liberal voluntarism and the way in which he depicts these alternatives as exhaustive of the conceptual possibilities open to citizens attempting to confront the social and economic ills facing modern liberal democracies. Sandel's earlier work posited a contentious dualism between unencumbered and radically encumbered selves. Rather than relaxing this dichotomy, *Democracy's Discontent* if anything sharpens it. He uncritically attributes the former notion to procedural liberalism and the latter to civic republicanism. At no point does he adequately engage the arguments proffered by many liberals in reaction to his former book with the aim of demonstrating that liberal philosophy does not presuppose the unencumbered self nor is hostile to conceptions of civic virtue and communal identity.⁹ Even more pertinently, Sandel's own account of civic republicanism is greatly lacking in detail. We receive little clear idea about which civic virtues are most appropriate for the contemporary world. Sandel fails to explain what the substance of the substantive republic ought to be. Furthermore, Sandel does not seem to appreciate that civic republicanism by according principal priority to the virtues of political participation and democratic deliberation may actually threaten constitutive moral identities whose adherence to conceptions of the good such as totalistic religious belief systems may be incompatible with a republican polity which values politics above all else. It will be argued below that this ambiguity is a product of Sandel's oscillation between civic republicanism and sectarian communitarianism.

Sandel's occlusion of the exclusionary aspects of republicanism is also evident in his sanitised account of republican history. As historians such as Rogers Smith and

James Kloppenberg have eloquently articulated, the language of republicanism was often deployed for dubious ideological purposes. These included the perpetuation of gender and racial hierarchies and the legitimisation of imperialist practices, both domestically and abroad.¹⁰ Sandel also ignores the pervasive religiosity which has permeated much of American political discourse and the extent to which it has intertwined with republican themes to legitimise exclusionary civic practices. This chapter will conclude that the limitations which attend Sandel's dichotomy between procedural liberalism and civic republicanism in his account of American history sharply diminish the salience of the normative arguments which Sandel offers for the retrieval of the republican tradition. Indeed, his conceptualisation of the political universe in terms of opposing and incommensurable worldviews fails to adequately comprehend the complexity of the public realm and the extent to which it is enveloped by multiple ideological strands which interact and conflict with one another in such a way as to dissolve the rigid conceptual categories formulated by Sandel. This is not to suggest that the attempt to elucidate a coherent public philosophy is misplaced, as certain postmodernists would claim.¹¹ Only that it cannot be done at the abstract level, which despite superficial appearances to the contrary, Sandel couches his argument

Liberalism and the Limits of Justice and Democracy's Discontent

Sandel's belief that Kantian liberalism is theoretically flawed is the fundamental assumption which unites all his work from *Liberalism and the Limits of Justice* through to *Democracy's Discontent*. However, there are also three important differences between the two books which reflect a change in emphasis between Sandel's earlier and later work. Firstly, as Charles Taylor has pointed out, in

Liberalism and the Limits of Justice, Sandel was largely positing an ontological thesis.¹²

His principal aim was to show how the unencumbered self is a human impossibility. By contrast, in *Democracy's Discontent*, he is primarily making a normative claim, to argue for the importance of reviving civic republicanism, a public philosophy which has always been latent in American history. This helps us to understand the second key difference between the two books which is that Sandel has subtly moved away from the language of community which he used in *Liberalism and the Limits of Justice* to embrace instead the language of civic virtue. A clue to why he has made this change can be found in a remark from his review essay of John Rawls's *Political Liberalism* written a couple of years before *Democracy's Discontent* where he states

the term communitarian is misleading ...insofar as it implies that rights should rest on the values and preferences that prevail in any given community at any particular time. Few, if any, of those who have challenged the priority of the right are communitarians in this sense.¹³

Sandel's primary concern is that the language of community obscures what is really at stake in the debate between liberals and their communitarian critics and leads to a distortion of the latter's positions. Sandel is aware of the potential misunderstandings involved in invoking community as an ultimate philosophical standard. As Sandel makes clear in his review essay, it was not his intention to legitimate community in the abstract as the ultimate locus of authority as some critics have assumed, but rather to point out that Rawlsian liberals by prioritising the right over the good do not (and cannot) pay sufficient attention to people's substantive commitments. Sandel evidently feels that certain misinterpretations of his work resulted from the perception that he viewed community as an

indiscriminate good, in particular the criticism expressed by liberal critics that Sandel neglected the fact that the common good which could come to constitute our identities might be evil and /or coercive. Of course, appealing to the language of civicism and republican virtue does not by itself alleviate this fear and one of the criticisms of *Democracy's Discontent*, which I will examine is that Sandel still does not supply a sufficient conception of what the common good might consist of. If this is the case, the fears of critics that his alternative to liberalism may legitimise undesirable communities would remain valid.

The third key difference to note between *Liberalism and the Limits of Justice* and *Democracy's Discontent* is that ironically, in certain respects the latter book is more representative of the communitarian ideal than the former because whereas *Liberalism and the Limits of Justice* was a critique of liberalism at an abstract and universal level, *Democracy's Discontent* is concerned with analysing the consequences of liberalism in one particular society, i.e. the United States. His latest book is, as Michael Walzer states, an exercise in 'immanent social criticism' which he regards as 'social criticism as it ought to be written'.¹⁴ Whereas Sandel aimed in his first book to expose the theoretical failings of liberalism, his primary objective in *Democracy's Discontent* is to show how these theoretical defects have infected American politics in practice. As Ronald Beiner notes, whereas the earlier book told us that regardless of what certain liberal philosophers said, selves have deep attachments and are rooted in constitutive communities, his more recent book argues that procedural liberalism with its emphasis on an unencumbered self can do much to uproot us from these constitutive communities in practice.¹⁵ It is important to emphasise that Sandel still denies the coherence of the notion of the

unencumbered self. It is not the unencumbered self which is the problem so much as the mistaken *belief* which procedural liberals hold that individuals can or should become unencumbered. It is the attempt to persuade citizens through public discourse and judicial laws that they are unencumbered selves which has had a corrosive effect on the American polity.

Sandel aims to show the interrelationship between theory and reality and how the latter is the consequence of the former, as is illustrated when he states in the preface to *Democracy's Discontent*, "this is the sense in which philosophy inhabits the world from the start; our practices and institutions are embodiments of theory".¹⁶ Sandel further writes that "my aim is to identify the public philosophy implicit in our practices and institutions and to show how tensions in the philosophy show up in the practice".¹⁷ The fact that Sandel uses the term public philosophy is indicative of the fact that his aim in *Democracy's Discontent* is not to write an abstract book in political theory but rather to try and interpret to the American people firstly, what is the public philosophy which pervades their constitutional, political and social practices; Secondly, why it has made them feel discontented and thirdly, and more positively, how it is possible, by examining and reflecting upon America's particular traditions and history to resurrect an alternative public philosophy which more authentically represents the American political tradition and can consequently cure the discontents which currently afflict American public life.

The Main Thesis of *Democracy's Discontent*

I now wish to outline Sandel's thesis in *Democracy's Discontent* before going on to consider some of the key issues which have arisen from his book. In a similar way

to contemporary conservatives, Sandel regards American history as a tragedy. The loss of self-government and the erosion of community together define the anxiety of the age. This is the consequence not of the absence of public philosophy but because the wrong public philosophy has become historically predominant: “broadly speaking, republicanism predominated earlier in American history liberalism later”.¹⁸ Sandel aims to show that contemporary liberalism fails to answer democracy’s discontents.

Whereas in his first book, Sandel tries to show *philosophically* how Rawls relied on too thin a theory of the human self, his aim in *Democracy’s Discontent* is to show *historically* how liberalism fails to address the anxieties and frustrations that have come to afflict American politics over the last fifty years. Sandel blames both contemporary liberals and conservatives’ inability to answer people’s yearning for self-government and community on this commitment to the public philosophy of procedural liberalism, in which government does not affirm any particular conception of the good life, but merely provides guarantees of individual rights so that people can choose their ends and values for themselves. In contrast, the civic republican tradition which Sandel favours has an entirely different notion of liberty in which individuals achieve their freedom through political participation concerning the nature of the common good. Unlike liberals, republicans believe that individuals must not merely be concerned with their private ends, but with the good of the community as a whole. This requires citizens to have a sense of belonging and attachment to the community of which they are a part. Citizenship is much more demanding in the republican as opposed to the liberal tradition, (according to Sandel) because it stipulates that politics cannot be neutral about the qualities and

character of citizens, but rather is concerned with the formative project of educating citizens in the civic virtues required for self-government. This distinction can be neatly summed up by stating that whereas Sandel thinks that liberalism consists of a juridical conception of the citizen, republicanism in contrast possesses a political conception.

Democracy's Discontent is divided into two main sections. The first section explores the development of the doctrine of the unencumbered self through the history of constitutional law. Sandel argues that the Supreme Court has been pivotal to the creation of the procedural republic. In issues such as religious liberty, freedom of speech, privacy rights and family law, the Supreme Court has shifted away from assessing the substantive content of practices and beliefs in the interests of the common good to simply upholding individual rights on the basis of legal neutrality over what constitutes the good life. Sandel argues in contrast that when deliberating over constitutional freedoms, judges should not exclude conceptions of the good as they do in the procedural republic, but instead as they have done for the bulk of American history, legitimise freedoms on the basis of the civic virtues which they foster. In addition to the changes in constitutional law, there have been parallel changes in political economy, the discussion of which forms the second much longer part of *Democracy's Discontent*. In this section, Sandel argues eloquently that before the Second World War, public debate focussed on what he calls the 'political economy of citizenship', which consists of what economic arrangements are required to produce virtuous citizens. From the beginning of American history through to the age of the progressive reformers, political economy was largely a debate about citizenship. Thus, in the presidential contest of 1912

between Woodrow ('New Freedom') Wilson and Theodore ('New Nationalism') Roosevelt, they were both agreed that "economic and political institutions should be assessed for their tendency to promote or erode the moral qualities self-government requires".¹⁹ Thus, from the American Revolution to the early twentieth century, all sides of the political spectrum were united in upholding the political economy of citizenship.

Sandel believes that it was the Keynesian revolution in fiscal policy which emerged in the 1930s that heralded the new era of detaching economic debates from their traditional concern with citizenship. "Keynesian fiscal policy is neutral... in its assumption that government should not form or revise or... judge, the interests and ends its citizens espouse".²⁰ From this point onwards, Keynesianism became predominant in determining the nature of economic policy. Regardless of whether the administration was Republican or Democrat, in the fifty years following the New Deal, economic policy was, according to Sandel, oriented towards the stimulation of consumption over production. Modern politicians of all stripes became obsessed with 'prosperity and fairness' and completely ignored the republican concern with cultivating particular virtues of citizenship. Sandel states that "The Keynesian revolution can thus be seen as the counterpart in political economy of the liberalism that emerged in constitutional law after World War II, as the economic expression of the procedural republic".²¹ Ultimately, Keynesianism made procedural liberalism America's economic as well as political philosophy.

While Sandel argues eloquently that the last four decades have seen the near total eclipse of civic republicanism and the predominance of procedural liberalism, he

asserts (I will argue later somewhat paradoxically) that the feelings of popular disillusion and frustration that so many felt with American politics were clearly articulated by many leading politicians from the 1960s onwards: in particular, he cites the examples of George Wallace, Robert Kennedy and Presidents Carter and Reagan, who for all their marked differences had in common the fact that they all successfully tapped the mood of discontent with the current political agenda by moving beyond the ideals which animated procedural liberalism and emphasising instead the themes of self-government and community. George Wallace, one of the early exponents of the politics of protest was a charismatic southern populist whose campaign against a distant federal government that regulated so many aspects of individuals' lives while failing to respond to the key concerns of ordinary Americans resonated with many people.

It is Robert Kennedy, however, whom Sandel considers best addressed the feeling of powerlessness amongst the American people and offered the most promising political vision to remedy these anxieties. He realised that despite the fulfillment of the liberal political project, Americans still felt exposed to vast impersonal forces beyond their control. Kennedy discerned that this loss of agency was due to the erosion of self-government and community. He sought to remedy this discontent by decentralising political power, thus marking a break with New Deal Liberalism which had been prepared to use concentrated national power as a means of expanding individual rights and entitlements. However, Kennedy realised that the welfare state failed to enhance and may even erode the civic capacities required for self-government. Kennedy aimed to restore the civic dimension by fighting bigness and over-concentration of power and to attempt to bring political and economic

institutions under the democratic control of citizens. He thus came up with innovative proposals such as the creation of Community Development Corporations which were community-run institutions with the purpose of channelling development to accord with local needs. Kennedy's ultimate objective was to adapt Jefferson's republican vision to modern times, by reversing "the growing accumulation of power and authority in the central government in Washington, and returning that power of decision to the American people in their own local communities".²²

According to Sandel, in the decades which followed, Jimmy Carter and Ronald Reagan both attained the Presidency by articulating the frustrations which Americans continued to feel towards politics. They campaigned as anti-establishment figures that would restore American confidence and pride. Sandel argues that ultimately however, their Presidencies failed to address the underlying discontents which they eloquently diagnosed in their election campaigns. The basic problem with Carter's administration was that the moralism and managerialism which defined his politics failed to substantiate the purposes and ends which government should serve. In accordance with the reigning public philosophy of procedural liberalism, Carter's program of open, honest, accountable government and managerial efficiency abstracted from any substantive moral or political ends. Whereas some critics have blamed Carter for conducting a 'passionless presidency', Sandel states that the real problem was that "his was a purposeless presidency. Honesty and efficiency...are not ends but ways of pursuing ends; they do not in themselves constitute a governing vision".²³

Jimmy Carter was succeeded by Ronald Reagan who was elected on the promise of restoring American mastery. His significance for Sandel lay in the fact that he moved beyond the confines of procedural liberalism and evoked the ideals of self-government and community. Ultimately, however, he too failed to stem Americans' frustration with their political condition. Sandel attributes the underlying reason for this failure to the fact that Reagan's politics embodied two contradictory strands of American conservatism. On the one hand, there was an individualist, libertarian strand which celebrated the free market and upheld the voluntarist conception of freedom. This strand of conservatism fitted in comfortably with the terms of the procedural republic as it repudiated the notion of government forming the character of its citizens. Wearing his libertarian hat, Reagan stated that "we believe that liberty can be measured by how much freedom Americans have to make their own decisions".²⁴ In contrast to this libertarian strand, there was also a civic strand which by evoking a communal ethic contradicted the assumptions of procedural liberalism (which included the libertarian conservatives). It was this communal strand of Reagan's politics, which emphasised the importance to public life of morals rather than markets which resonated with large sections of the American people. It was his evocation of the communal values of family, neighbourhood, religion and patriotism which distinguished Reagan not only from libertarian conservatives, but more generally from the predominant liberal public philosophy. In a similar vein to Kennedy, Reagan called for "an end to giantism, for a return to the human scale...it is this activity on a small human scale that creates the fabric of community".²⁵

Unfortunately, however, while Reagan campaigned as a civic conservative, he governed more as a market conservative. While the communal strand of Reagan's

politics was reminiscent of the republican concern with concentrated power, he seemed preoccupied purely with the dangers of big government whereas traditional republicans including Robert Kennedy were equally worried about the effects of big business as well. Reagan however completely ignored the disempowering consequences of concentrated economic power. Sandel invokes Christopher Lasch who states that “Reagan’s rhetorical defence of ‘family and neighbourhood’ could not be reconciled with his championship of unregulated business, which has replaced neighbourhoods with shopping malls and superhighways”.²⁶ Thus the most promising opportunity of reviving the civic republican tradition for decades was squandered. Unfortunately, the Reagan-era Democrats were not able to capitalise on this continued mood of discontent. While Democrats did criticise what they perceived as the unfettered capitalism of the Reagan administration, they did so in terms of fairness and distributive justice. Thus, by remaining wedded to rights-oriented liberalism, they missed the mood of discontent. Democrats lacked the intellectual resources to meet the popular aspiration for self-government. Once the party of dispersed power, they had come in recent decades to embrace a strong welfare state. Thus, Sandel argues that “from the New Deal to the civil rights movement to The Great Society, the liberal project was to use federal power to vindicate individual rights...the individual and the nation advanced hand in hand”.²⁷

Sandel’s American History

One of the most commented upon aspects of Sandel’s thesis is the extent to which his historical narratives have been criticised for being at best selective, at worst reductionist to the point of caricature.²⁸ Sandel’s sanitised account of American history, is greatly flawed as historians such as Rogers Smith note, due to his

proclivity for translating key historical events into a version of either civic republicanism or procedural liberalism.²⁹ This not only leads to a truncated account of American history but results in Sandel frequently overlooking the extent to which a republican vocabulary has been utilised for ideological ends which he would presumably not wish to endorse. This can be aptly illustrated by citing the following examples. A serious anomaly in Sandel's historical narrative is its neglect of religious themes in constituting the identities of American citizens and in shaping America's self-image. Thus, as Barry Shain and others have noted, for most colonial Americans, liberty meant subscribing to the will of the Christian God.³⁰ This understanding of liberty can be contrasted not only with Kantian conceptions of liberty, but also with republican notions of freedom which locate political authority within popular institutions rather than by reference to an external moral authority such as God. Much of the impetus for the revolutionary cause was generated not by the desire to forge an American Republic, but rather by the need for colonialists to fulfil their providential mission as a "redeemer nation".³¹ The interweaving of republican and Christian themes in the Revolutionary period was aptly summarised in Sam Adam's description of the new nation as a 'Christian Sparta'.³²

The influence of Puritanism on the republican tradition explains why republicans have often had a very conservative view of what it means to be a citizen. This can be seen from Sandel's own historical narrative where there is a stress on such virtues as obedience, respect for authority and religious piety. Furthermore, as Sandel's own sources show, the republican tradition is infused by a strong aristocratic component. For example, the framers of the constitution were much

concerned by the proliferation of mass politics in the state legislatures. Revolutionary leaders such as Madison believed that for republican ideals to be fulfilled, a 'natural aristocracy' of merit and virtue would have to replace the artificial aristocracy of heredity and patronage. They believed that ordinary people were too absorbed in their own private interests to possess sufficient virtue to govern directly and instead proposed to have government led by enlightened statesmen.³³

One of the most astonishing and frankly offensive omissions from Sandel's thesis is his failure to discuss the dispossession and near genocide of native tribes as a by-product of the Westward expansion of the colonial settlers. As Smith states; "one could read his book and never realise that the North American continent was not simply waiting for the taking by Europeans".³⁴ The western North American territories, (all of which were occupied by Indian tribes) are described by Sandel uncritically as 'open land' which attracted the Republican party due to the opportunities which it presented for preserving the agricultural way of life, which fostered virtuous citizens. Both Thomas Jefferson and James Madison considered westward expansion a critical condition for the achievement of a republican political economy.³⁵ Thus, as Kymlicka points out, not only has Sandel neglected to mention the presence of native Indians on lands which were to be colonised, he actually provides an example whereby the promotion of civic humanist virtues is attained at the expense of liberal justice. The promotion of civic humanism as an intrinsically valuable conception of the good life could only be sustained by westward expansion, which in turn necessitated the displacement of the native population. Kymlicka then asks a pointed question which is obscured by Sandel's abstract

dichotomy between liberal voluntarism and civic republicanism: Namely, does the cultivation of a civic humanist conception of the good life justify the injustices which were perpetrated on the Indian population?³⁶ While it seems highly unlikely that Sandel would answer the question in the affirmative, (especially bearing in mind his progressive instincts), his failure to address the question is a major defect in his argument.

The Elusive Nature of Sandel's Civic Republicanism

The above example illustrates Sandel's failure to critically interrogate the historical sources which he cites in order to show the prevalence of republican rhetoric throughout American history. As a consequence, liberal suspicion over the political implications of prioritising republican freedom over liberal justice will continue to fester. Even theorists sympathetic to the republican project have raised concern over Sandel's vagueness in explaining which conceptions of virtue and which communal goods should animate a revived republican philosophy. In order to comprehend this degree of abstraction and indeterminacy in what is supposed to be a work of analytical history, it is useful to examine the strikingly similar parallels in terms of the critical reception which have greeted both Rawls and Sandel from the publication of their first works to its later crystallisations.

One reason why the liberal-Communitarian dispute is often considered to be exhausted is the belief that political liberals such as Rawls and Stephen Holmes, by historicising their projects and thus justifying their commitment to liberal ideals through locating their appeal within the context of modern constitutional democracies have in effect pulled the rug from under the feet of the

Communitarians.³⁷ It was no longer possible to charge liberal political theory with abstract universalism. Furthermore, liberal theorists had seemingly turned the tables on Communitarians by not only extricating themselves from the claim of abstract metaphysics but also by asserting that it was in fact Communitarians such as Sandel, who were guilty of metaphysical foundationalism and ahistoricism. Thus, Jeffrey Stout damningly concluded, “The main problem with communitarian criticism of liberal society... is its implicitly utopian character... When you unwrap the utopia the batteries aren’t included”.³⁸ Thus, in the eyes of anti-foundationalists such as Stout and Rorty, Communitarianism is hamstrung by the fact that it offers this reinterpretation of political philosophy as a hermeneutic enterprise merely through abstract philosophical reflection rather than an empirical evaluation of the circumstances of everyday life.³⁹ This is rather paradoxical given Communitarianism’s commitment to the importance of situated identities and historical embeddedness as the kernel of normative political theory. Thus, Communitarian works such as *Liberalism and the Limits of Justice* suffer from a major disjunction between form and content. Whereas, in terms of content, *Liberalism and the Limits of Justice* was infused by an appeal for a shift from conceptions of hypothetical circumstances in which antecedently individuated subjects are posited to one emphasising the prevalence of embedded selves, this argument was formulated through a method of philosophical abstraction strikingly similar to that imputed to Rawls.

Some commentators have interpreted *Democracy’s Discontent* as a response to this criticism. Thus, Amy McCreedy in particular has claimed that *Democracy’s Discontent* is an attempt to remedy this failing by providing the methodological

readjustment necessitated by the substantive arguments presented in *Liberalism and the Limits of Justice*.⁴⁰ If normative theory is shaped by an understanding of human beings as socially constructed, then it must correspondingly depend on empirical disciplines like history and sociology rather than philosophy for the development of substantive political ideals to inform the constitution of particular societies. Thus, McCready argues that *Democracy's Discontent* not only completes the argument of *Liberalism and the Limits of Justice* but supersedes it. The philosophical procedure of the latter is eschewed in favour of a methodology championing empirically grounded inquiry.⁴¹ On this interpretation, it is suggested that while Sandel helped to initiate the Communitarian challenge to liberalism, he is also the heir to liberalism, both chronologically and conceptually, for he tries to improve upon Rawls, (I presume McCready means here the early Rawls), as Rawls tried to improve upon Kant by renouncing the metaphysical in favour of the empirical. In a similar fashion to Rawls, Sandel imperfectly executed his project in his first work by seeking only conceptual verification for his normative theory and thus unwittingly ended up reproducing the noumenal subject, which he argued was the logical outcome of Rawls's conceptual constructions. *Democracy's Discontent* was written to remedy this error.

I believe that this reading of Sandel's later work is, at best only partly correct. It is mistaken in the same way that the initial interpretation of Rawls's later work is mistaken in that it presupposes that both thinkers have jettisoned substantive political philosophy in favour of the much more modest task of articulating the convictions and beliefs which shape Western constitutional democracies, although in reality, Rawls implicitly and Sandel explicitly confine their mode of reference to

the United States. On this reading liberals and Communitarians have converged in repudiating universality and abstract metaphysics and become enamoured with historical and cultural particularism instead. However, as stated in the introduction to the chapter, Sandel has explicitly distanced himself from a conventionalist reading of his work and tried to insulate himself from Gutmann's famous charge that "he wants us to live in Salem but not to believe in witches" through the adoption of his self-professed republicanism.⁴² Rather than discarding conceptual analysis in favour of historical inquiry as McCready claims, Sandel, just like Rawls, remains committed to the idea of synthesising the two by reconciling a historicist methodology with determinate philosophical conclusions. Both thinkers attempt to show that an accurate excavation of their country's political and cultural traditions would result seamlessly in the substantive philosophical positions they end up advocating, whether it be procedural liberalism in the case of Rawls, or civic republicanism in the case of Sandel.

In this context, it can be argued that the much lauded hermeneutic or historicist turn in normative political theory which has allegedly received its most influential articulation in the maturation of Rawls's and Sandel's political projects is of only secondary importance to their desire to vindicate the divergent metaphysical positions which have animated their theories since their inception. In the case of Rawls, as will be claimed in a later chapter, history is invoked in a peculiarly teleological manner to illustrate the triumph of liberalism over its ideological competitors and its consequent emergence as a hegemonic public philosophy. Rawls aims to invest this triumph with normative significance by claiming that it demonstrates how liberal ideals can be extrapolated from within the confines of

Western societies rather than through the delineation of abstract, universal principles. Through the employment of this strategy, he attempts to neutralise the Communitarian charge of ahistoricism. In what can be judged as a response to the later Rawls's attempt to extricate liberalism from metaphysical disputes by embedding a liberal self within the political culture of constitutional democracies, Sandel states:

The justification of liberalism must...depend on moral argument, not cultural interpretation or appeals to tradition alone...They must after all affirm a conception of the person in which the self is prior to its ends. They cannot avoid confronting the difficulties that this conception of the person entails.⁴³

This point is well taken. Indeed, the difficulties embodied in the attempt by political liberals to ground a Kantian conception of the self through appeal to the allegedly liberal shared understandings which govern constitutional democracies will be discussed in a later chapter. The critical point to note here is that Sandel also, by his own admission has to transcend cultural interpretation and invocations of tradition and affirm a conception of the person 'confronting the difficulties that this conception of the person entails'. The tentative and even detached way in which he views the historical sources which shape his narrative precludes him from being able to do so.

The fundamental problem which Sandel confronts is that he too is exploiting history in order to buttress his normative faith in civic republicanism. In a similar fashion to Rawls, whose historical account of the evolution of Western constitutional democracies serves as the empirical basis for proclaiming the salience of liberal political ideals, Sandel seems equally keen to demonstrate in response, the extent to which republican thinking was embedded throughout much of American history.

The fact that both Rawls' and Sandel's historical methodologies furnish two contrasting public philosophies can be explained in the following way. Both theorists are intent on portraying American history as a template dominated by one or, in the case of Sandel, two hegemonic public philosophies. The result of this strategy is that alternative ideological traditions which resist absorption within these reified categories are either excluded altogether or are assimilated to procedural liberalism or civic republicanism. The result of the former is the minimalisation of ideological competitors to either procedural liberalism or civic republicanism. The latter, by contrast, ensures that liberalism and republicanism are defined in such a broad way that the degree of diversity embodied within these two traditions is completely occluded. This has particularly unpalatable implications for Sandel's thesis. As discussed earlier in the chapter, Sandel's republicanism is too sanitised in the sense that it overlooks the extent to which a republican vocabulary has been used to legitimise the existence of nativism, racism, slavery and even genocide. The point is not to suggest that Sandel endorses the employment of a republican vocabulary for these purposes. Rather, it is to question the extent to which it is possible or even desirable to retrieve a republican discourse to serve the contemporary needs which Sandel believes are being neglected by procedural liberalism.

It is important to note that Sandel has an additional burden to that of Rawls in invoking a historically situated political argument to assert the contemporary relevance of civic republicanism. To begin with, Sandel accepts (in my opinion wrongly), that Rawls has provided a largely accurate account of the assumptions and beliefs which constitute American political discourse. He thereby accepts the

Rawlsian view that procedural liberalism is now hegemonic in this country. Rather than simply accepting that Rawls has provided the best articulation of the shared social understandings which animate the American polity, as he might have done, had he really been the thorough-going conventionalist he has sometimes been depicted as, Sandel instead argues for the importance of subjecting these liberal assumptions to critical examination. At the same time, he wishes to situate his critique of procedural liberalism firmly within the tradition of immanentist thinking as a whole. Therefore, he has to argue that despite its contemporary predominance, procedural liberalism is not characteristic of the American tradition as a whole. As Flathman says, Sandel's attempt to demonstrate the pervasiveness of republican thinking within the theory and practice of American democracy is intertwined with the view that elements of this tradition remain embedded even if subconsciously in the American psyche thus explaining the angst and alienation which Americans currently experience with their all-pervasive liberal public philosophy. The strength of Sandel's critique on the importance of reviving civic republicanism depends on evidence that it is implicit in the minds of the 'we' he is speaking to.⁴⁴

Thus, Sandel is forced to perform a difficult balancing act in attempting to launch a substantive critique of procedural liberalism which he blames for many of the ills which he believes confronts the American polity while at the same time trying to ensure that this critique is not divorced from the beliefs and values of the 'we' whom he is addressing. The problem for Sandel is that by his own admission, those beliefs are centered on a commitment to procedural liberalism. Sandel leaves himself open to the charge that he is much more worried about the decline of civic republicanism as a prominent tradition in American public life than the constituency

to whom his argument is directed, most of whom embrace procedural liberalism. As

Flathman rather damningly puts it:

What the book amply demonstrates...is that Sandel himself deeply laments the absence or severely diminished resonance of the republican beliefs and values for which...he expresses his admiration. On this interpretation, he attributes the same regret to his fellow citizens, because, apparently holding that merely abstract, external or philosophically unsituated critiques are both philosophically jejune and practically futile, his own critique would otherwise be hoist, both theoretically and practically by its own petard.⁴⁵

Thus, critics such as Flathman are basically arguing that there remains a contradiction between the historicist methodology in which Sandel appears to be trying to tease out the social meanings implicit in the American constitutional tradition and his own substantive public philosophy which is predicated on transforming hyper-individualistic consumers into committed citizens attempting to ascertain the public good. If this argument were to be accepted it would seem to reintroduce the problem of utopianism which as stated in the Introduction to this chapter, has often been levelled against communitarian thought. As even potentially sympathetic commentators of Sandel's argument have noted, critics could easily interpret his thesis as a nostalgic yearning for an irrecoverable civic republican dream which as Sandel's own narrative shows, has long been rendered fruitless by the emergence of procedural liberalism. It would thus be a classic example of what Stephen Holmes calls 'deprivation history', a hankering after a past golden age which can no longer be resurrected.⁴⁶ Indeed, Sandel himself lends weight to this claim when in responding to his critics he asserts: "Any sober political theory must distinguish between optimism and hope. If the diagnosis presented in *Democracy's Discontent* is correct, there are reasons to doubt that the civic aspirations of the republican tradition will be realised in our time".⁴⁷

Sandel is forced inexorably to this pessimistic conclusion by the logic of his own historical analysis which in the words of the American historian Eric Foner exhibits a “tendency to see republicanism and liberalism as ideologies that flourished sequentially, with one replacing the other, rather than outlooks coexisting throughout our history”.⁴⁸ The historical evidence evinced by Sandel to justify this two-dimensional portrait actually suggests a much more complex picture with liberal and republican themes overlapping with each other throughout key moments of American history. Furthermore, as illustrated above, even to the extent that Sandel shows that the civic republican strand of political thought was dominant at certain points of American history, this cannot be properly understood without also analysing the specific context within which the vocabulary of civic republicanism was mobilised. As Sandel’s historical narrative shows, the language of civic character formation has been reconciled both with contrasting modes of economic organisation and with very different understandings of the nature of the American polity. Thus, for example, civic republicanism has been associated with both political and economic localism on the one hand and national centralization on the other. In addition, the formative project has been aligned with both agrarian and manufacturing modes of production and even by the 1920s, large corporations which had previously been regarded as an obstacle to the formation of good citizens.⁴⁹

The more general problem is that the content of ‘our’ civic virtue was largely undefined throughout American history, and consequently, remains so in Sandel’s account, focused as it is on demonstrating the mere abstract existence of a republican vocabulary without ever considering the purposes and motivations to

which that vocabulary was deployed. This is important for the reasons demonstrated by political theorists such as Kymlicka and Smith. If the republican project has traditionally been harnessed to further the aims of American expansionism with the consequent subjugation and even genocide of key groups of people such as blacks and American Indians, then it raises serious questions about the desirability of reviving civic republicanism unless it can be uncoupled from what Sandel would regard as these distortive ideological influences. The fundamental problem with Sandel's account of American history is that he fails to even acknowledge the existence of these ideological influences due to his compression of complex bodies of theory and practice into no more than two categories which cannot contain them.

Sandel has attempted to respond to critics of *Democracy's Discontent* who have argued that his account of civic republicanism leaves unanswered either the content of the civic virtues which he wishes to promote or the political institutions needed to nurture them, thereby making it difficult to assess the viability of republicanism as a normative alternative to procedural liberalism. Sandel claims that he is not trying to evade the political implications of republicanism such as those elucidated by Thomas Pangle.⁵⁰ It will be recalled that Pangle extracted from Sandel's account of American republicanism a litany of civic virtues which included obedience to authority, religious faith, and reverence for tradition and a love of country. Sandel acknowledges Pangle's claim that *Democracy's Discontent* has "hidden away in embarrassment" the aristocratic component of republicanism premised on the belief that only virtuous and disinterested statesmen are entitled to govern.⁵¹ He responds, however, that the reason for this hesitation is not that he is attempting to avoid the political implications which emanate from republican thought. Rather, it is in order

to show how republican ideals have informed the American political tradition through much of its history. He states that the fact “that republicanism is sufficiently capacious to inform different political and economic outlooks is no argument against it. Procedural liberalism, which has its libertarian and egalitarian versions, is similar in this respect”.⁵² Unfortunately, this response is inadequate in that it fails to seriously address the question of whether civic republicanism represents a coherent philosophical worldview which can be modified to fit diverse social and economic contexts as Sandel implies.

An alternative interpretation which this chapter has courted is that the unity which Sandel ascribes to American history centring on the ubiquitous presence and dominance of the republican paradigm is largely illusory. It is purchased only at the cost of occluding the degree to which republican ideas have been encompassed within mutually exclusive value systems such as the democratic republicanism epitomised by Rousseau which prioritised secular civic goods and belief systems which framed public discourse within a religious context. Compounding this problem is his Kantian error of failing to take into consideration the rhetorical dimension of ideology and in the context of American history, the way in which the language of republicanism can be mobilised to disguise the hierarchical power relations which have constituted American political culture (as in any other polity) since its inception. Sandel’s mistake here can be at least in part traced to his cognitive approach which as Michael Freeden has argued resulted in the dominant Anglo-American school of political philosophers underestimating the contingency and fragmentation that all ideologies have to forebear in their encounter with empirical reality.⁵³

Conclusion

This chapter has attempted to show that it is a mistake to argue that *Democracy's Discontent* represents a major divergence from *Liberalism and the Limits of Justice* despite the marked difference in form and style between the two works. The central purpose of *Democracy's Discontent* is to synthesise history and philosophy with the ultimate aim of demonstrating the normative failure of procedural liberalism to adequately account for the constitutive self-understandings which animate American political culture. Underpinning the theoretical approach which Sandel adopts in *Democracy's Discontent* is a desire to show that ideas far from being irrelevant have played a commanding role in American history and indeed serve as the filter through which Americans perceptions of themselves and their environs can be understood. In this context, he aims to repudiate not only behaviourist and other modes of inquiry which dismiss ideas as irrelevant to understanding practice but also species of relativism which stipulate that providing an accurate account of a community's social practices is exhaustive of philosophical reflection. It is essential for Sandel to distance himself from this form of extreme anti-foundationalism because it leaves open the possibility for liberals to argue that their philosophy most accurately depicts the constitutive understanding 'we' have of ourselves. Sandel cannot countenance this response for he remains wedded to the view that deontological liberalism is *philosophically* flawed in that it produces a defective conception of the self, an unencumbered self which is severed from the constitutive attachments which give it meaning. Sandel wishes to argue that the apparent dominance of the unencumbered self in American political practice can be adduced to a false philosophical anthropology which by fostering conceptions of hypothetical beings as representations of ourselves has resulted in 'our' current

collective misunderstanding of the true nature of human freedom. Sandel believes that the inchoate 'discontent' or Weberian despair experienced by the modern individual can be traced to the illusory promise of freedom proffered by liberal political theory.

While this belief in the ontological and normative inadequacies of contemporary liberalism provides a continuous thread linking Sandel's earlier and later work, Sandel came to recognise the importance of situating his own philosophical anthropology within concrete historical contexts. He came to recognise his failure to do this in *Liberalism and the Limits of Justice*, a work which mirrored the deontological liberalism which he so strongly criticised in that it too aimed to abstract from the particular in order to supply a universal understanding of human nature which was non-contingent. This was a defect which he attempted to remedy in *Democracy's Discontent*. The resurrection of Civic Republicanism which Sandel produced in the latter work as an alternative to liberal voluntarism was designed to serve a dual purpose: On the one hand it corresponded with the philosophical anthropology outlined in *Liberalism and the Limits of Justice* in its rejection of the unencumbered self and its alternative stress on the importance of communal contexts in shaping individual character. Secondly, it was an ideological tradition which had been pervasive in American political culture for much of its existence and therefore could be presented as an indigenous home-grown alternative to contemporary liberalism. In this way, Sandel hoped to reconcile the contingent with the non-contingent, the empirical with a pre-empirical understanding of the self. Rather than discarding the Rawlsian notion of reflective equilibrium, he attempted to improve upon it by showing that, at least within the American context, persons

reflective intuitions would converge in an endorsement of the principles animating republican rather than liberal political theory.

Unfortunately, despite the boldness of this endeavour, it suffers from parallel problems to those which afflict the Rawlsian project. The multiplicity of ideological traditions which constitute American political culture means that Sandel's attempt to provide an ideal-type historical account of how civic republicanism came to play a dominant role in that society until it was tragically usurped by an alien liberalism which violated the nation's collective understandings cannot withstand historical scrutiny. While the historical narrative which informs *Democracy's Discontent* is often illuminating, it suffers from the author's desire to imprison the disparate historical phenomena which he discusses within the restrictive confines of the Republican paradigm. The virtue of *Democracy's Discontent* lies in its recognition that philosophies embody ideas which are in part representations of concrete practices and correspondingly, that philosophical ideas are implicit in a society's practices and institutions. This is a welcome antidote both to political scientists who attempt to explain historical developments by reference to interests and theorists who regard ideas as existing in an ethereal vacuum. Sandel's ability however, to execute this project in practice is vitiated by the fact that his continued adherence to the metaphysical commitments which informed *Liberalism and the Limits of Justice* means that he cannot fulfil his objective of reconstituting normative theory from a procedure predicated on abstract theory to a practice situated in history. The historical inquiry which shapes much of the book is conducted with the purpose of vindicating ahistorical notions which have already been established in advance. In

short, his approach remains one which is a priori and deductive rather than inductive in orientation.

Of course, whether one considers that to be objectionable depends on whether one believes in both the possibility and desirability of political theory as a post-metaphysical enterprise. It will be argued in future chapters; in particular, through an examination of the work of Rawls and Habermas, that neither proposition can be sustained and that furthermore, the necessity of metaphysics does not and indeed, should not preclude an acknowledgement of the insights stemming from the contextualist turn in political theory. The point to be noted here is that such a project cannot be undertaken in the manner that Sandel has attempted, in which he tries to initiate a convergence between form and content, by merging the ahistoricism of the former with the historical substance of the latter. Such an approach is not only responsible for Sandel's distorted account of American history but also his inability to supply civic republicanism with any determinate content as he wishes to occlude the ideological pluralism which animates American political culture by sublimating it into his republican public philosophy. Indeed, the fact that republican discourse has been mobilised to support ideological perspectives derived from divergent epistemological and metaphysical bases casts serious doubts on to what extent it can be regarded as a coherent public philosophy at all.

This point is largely obfuscated in Sandel's work due to his failure to explore the relationship between ideology and pluralism. The rationalist bias implicit in Sandel's work means that his analysis fails to take into consideration the extent to which a seemingly praiseworthy philosophical vocabulary (such as one premised on

a republican conception of liberty) can be used to rationalise much less savoury political objectives. This partly explains why the interaction between republicanism and conservative traditions such as ascriptive inegalitarianism go largely unexplored in his account. At the same time, Sandel is no less aware than the later Rawls of the reality of irreducible pluralism in modern societies. In the sections of *Democracy's Discontent*, where he engages in primarily normative rather than historical analysis, he attempts to demonstrate that republicanism can adopt a more accommodating approach to cultural diversity than procedural liberalism.

As the next chapter will argue, he is not successful in this endeavour because his alternative normative vision suffers from a similar conflation of conflicting belief systems as that which besets his historical analysis. Civic republicanism can no more perform the political function which he sets out for it than the historical one and for largely similar reasons. Sandel presents contemporary American politics, like American history, in terms of a dichotomy between liberalism and illiberalism with the former very much in the ascendant. By adopting such a stance, Sandel not only replicates the defects of his historical analysis by conceptualising one public philosophy (in this case liberalism) as a dominant political culture but fails to evince the level of diversity within the liberal tradition itself. As a consequence, Sandel's attempt to formulate in *Democracy's Discontent*, a pluralistic form of republicanism in relation to normative issues such as abortion and homosexuality fails. Sandel believes that procedural liberalism, by precluding critical engagement between competing conceptions of the good where questions of state coercion are at stake in order to respect reasonable pluralism impoverishes political discourse.

At the same time, he wishes to distance himself from the classical, Rousseauian strand of republicanism which by promoting a narrow vision of the common good, makes the opposite error of failing to take reasonable pluralism seriously. Sandel thus proposes the adoption of a deliberative model requiring critical discussion between conflicting substantive visions with the aim of obtaining normative consensus over which one represents the more appealing substantive civic ideal. Unfortunately, as will be illustrated in the next chapter, such an approach will merely reproduce the failings of Sandel's historical analysis. It is impossible to subsume irreconcilable metaphysical worldviews within an all-embracing republican conception of liberty. Such an effort will either result in an affirmation of substantive liberalism or in the adoption of some form of communitarian conservatism. While Sandel wishes to respect the reasonable pluralism of modern liberal polities, even his modulated version of republicanism commits him to the view, that as in classical republicanism, such pluralism can be overcome. This notion represents a dangerous utopian illusion, which risks imperilling the achievements of Enlightenment liberalism.

Endnotes Chapter 1

¹ Michael Sandel, *Liberalism and the Limits of Justice*, (2nd. Ed. Cambridge, UK and New York: Cambridge University Press, 1998).

² See for example, Richard Rorty, “*The Priority of Democracy to Philosophy*”, Objectivism, Relativity and Truth, (Cambridge University Press, 1991), pp175-196

³ John R. Wallach, “Liberals, Communitarians and the Tasks of Political Theory”, *Political Theory*, vol.15, no.4, (Nov 1987), pp581-611, p591

⁴ *ibid.*, p594. Wallach states, “Presumably his {Sandel’s} ‘constitutive community’ would be just but it is difficult to know for sure”.

⁵ John Gray, *Enlightenment’s Wake, Politics and Culture at the Close of the Modern Age*, (London: Routledge, 1995), p7

⁶ Michael Sandel, *Democracy’s Discontent: America in Search of a Public Philosophy*, (Harvard University Press, 1996).

⁷ *Ibid.*, p3

⁸ Tom Hoffman, “Humanism and Antihumanism in Lasch and Sandel”, *Critical Review*, vol 13, nos 1-2, (Winter-Spring 1999) pp97-114

⁹ See for example, Will Kymlicka, *Liberalism, Community and Culture*, (New York: Oxford University Press, 1986).

¹⁰ Rogers M Smith, “America’s Contents and Discontents, Reflections on Michael Sandel’s America”, *Critical Review*, Winter- Spring 1999, vol.13, nos 1-2, (Winter-Spring 1999), pp73-96

¹¹ See for example, Richard Rorty, “A Defence of Minimalist Liberalism”, in *Debating Democracy’s Discontent*, pp117-125

¹² Charles Taylor, “Cross-Purposes: The Liberal-Communitarian Debate”, in Nancy L. Rosenblum, *Liberalism and the Moral Life*, (Harvard University Press, 1989), pp159-182, p160

¹³ Michael Sandel, “Review of Political Liberalism”, *Harvard Law Review*, vol. 107, no.7, (May, 1994), pp1765-1794, p1767

¹⁴ Michael Walzer, “Michael Sandel’s America”, in Anita L Allen and Milton C Regan Jr., in *Debating Democracy’s Discontent* (Oxford: Oxford University Press), pp175-182 p175

¹⁵ Ronald Beiner, “Introduction, The Quest for a post-liberal public philosophy”, in *Debating Democracy’s Discontent*, pp1-13, p6

¹⁶ Michael Sandel, *Democracy’s Discontent: America in search of a Public Philosophy*, (Cambridge, MA: Harvard University Press, 1996), pp ix-x

¹⁷ *ibid.*,

¹⁸ *ibid.*, p6

¹⁹ *ibid.*, p221

²⁰ *ibid.*, p267

²¹ *ibid.*, p262

²² *ibid.*, p304

²³ *ibid.*, p306

²⁴ *ibid.*, p309

²⁵ *ibid.*, p311

²⁶ *ibid.*, p311

²⁷ *ibid.*, p315

²⁸ See for example, Eric Foner, “Liberalism’s Discontents”, *Nation*, May 6 1996, p36

²⁹ Rogers Smith, “America’s Contents and Discontents”, p95

³⁰ Barry Shain, *The Myth of American individualism: The Protestant Origins of American Political Thought.*, (Princeton: Princetown University Press).

³¹ Ernest L. Tuveson, *Redeemer Nation: The idea of America’s millennial role*, (Chicago: University of Chicago Press, 1968)

³² Rogers Smith, *Civic Ideals, Conflicting Visions of Citizenship in U.S History.* (New Haven: Yale University Press, 1997).

³³ The extent to which this strain of civic republicanism wished to limit democracy and equality is illustrated by Thomas Jefferson, who states in Notes on the state of Virginia, “the best geniuses will be raked from the rubbish annually”, quoted in Thomas Pangle, The Retrieval of Civic Virtue, in *Debating Democracy’s Discontent*, pp17-31 at p25

³⁴ Rogers Smith, “America’s Contents and Discontents”, p84

³⁵ Michael Sandel, *Democracy’s Discontent*, p137

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- ³⁶ Will Kymlicka, "Liberal Egalitarianism and Civic Republicanism: Friends or Enemies"? in *Debating Democracy's Discontent*, pp131-148 at p140
- ³⁷ See for example, Joseph Kloppenberg, *The Virtues of Liberalism*, (Oxford: Oxford University Press, 1998), p158. Amy Gutmann, "Communitarian Critics of Liberalism", *Philosophy and Public Affairs*, vol. 14, no.3, (July, 1985), pp308-322 at p314, Stephen Holmes, *Passions and Constraint: On the Theory of Liberal Democracy*, (Cambridge: Harvard University Press, 1995).
- ³⁸ Jeffrey Stout, *Ethics after Babel: The Languages of Morals and their Discontents*, (Boston: Beacon Press, 1989), p229
- ³⁹ Richard Rorty, "The Priority of Democracy to Philosophy", p178
- ⁴⁰ Amy McCreedy, "The Limits of Logic, A Critique of Sandel's Philosophical Anthropology", *Philosophy and Social Criticism*, vol. 25, no.4, (July 1999), pp81-102, p83
- ⁴¹ *ibid.* .
- ⁴² Amy Gutmann, "Communitarian Critics of Liberalism", p316
- ⁴³ Michael Sandel, *Democracy's Discontent*, p103
- ⁴⁴ Richard Flathman, "Review of Sandel's Democracy's Discontent", *The Philosophical Quarterly*, vol.48, no.193, (Oct 1998), pp563-566 at p564
- ⁴⁵ *ibid.*, p565
- ⁴⁶ Stephen Holmes, *The Anatomy of Antiliberalism*, (Harvard University Press, 1996), p177
- ⁴⁷ Michael Sandel, "Reply To Critics", in *Debating Democracy's Discontent*, (Oxford: Oxford University Press, 1998), p325
- ⁴⁸ Eric Foner, "Liberalism's Discontents", p306
- ⁴⁹ Michael Sandel, *Democracy's Discontent*, p324
- ⁵⁰ Michael Sandel, "Reply to Critics", p324, See also Thomas Pangle, *The Retrieval of Civic Virtue*, pp24-25
- ⁵¹ Michael Sandel, "Reply to Critics", p324
- ⁵² *ibid.*, p325
- ⁵³ Michael Freeden, "Editorial: On Pluralism through the Prism of Ideology", *Journal of Political Ideologies*, vol.7, no.1, (Feb 2002), pp5-14

CHAPTER TWO: CIVIC LIBERALISM, CULTURAL CONSERVATISM AND LIBERTARIAN MULTICULTURALISM: THREE CONFLICTING STRANDS IN COMMUNITARIAN THOUGHT

Introduction

The last chapter argued that *Democracy's Discontent* presented us with what in effect is a domestic equivalent of Samuel Huntington's clash of civilisations thesis with public discourse being driven by a conflict between two rival and incommensurable worldviews, procedural liberalism and civic republicanism with the former increasingly displacing the latter with nefarious consequences for American democracy.¹ While this view of American politics as a gladiatorial contest between two rival belief systems informs Sandel's historical analysis, it is much less apparent in his critique of procedural liberalism where his attack on that philosophy's adoption of a neutral framework of rights and justice as a basis of adjudication for substantive moral and ethical issues such as abortion and homosexuality does not depend on him adopting a republican perspective. As Joan Williams notes, republicanism plays little role in the two chapters of the book where he discusses concrete issues such as the role of religion and free speech in the American polity.² When Sandel finally comes to addressing the question of how to apply republican ideals in a contemporary society informed by the empirical realities of multiculturalism and incommensurable conceptions of the good, he explicitly disavows the classical republican model which articulated a substantive vision of the ethical life of the community, in which the common good was unitary and pluralism inherently subversive of communal harmony.

Sandel's principal aim in the parts of *Democracy's Discontent* where he attempts to articulate a normative alternative to procedural liberalism is to gesture however tentatively in the direction of a more progressive brand of republicanism which can be differentiated from cultural conservatism which (though unacknowledged for most of the book) has the potential as William Connelly puts it, to transform republican virtues into weapons of cultural war in order to attain a univocal conception of the common good.³ As a consequence, however, as the discussion in this chapter will illustrate with particular reference to the issues of abortion and homosexuality, Sandel's attempt to defend the progressive values which are also cherished by contemporary liberals without presupposing the priority of the right over the good forces him to collapse the dichotomy between the radically encumbered and the unencumbered self which animates his philosophical theorising. The radically encumbered self that had represented the cornerstone of Sandel's normative political theory appeared as Hilliard Aronovich argued, to be a residue of Aristotelian ontology or Burkean sociology.⁴ The assumption was that as encumbered selves, we *discover* our values and obligations which in turn provide us with a code for how we should live. By contrast, the unencumbered self of contemporary liberalism which Sandel excoriates is, as Richard Rorty puts it, an existentialist, Californian self "which can somehow sit back and choose ends, values and affiliations without reference to anything except its own momentary pleasure".⁵

There are two principal ways in which liberals have chosen to respond to Sandel's critique of the unencumbered self. The first is the minimalist or procedural liberal

response which is most eloquently articulated by Rorty.⁶ Rorty rejects the idea that liberalism needs to be saddled with a metaphysical notion such as the unencumbered self and questions the level of abstraction at which Sandel's analysis is posed. It is possible, he believes to defend liberalism and even incorporate republican ideals of participatory government without becoming embroiled in metaphysical disputes about the nature of the self or for that matter whether the right is prior to the good or vice versa. An alternative liberal response formulated by comprehensive liberal theorists is to accept Sandel's claim that the right cannot be prior to the good and to forswear the aspiration to neutrality and instead defend liberalism on the basis of comprehensive moral ideals. On at least one occasion Sandel states that his quarrel is not with comprehensive liberalism but only with procedural liberalism. In an article subsequent to the publication of *Democracy's Discontent* he avers that "My objection to this liberalism is not that it emphasises individual rights but that it seeks to define and defend rights without affirming any particular conception of the good life".⁷

This chapter will argue that Sandel is correct to stipulate against minimalist liberalism that moral and ethical conflicts cannot be resolved without appealing to particular conceptions of the good. However, as will be shown by an exploration of the debates concerning abortion and homosexuality between progressives and cultural conservatives, Sandel's rejection of the normative views underpinning cultural conservatism and his rejection of the possibility of forging a political and social consensus around one particular conception of the good which sustains the latter position leaves Sandel much closer politically to the liberals he excoriates philosophically than the cultural conservatives who may share his desire for a return

to a politics of civic virtue. Sandel fails to recognise this due to his apparent conviction that it is possible to obtain a normative convergence on the adoption of liberal progressive values once disputes on issues such as homosexual rights are transposed from a discourse of rights into one based on a discussion of conflicting goods. It will be argued in this chapter that the belief in the possibility of such a convergence neglects the true extent of reasonable pluralism in modern liberal democracies emanating from the existence of conflicting comprehensive moral doctrines. Furthermore, the possibility that deliberative discussions may transpire in the endorsement of illiberal doctrines such as those posited by cultural conservatism means that liberals should be reluctant to endorse Sandel's invitation to discard the language of individual rights.

The conflict between a pluralistic vision of democratic politics and a narrower, more restrictive one is not the only tension in Sandel's thought. Irrespective of whether Sandel embraces the collectivist or pluralist strand of the republican tradition, he is led into privileging the political community over other constitutive communities. From the perspective of proponents of diversity-based liberalism, the notion that politics enjoys a general authority over subordinate communities is a view not only evident in the communitarian theories of Aristotle and Rousseau, but also in the work of civic liberals such as Macedo and Dagger.⁸ The potential lack of congruence between the principles animating constitutive communities in which individuals' identities are shaped and the principles constituting public institutions, however inclusively they may be conceptualised, is a tension implicit in Sandel's thought which he never addresses. It will be argued in this chapter that the tension between these two strands of communitarian thought runs parallel to and indeed

cross-cuts the distinction within the liberal tradition between autonomy-based liberalism, which privileges the political community, and diversity-based liberalism, which asserts the right of constitutive communities to declare their independence against the polity.

These tensions are particularly evident in Sandel's political thought. On the one hand, he unfavourably juxtaposes procedural liberalism with a not too clearly defined version of the formative project which advocates abstraction from individuals' particular ends in order to pursue perfectionist ideals thus invoking the prospect of a far greater degree of government coercion than that sanctioned by procedural liberalism. This position is particularly in evidence in relation to issues such as abortion, homosexuality and free speech as will be outlined below. On the other hand, his attack on procedural liberalism for being insufficiently attentive to cultural diversity leads him in the opposite direction. Contemporary versions of liberalism are castigated for failing to understand that individuals are situated selves who cannot be expected to abstract from their constitutive ends in order to foster autonomous choice as advocated by procedural liberals. In this context, Sandel's arguments are more reminiscent of Chandran Kukathas's classical liberal multiculturalism which represents the very antithesis of the formative projects pursued by perfectionist liberals and civic republicans alike. It will thus be argued in this chapter that Sandel's oscillation between competing versions of perfectionism on the one hand and sectarian multiculturalism on the other means that he cannot supply a coherent philosophical alternative to the procedural liberalism, which is the basis of his critique.

Two Competing Versions of Pluralism

One of the most remarkable features of Sandel's thesis is the disjunction between the conservative nature of his civic historiography and the progressive conclusions which he nonetheless believes can be arrived at by resuscitating republican ideals. His historical narrative and the history of civic republicanism more generally unearth a powerful exclusivist strain in republican thought whereby communal particularisms are assimilated to a state sponsored comprehensive conception of the good. This exclusivist aspect of republicanism was premised on the belief that civic homogeneity was a prerequisite for a functioning polity. Sandel claims however that republicanism is not intrinsically predicated on the fostering of cultural homogeneity. Thus, his starting point for contemporary political theorising is not only an acknowledgement of but indeed an affirmation of the existence of religious and ethical pluralism. Far from desiring to erase that pluralism and impose a univocal conception of the good in its place, as classical republicans would have demanded, Sandel claims to be able to supply a theory which is more respectful of that pluralism than procedural liberalism is, while at the same time continuing to subscribe to the formative project. I will be discussing the nature and merits of political liberalism in much more detail in the following chapters. It is sufficient to note here that for political liberals such as Rawls and Rorty, the only way to establish a consensus on principles of justice is to prescind as far as possible from discussion on all substantive religious and ethical views as reasonable disagreement on these issues cannot be eliminated. The laws and principles which constitute a polity characterised by irreducible reasonable pluralism must be established by reasons which make no appeal to any particular comprehensive conception of the good. This has been aptly described as '*the strategy of abstraction*'.⁹ The solution

to the existence of value pluralism is to abstract from one's particular ethical and religious convictions in order to legitimate laws with reference to reasons that can be shared by everyone in a diverse polity.

Sandel rejects this liberal strategy of abstraction arguing that liberals are wrong to preclude appeal to substantive moral and religious values when determining issues of justice. His principal argument is that the liberals' reliance on the strategy of abstraction subordinates substantive moral concerns to a pragmatic interest in securing peaceful social cooperation.¹⁰ Sandel believes in contrast that it is only by engaging conflicting comprehensive moral doctrines in deliberative discussion that one can arrive at principles of justice that can legitimately be accepted by everyone. Thus far from erasing diversity or at least confining it to the private sphere, Sandel argues for the possibility of reasoning over our conceptions of the good. The differences between Sandel's approach to value pluralism and the liberal conception of toleration which he criticises can be better understood by juxtaposing it with the minimalist liberalism of Rorty.¹¹ One of the most telling criticisms that Sandel makes against minimalist liberals is that their attempts to achieve a consensus on principles of justice by abstaining from metaphysical disputes is incoherent. If their attempts to forego metaphysical controversies by asserting 'the priority of the practical' are to succeed, then they must deny that "any of the moral or religious conceptions it brackets could be true. But this is precisely the sort of controversial metaphysical claim the minimalist liberal wants to avoid". However, "if the liberal must...allow that some such conceptions might be true, then what is to assure that none can generate interests sufficiently compelling to burst the brackets, so to speak, and morally outweigh the practical interest in social cooperation".¹²

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If Sandel is correct then minimalist liberals appear to be impaled on the horns of a dilemma which can be summed up as the impossibility of evading the cognitive-non-cognitive dichotomy. If they attempt to affirm the impossibility of establishing cognitive truth claims then they are committed to a specific metaphysical position which belies their claim to have developed a minimalist liberalism. On the other hand, if minimalist liberals refuse to take refuge in non-cognivity and instead concede that certain metaphysical beliefs may be true then it is unclear on what grounds these beliefs can be overridden by a practical interest in social cooperation. Rorty's response to this is to argue that liberalism ought to be defended by simply evading substantive philosophical disputes such as cognitivism versus non-cognitivism and instead assert that liberalism eschews all philosophical foundations and ought to be preferred on historical rather than philosophical grounds. Quite simply as he puts it, "such republics have the best track record among the regimes which we have tried so far".¹³

Conclusion

The differences between the approaches proffered by Sandel and Rorty manifest themselves in their contrasting responses to the abortion controversy. On the one hand, Sandel argues that one cannot defend abortion rights without making assumptions about the value of fetal life and in particular, demonstrating that fetuses are, in the relevant moral sense, different from babies. In order to do this, one must engage the moral-theological question of when human life begins. Thus, the minimalist liberal position is unsustainable in that it attempts to address the abortion none can't avoid confronting that key question. Rorty, on the other hand, argues that it speak, and essay to confront it. Instead, in his typically idiosyncratic style, he

suggests that rather than engaging the substantive moral and religious doctrines at stake, we should try and change the subject from “When does human life begin”? To “How can some unprincipled and wishy-washy consensus about abortion be hammered out”?¹⁴ Thus, Rorty claims, in essence that the philosophical controversies which have made the abortion debate so intractable are best mediated by discarding the need for a public philosophy altogether.

There are two observations which need to be made about this debate. First of all, it confirms the point made earlier in the chapter that Sandel’s apparent hermeneutic turn and his seeming disavowal of abstract theorising does not mean that he has ended up embracing the same anti-foundationalist stance as that espoused by pragmatic liberals such as Rorty. Put simply, whereas the latter wishes to discard metaphysics completely when confronting political dilemmas such as abortion, the latter argues that metaphysics are indispensable. Secondly, in my opinion, Sandel has the better of the argument. In arguing for the view that one ought to “value democratic consensus more than anything else”, Rorty’s pragmatism is in danger of usurping his liberalism in that he is prepared to compromise on virtually anything in order to maintain peace as the ultimate value, including even slavery (if the historical circumstances happened to be advantageous to its advancement). Rorty attempts to retrieve his position from the pitfalls of relativism by recognising that a society promoting the goal of peace at virtually any price can only succeed if it is prepared to instil in citizens the civic virtue of having as few metaphysical commitments as possible. However, in the process, Rorty’s pragmatism becomes increasingly dogmatic. This suspicion is confirmed when Rorty, in his response to Sandel, implies that minority positions ought to regard the virtues of tolerance and

compromise as overriding their metaphysical convictions which may, in other circumstances, require dissent or even secession from the polity.¹⁵ In the case of abortion, the price of compromise is far greater for those who equate abortion with murder than for those who think it is morally permissible. Therefore, it is impossible for liberals to maintain neutrality on the issue without presupposing tacit consent for the practice in question.

While Sandel is eloquent in demonstrating that political disputes cannot avoid metaphysical arguments such as disagreements over when human life begins, or at least cannot do so without instituting a level of dogmatism which subverts the procedural liberal's commitment to pragmatism, this in itself does not constitute an argument for civic republicanism. In particular, it does not show in what way a liberal metaphysics would differ from a republican metaphysics. After all, as Hillaird Aronovitch points out, while one could be persuaded by the need to affirm the priority of the good over the right, this does not in itself justify a collective or common good as the prior thing.¹⁶ Sandel tends to elide this point by sliding from saying that rejecting the priority of the right necessitates endorsement of the idea of the public good. However, it is obvious that one does not conceptually follow the other and indeed, is unlikely to do so in the current empirical circumstances suffused with irreducible pluralism, stemming from the erosion of any one overarching philosophical worldview. While Sandel attempts to acknowledge the existence of this deep diversity, it is not clear that he truly appreciates its extent, drawn as it is from a multiplicity of competing conceptual frameworks sustained by incommensurable moral premises and as a result, conflicting conceptions of civic virtue. One reason for this oversight is his failure to appreciate the extent to which

some religious belief systems depart so sharply from secular moral vocabularies as to make consensus on certain political disputes impossible. This can be illustrated briefly in relation to abortion and homosexuality.

Sandel argues that the liberal urge to abstain from metaphysics constitutes violence against encumbered selves whose commitments to certain core values and obligations such as the sacred nature of unborn life cannot be compromised without compromising their very selves. At the same time, however, he believes that by engaging in public deliberation over fundamentals, it is possible to achieve a consensus in favour of abortion and homosexual rights. In the case of abortion, Sandel believes that it can be demonstrated that a fetus is sufficiently lacking in the attributes of a person thus invalidating objections to abortion. As Aronovitch rather damningly states, however, “for Sandel to believe that any such agreement about the fetus and personhood could be reached now or in any near future, he must be imagining a world utterly unlike the actual one”.¹⁷ More interesting is Sandel’s defence of homosexual rights in the sense that in this case he attempts to justify them in a way which is distinctive and in his opinion more compelling than liberal arguments. Liberal defences of homosexuality are couched in terms of the right of autonomous, unencumbered selves to shape their own lives in accordance with their own fundamental values and commitments. Sandel argues for a new approach emphasising the moral goods which homosexual practices promote such as love and responsibility which thus makes them worthy of the same degree of respect as is accorded to heterosexual practices. “The substantive answer {as opposed to the voluntarist one}... claims that... the connection between heterosexual and

homosexual relations is not that both are the products of individual choice but that both realise important human goods".¹⁸

I do not have the space here to explore this argument in any detail. I merely want to make two observations as it relates to Sandel's argument for jettisoning liberal voluntarism in favour of civic republicanism. Firstly, it is unclear why his 'substantive' solution cannot be co-opted by liberal advocates of homosexual rights in order to complement rather than replace voluntarist arguments for homosexuality. Secondly, Sandel's defence of homosexuality shares the same fundamental limitation as the liberal argument which he criticises, namely, its fundamentally secular nature. A Republican defence of sexual diversity can only be purchased at the cost of alienating cultural conservatives who believe that the good of procreation is integral to the moral worth of human sexual relations. This is, of course the position of the Catholic Church who avail themselves of both scripture and natural law to condemn homosexual practice as 'deviant behaviour' subversive of the common good.¹⁹ These metaphysical teachings are completely alien to Sandel's secular republicanism and leave him exposed to the charge that he is no more sensitive to the religious beliefs and values of encumbered selves whose thinking is not broadly 'progressive' than that of liberal voluntarism. Sandel's embrace of sexual diversity requires an irreconcilable divorce from communal traditions of faith who, while sharing Sandel's yearning for a politics devoted to the common good, differ from him on what the nature of that common good should be.

Of course, Sandel might respond that his revised conception of civic republicanism is cognisant of this fact. No agreement is likely to be fostered between for example,

a conservative Catholic, who perceives same-sex desires as an objective disorder which must be regulated, and a progressive republican, who wishes to emphasise the intrinsic goods which homosexual relationships furnish. However, Sandel's concentration on the philosophical divide between a liberalism that prioritises individual choice and a republicanism, which privileges civic goods, glosses over this point. As a result, he fails to appreciate the potential adverse consequences for the very homosexual practices, which Sandel believes that the liberal politics of individual autonomy fails to properly esteem. Sandel attempts to assuage this concern by arguing that a failure to explicate the moral worth of homosexuality is "unlikely to win for homosexuals more than a thin and fragile toleration".²⁰ It is therefore erroneous to understand Sandel's position as one endorsing majoritarian democracy. Rather, he clothes his alternative to liberal public reason in the seemingly inclusive language of deliberative democracy, which requires citizens' moral convictions to be interrogated rather than simply confirmed in an unreflective manner.

Indeed, he states explicitly in his review of Rawls's *Political Liberalism* that the very abstractness of the conception of public reason contained within that work is liable to generate the very disenchantment which will give rise to the intolerant fundamentalisms which political liberalism is designed to curtail.²¹ He thus argues that the deliberative model, which he espouses is better equipped to provide a secure anchor for the ideals which political liberals aspire to promote. In effect, Sandel is asserting that his philosophical worldview is better placed to defend civil liberties than political liberalism. Even if this argument is correct he fails to acknowledge that its very recognition of the complexities of a pluralistic society mean that it will

be no more welcoming of cultural conservatism than political liberalism is. The conception of mutual respect which underpins his deliberative model in contrast to more traditional variants of communitarianism will be regarded as anathema by religious conservatives amongst others. Sandel, therefore, finds himself impaled on the horns of a dilemma: On the one hand, liberals will be concerned that Sandel's model of deliberative democracy as with all models of deliberative democracy risks subordinating individual rights to processes of democratic deliberation. Cultural conservatives by contrast will share similar concerns from an opposite perspective. They will be unwilling to subject their conceptions of civic virtue which most often are informed by a transcendent theological framework to the vagaries of discursive procedures, which may prove unsympathetic to such views. In effect, this is the price which Sandel pays for trying to eschew civic republicanism's exclusionary tendencies. The price of trying to reconcile civic republicanism with a pluralistic society is to adopt the rhetoric of the former while leaving it devoid of any meaningful substance in order to court the possibility of convergence between incompatible moral worldviews.²²

Civic Republicanism and Sectarian Multiculturalism and Perfectionist Liberalism: Three Incompatible Worldviews

The previous section illustrated that Sandel's attempt to foster a pluralistic republicanism will ultimately prove no more congenial to cultural conservatives, who wish to utilise the power of the state in order to furnish their conceptions of traditional morality, than the framework provided by political liberalism. This leaves unresolved, however, the question of whether Sandel's thesis may prove more amenable to religious and other cultural communities, which, while also being

illiberal in composition, have no desire to employ the power of the state to fulfil their conceptions of the good, but simply wish to insulate themselves from the power of the political community. It is at this point that the most serious ambiguity not only in Sandel's political thought but in Communitarian thought more broadly becomes apparent. As a number of commentators have observed, there is, implicit in Sandel's work, an unresolved tension concerning which type of community should be accorded precedence.²³ On the one hand, his embrace of civic republicanism appears to assign pre-eminence to the political community. (This is true even in relation to the more pluralistic form which he attempts to advertise as it still regards the character of the citizen as being of paramount importance). The political community is integral to the formative project which republicanism promotes enshrining at its heart the possibility of discovering objective, metaphysical conceptions of truth that dictate the civic virtues which citizens are expected to cultivate. Thus, the suspicion of relativism that was sometimes levelled against Sandel, both by liberals and indeed critics sympathetic to Sandel's project, appears to have been definitively resolved. On the other hand, his continuing adherence to the language of encumbered selves moves Sandel in an altogether different direction, one which reignites the fear amongst both civic republicans and many liberals that his project remains relativist in nature by abjuring objective standards against which particular communal practices can be evaluated.

As Pangle notes, this confusion is exacerbated by the structure of *Democracy's Discontent*. In both the Introduction and Conclusion and also throughout part two of the book, Sandel is principally concerned with divining the civic virtues needed for self-government. In part one, by contrast, his focus is on constitutive communities

which embody spiritual goods, which may be in tension with self-government or even regard the state with outright hostility.²⁴ This points to a wider problem in Sandel's thesis, namely that the notion of the encumbered self does not provide the supporting foundation for republican freedom that Sandel seems to imply that it does. Sandel argues that in the same way that liberal voluntarism serves as an inadequate protection for homosexual rights, it also fails to secure religious liberty by misrepresenting the role of religious belief in people's lives. Once again, Sandel aims to illuminate the progressive potential of his brand of republicanism by demonstrating that liberal voluntarism is insufficiently concerned for the social attachments which animate individuals in both their public and private lives. His scrutiny of Supreme Court decisions is conducted with the purpose of showing how this is especially true in the case of religion. Sandel argues that the language of individual autonomy which has buttressed the liberal case for religious freedom is flawed in that it fails to capture the moral importance of religion and has thus ironically led to illiberal consequences where religion is concerned.

The theoretical defect of the voluntarist view can be traced to its image of the unencumbered self which leads it to view religious beliefs as "worth of respect", not because of their intrinsic importance, but rather in virtue of being "the product of free and voluntary choice".²⁵ However, religious beliefs cannot be translated without loss in this way. Sandel argues that recasting religious liberty as a particular instance of an individual's right to choose his beliefs negates the fact that for encumbered selves religious beliefs are constitutive ends which divest persons with duties which they did not choose and which are derived from sources other than themselves. Sandel is certainly correct to suggest that his conception of religious

liberty is distinctive from the one presupposed by procedural liberalism in that it is motivated not by a desire to protect individual autonomy but rather the 'encumbrances' of individuals. However, it is not at all clear what it has got to do with civic republicanism. As Walzer points out, the most perceptive discussion which Sandel provides of encumbered selves in *Democracy's Discontent* do not deal with citizens, but rather with members of sectarian religious communities such as the Amish, orthodox Jews etc. which have been described as 'greedy' by the sociologist Lewis Coser in that they aim to absorb the commitment of their members to the detriment of all other communities including the political community.²⁶

As Peter Berkovitz points out, Sandel does not advocate in his criticisms of Supreme Court reasoning that it should reject liberal neutrality in order to take sides between competing theological doctrines such as for example, the dispute between fundamentalist Mormons and Catholic Conservatives (amongst others) concerning the moral and legal propriety of polygamy. Rather, he wants the Supreme Court to be more rather than less neutral in its reasoning by arguing that freedom of conscience not freedom of choice should undergird the Court's deliberations.²⁷ It is worth exploring briefly the closeness between Sandel's language here and that employed by the libertarian political theorist Chandran Kukathas. Kukathas is concerned, like Sandel, to attack the liberal conception of autonomy which has been central to liberal thought and replace it with one emphasising tolerance. According to Kukathas:

Fundamental to the liberal standpoint is the conviction that individuals should not be forced to act against conscience- to act in ways they

consider wrong. It is the value of liberty of conscience which lies at the core of the liberal ideal of toleration.²⁸

Therefore, on occasions, one can glimpse in Sandel's critique of the liberal conception of individual autonomy a desire not to replace it with a collectivist conception of the common good or even a pluralistic consensus embodying contrasting accounts of the good. Rather, it is an appeal for a more expansive notion of neutrality than that allowed by contemporary liberalism which does not exclude communitarian conceptions of the good. On this account, Sandel's principal objective is not a 'thick' polity united around a substantive conception of the good -whether that good be individual autonomy or collective self-government which all communities are required to abide by but rather a 'thin' polity composed of many diverse communities adhering to different moral standards and possessing different codes of justice.²⁹ Glimpses of support for this regime of toleration are evident in Sandel's support for the Amish community's demands to have partial autonomy over how their children are educated.

At this point, we seem to be a long way from the language of civic republicanism. Sandel's criticism of the Kantian conception of personal autonomy seems motivated more by its inability to be sufficiently sensitive to illiberal communities which may not subscribe to personal autonomy as a worthwhile ideal. In the process, however, he once again, leaves himself vulnerable to the charge of relativism, the charge, which his adoption of the philosophy of republican self-government was meant to dispel. Thus, even critics sympathetic to his project have accused him of failing to provide an external, critical standard to adjudicate between different communities. Indeed, at one point, he simply asserts that 'bad'

communities may form 'bad' characters.³⁰ In the event, however, there is good reason to believe that Sandel does not want to be seen as offering an indiscriminating embrace of the constitutive conception of community. He contends that "What makes a religious belief worthy of respect is not its mode of acquisition ...but ...its tendency to promote the habits and dispositions that make good citizens".³¹ As Walzer points out greedy communities will fail this test because its members do not make good citizens. Indeed, the members of greedy communities have little interest in and indeed, might be totally hostile to the political community. Furthermore, if Sandel is serious in his view that only 'religious beliefs and practices' which have 'sufficient moral or civic importance' from a republican perspective' are worthy of 'constitutional protection' then he is even less sensitive to religious liberty than liberals are. After all, as Smith notes, many religious believers will be repelled at the notion that what they regard as being of intrinsic value ought to be subordinated to republican conceptions of the good.³²

One ought not to be surprised that in the last analysis Sandel appears to adopt a much more circumscribed role for religious freedom than at first appears to be the case. As will be recalled from the last chapter, he has aimed to make it clear in his more recent work that on no account should his position be conflated with cultural relativism. In this context, he has aimed to differentiate his political theory from both Michael Walzer and Alasdair MacIntyre with whom he is often linked.³³ In contrast to the latter two, Sandel does not believe that shared values and shared understandings are sufficient to ground a conception of justice. As Colin McCann notes, from Sandel's perspective it is a mistake to make any particular conception

of community the sole arbiter of moral import without interrogating the constitution of that community. The good life is a transcendent value and therefore, must be perceived as a categorical imperative rather than a contingent socially-prescribed goal.³⁴ Sandel is explicit in distancing himself from communitarianism as it is commonly understood in the Preface to the revised edition of *Liberalism and the Limits of Justice*. Under the heading 'Where Communitarianism Goes Wrong', Sandel states that while he agrees with other communitarian writers such as MacIntyre whom he is often lumped together with that justice is relative to the good rather than independent of it, he means it in a different sense from them.³⁵

Since the inception of the liberal-communitarian debate it has often been assumed that when communitarians argue that justice is relative to the good they mean by this that the values underpinning any particular community or cultural tradition determines what is just. Sandel rejects this species of cultural relativism asserting instead that principles of justice derive their moral legitimacy from the *human* ends which they are meant to serve. The fact that these ends may not be implicit in a particular community's tradition does not constitute a decisive objection against them. (One may add, however, that Sandel must consider whether they are or not of considerable importance or otherwise he would not have devoted much of *Democracy's Discontent* to trying to unearth the existence of republican ideals as a constitutive feature of America's communal traditions). Sandel asserts that this second way of identifying justice with particular conceptions of the good is not strictly speaking communitarian but rather teleological or perfectionist. He quotes, approvingly Aristotle who asserts that in order to define individual rights 'it is

necessary for us first to determine the nature of the most desirable way of life. As long as that remains obscure, the nature of the ideal constitution must also remain obscure'.³⁶ Sandel therefore criticises both liberal neutrality and communitarianism for the same reason. Namely that in their differing ways both doctrines preclude the making of critical judgements on the content of ends that rights promote.

It is important to emphasise this transition in Sandel's thought. Between *Liberalism and the Limits of Justice* and *Democracy's Discontent* his theory has migrated from one which uncritically embraces a constitutive conception of community as an alternative to liberal voluntarism to one which posits a variant of perfectionism in order to provide the critical standard which he had heretofore failed to elucidate. Therefore criticisms of Sandel's later work which tend to presuppose that he envisages communities in a manner akin to the virtuous Troglodytes of Montesquieu's *Persian Letters*, a group of people whose identity was so bound up with their community that they could not imagine challenging its norms and values seems misplaced.³⁷ However, this begs the question, of what precisely does Sandel's teleological conception the good consist in? After all, we have seen so far that neither deliberative democracy nor cultural relativism strands of thinking which Sandel continues to appeal to, are up to the task. The most obvious answer is of course civic republicanism. However, as I will now show, his fear that civic republicanism will reproduce the same defects as communitarianism -intolerance, bigotry and oppression- ultimately leads him to discard this philosophy in favour of perfectionist liberalism.

In the final part of this section I will provide two instructive examples which not only serve to illustrate Sandel's endorsement of perfectionist liberalism, but also militate against his professed commitment to civic republicanism. The first of these is his account of the famous debates between Abraham Lincoln and Stephen Douglas concerning whether the federal state had a right to regulate slavery. From Sandel's perspective, the debate revolved not around the question of whether slavery was moral, but rather on whether it was correct to abstain from making a moral judgement on the question in order to maintain political unity. Whereas Lincoln argued that public policy should express rather than avoid making a substantive judgement on the issue, Douglas averred that we should bracket the moral controversy concerning slavery in order to respect "the right of each state and each territory to decide these questions for themselves".³⁸ Sandel's objective in highlighting this dispute is to demonstrate that while all contemporary liberals will instinctively concur with Lincoln that slavery is morally wrong their reluctance to appeal to comprehensive moral ideals in order to preserve political neutrality is a mode of argumentation which corresponds with Douglas rather than Lincoln. In order to refute Douglas's position political liberals must violate their own neutrality and advocate support for a Kantian conception of the person, a stance which is explicitly refuted by minimalist liberalism.³⁹

It is not my intention to critique this argument in any detail. Rather, I wish to point out that even if Sandel is correct, what he has effectively done is side with the Kantian liberal Lincoln against the civic republican Douglas. Although Sandel does not say so, Douglas's presumed neutrality itself rested on a comprehensive moral doctrine, the inviolability of states rights and the moral illegitimacy of any

action by the federal state to curb those rights. As Smith states, Sandel obscures the fact that Douglas's doctrine of popular sovereignty is an explicit example of the very American republicanism with an explicit appeal to self-government which Sandel himself endorses.⁴⁰ Thus, while Sandel's example may successfully refute minimalist liberalism, it does so at the expense of also condemning civic republicanism, as neither doctrine by bracketing substantive moral questions can adequately defend individual rights. While Sandel's equation of Douglas's stance with the argumentative strategy of modern liberalism is both clever and provocative, it also serves to disguise the extent to which it was the embodiment of the racism that attached itself to states rights republicanism.

Sandel's embrace of perfectionist liberalism at the expense of civic republicanism is also evident in his discussion concerning conflicts between free speech absolutists and those who wish to circumscribe free speech in order to reduce offence to certain constituencies of people. Sandel laments the fact that traditional justifications for free speech which emphasised its importance as a prerequisite for collective self-government have been displaced in favour of the belief that the moral worth of free speech derives from its importance in affirming the principle of respect for persons as individual selves. Consonant with this view, in recent decades, American courts have defended free speech in a way that is content neutral. In other words they have resisted passing judgement on the content of the speech which they are being asked to regulate. Sandel cites (amongst others cases) the famous example of *Collin v Smith* which involved attempts by the National Socialist Party to overturn injunctions by Skokie's village government prohibiting them from marching in the town due to the fact that it contained a large number of

Jewish holocaust survivors.⁴¹ The Illinois District Court sided with the plaintiffs arguing that content-based restrictions could only be justified “on the basis of imminent danger of a grave moral evil”.⁴²

Sandel astutely points out that the philosophical assumptions which governed the conclusions which the Court reached in this case were not philosophically neutral, but were parasitical on a controversial moral theory of personhood which prioritised individual self-expression over claims asserting speech-inflicted harm to the identity of particular communal groups. Thus, Sandel provides an illuminating account of how the individualistic assumptions which he claims have dictated the trajectory of Supreme Court jurisprudence in recent decades has impacted on questions of free speech. He stipulates that by allowing the Nazi march to go ahead, the District Court failed to take cognisance of the fact that speech not only advocates, but also constitutes social practices. In addition, preserving free speech at all costs inhibits political communities from respecting the good of persons as situated selves. Many liberals will of course find this case rather discomfiting and that is no doubt one of the reasons why Sandel selected it. It is perhaps the most eloquent example Sandel provides in *Democracy's Discontent* of how the good of respect for persons as situated selves can seem to outweigh the respect accorded to individuals as ends.

Sandel anticipates the response of the anxious liberal, namely, that the government must be neutral among ends in order to prevent majorities from prohibiting views which they happen to deplore. After all, while the disadvantage of allowing unfettered free speech may be that it results in groups such as the Nazis displaying

intolerance towards vulnerable minorities as in the case of Skokie it also serves to protect groups campaigning for civil rights as was the case when Martin Luther King marched in white segregationist communities. A liberal may ask that if all speech need not be tolerated then what is to distinguish the case of the Nazis in Skokie from the civil rights marches in the South. The assumption behind the question is that curbing free speech is more likely to impact upon the latter than the former. Sandel's answer is striking. Whereas the Nazis promoted genocide, Martin Luther King sought civil rights for blacks.⁴³ In other words, one can adjudicate between the different instances of free speech depending on the substantive ends being pursued in each case. To be more precise, when it is substantive liberal ends that are being pursued then it is wholly legitimate to allow free speech while in other instances it can be prohibited. It is not my intention here to determine whether Sandel is correct to privilege the more restrictive understanding of free speech over the permissive one. I simply want to note that both of these competing understandings are largely liberal in substance. Sandel is no longer claiming as he did in relation to constitutive religious communities that the liberal voluntarist self privileges the ideal of critical reflection towards an individual's particular ends at the expense of the situated self. Rather, his argument here is that its language of neutrality means that its ideal of critical reflection is formal rather than substantive. In its place, Sandel proffers a perfectionist liberalism which can supply the conceptual resources to challenge the values of constitutive selves whose attachments are inimical to the wider liberal community. In this context, his argument represents the very antithesis of communitarian relativism.

Conclusion

This chapter has argued that the false dichotomies which disfigure Sandel's narrative account of American history are replicated in his philosophical analysis. In particular, his attempt to resurrect civic republicanism as a philosophical alternative to procedural liberalism is vitiated by his failure to delineate precisely what the substance of the substantive republic actually consists in. The elusive nature of Sandel's republican project can be partly adduced to the fact that he aspires to articulate an inclusive strain of civic republicanism which is therefore less vulnerable to liberal objections of failing to take seriously the diversity of views and cultural beliefs which pertain to modern liberal democracies. Sandel's abstract presentation of the formative project in the first chapter of *Democracy's Discontent*, where he initially differentiates civic republicanism from procedural liberalism, gives the impression that his principal aspiration is to argue for the possibility of a unitary conception of the common good. By contrast, when he comes to discussing political and social issues that provoke much animated discussion such as homosexual rights and abortion, these distinctions have been modulated somewhat. Sandel argues instead that the formative project cannot be delineated a priori but can only be established through a deliberative discussion between competing conceptions of the good. Despite their apparent differences, the problem with both these versions of the formative project is that they are ultimately premised on the invocation of state coercion to further certain concrete ends. A deliberative dialogue based on trying to reach a normative consensus on what these ends should be will merely highlight the incommensurable metaphysical and epistemological commitments which animate competing conceptions of the good. Therefore, the attempt to find a unified conception of the

common good is an illusory one and will simply end up reaffirming substantive liberal positions on issues such as abortion or result in the subordination of liberal rights to traditionalist conceptions of morality. Sandel does not appreciate that his legitimate point that it is impossible for the state to be neutral between competing conceptions of the good also vitiates his own aspiration to craft an overlapping consensus between diverse comprehensive doctrines which converge on a unified common morality.

Finally, this chapter has shown that Sandel not only oscillates between competing versions of the formative project, but in places, continues to employ a communitarian vocabulary which is at variance with his insistence that the good life is not relative to the shared understandings of a particular community but instead ought to be understood as having transcendent value. In particular, his continuing commitment to the notion of the radically encumbered self which is embedded in constitutive communities whose obligations are not subject to critical scrutiny drives him back in the direction of the very cultural relativism which he explicitly disavows. His ontological distinction between the unencumbered and encumbered selves simply does not map onto his normative distinction between procedural liberalism and civic republicanism. Thus, while the last two chapters have argued that Sandel's proffered alternative to procedural liberalism fails both ontologically and normatively, it still remains necessary to explore whether Rawlsian liberalism really does presuppose the Kantian conception of the unencumbered self which Sandel saddles it with. In contrast not only with Sandel, but also with conventional wisdom, it will be contended that Rawls's liberalism is actually communitarian in substance at both the ontological and normative levels.

Once this argument has been made in Chapter Four, it will be possible to see how it in fact suffers many of the same defects which plague Sandel's republicanism.

Chapter Two Endnotes

¹ I borrow this apt analogy from Will Kymlicka, "Liberal Egalitarianism or Civic Republicanism: Friends or Enemies"? in Anita Allen and Milton C. Regan, *Debating Democracy's Discontent*, (Oxford: Oxford University Press, 1998), pp131-148, at p131

² Joan Williams, "Notes of A Jewish Episcopalian: Gender as a Language of Class; Religion as a Dialect of Liberalism" in *Debating Democracy's Discontent*, pp99-113 at p99

³ William Connely, "Civic Republicanism and Civic Pluralism: The Silent Struggle of Michael Sandel" in *Debating Democracy's Discontent*, pp205-211 at p209

⁴ Hilliard Aronovitch, "From Communitarian to Republicanism: On Sandel and His Critics", *Canadian Journal of Philosophy*, vol 30, no.4, (December 2000), pp621-648, at p625

⁵ Richard Rorty, "A Defence of Minimalist Liberalism" in *Debating Democracy's Discontent*, pp117-125 at p118

⁶ Richard Rorty, *ibid.*,

⁷ Michael Sandel, "Liberalism and Republicanism: Friends or Foes"? A Reply to Richard Dagger, *Review of Politics*, vol.61, no.2, (Spring 1999), pp209-214 at p210

⁸ See for example, Chandran Kukathas, *The Liberal Archipelago*, (Oxford University Press, 2003), p2

⁹ See Timothy Hinton, "Sandel On Tolerance", *Analysis*, vol.6, no.4, (October 2001), pp327-33, p328

¹⁰ Michael Sandel, *Democracy's Discontent*, p102

¹¹ This might strike some readers as rather surprising as Sandel's main counterfoil is Rawls rather than Rorty. However, I believe that Sandel largely misrepresents Rawls's theory by depicting it as exclusively amoral and procedural in form. In contrast, as numerous authors have pointed out and as will be discussed later in the thesis, Rawls argues that his political conception of justice is a moral conception and thus is devoted to the cultivation of certain qualities of character needed to sustain that conception. See for example, Colin Farrelly, "Does Rawls Support the Procedural Republic? A Critical Response to Sandel's *Democracy's Discontent*", *Politics*, vol.19, no.1 (Feb 1999), pp29-35. In contrast, Rorty's position is much more emblematic of the procedural liberalism which Sandel aims to refute.

¹² Michael Sandel, *Democracy's Discontent*, pp20-21

¹³ Richard Rorty, "A Defence of Minimalist Liberalism" in *Debating Democracy's Discontent*, p120

¹⁴ *ibid.*,

¹⁵ *ibid.*,

¹⁶ Hilliard Aronovitch, "From Communitarianism to Republicanism: On Sandel and His Critics", *Canadian Journal of Philosophy*, vol 30, no.4, (Dec 2000), pp621-648, at p626

¹⁷ *ibid.*, p626

¹⁸ Michael Sandel, *Democracy's Discontent*, p104

¹⁹ See for example, the Vatican document, "Considerations Regarding Proposals to Give Legal Recognition to Unions between Homosexual Persons" at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_do...

²⁰ Michael Sandel, *Democracy's Discontent*, p107

²¹ Michael Sandel, "Review of Political Liberalism", *Harvard Law Review*, vol. 107, no.7, (May 1994), pp1765-1794, pp1793-1794

²² The difficulties which Sandel encounters in his attempt to modulate the somewhat brittle and austere tones which seems to make civic republicanism unattractive as a public philosophy for a post-modern age by translating it into a more inclusive discourse of deliberative democracy is evident not only in relation to social and cultural issues but also in questions concerning distributive justice. After all, a notable feature of classical republicanism, as Sandel himself acknowledges in the final chapter of *Democracy's Discontent* has been a profound commitment to social justice as an essential prerequisite of collective self-government. On republican terms, this would seem to rule out a priori any conception of distributive justice which deviated too far from this injunction. Indeed, it is interesting to note that Sandel in his review of *Political Liberalism* agrees with Rawls that there is no reasonable pluralism concerning questions of distributive justice and therefore that libertarians are unreasonable. It is difficult to see however, how this position is consistent with the spirit of deliberative democracy. The difference between Rawls and Sandel can be summed up by the fact that whereas Rawls thinks it is possible to attain reasonable agreement on questions of justice but not on conceptions of the good, Sandel, by contrast affirms the possibility of generating a reasonable consensus on both. It seems to me however, that whereas Rawls is partially wrong, Sandel is totally

wrong. If Sandel were to remain faithful to the spirit of deliberative democracy then he should have criticised Rawls for not ascribing reasonable pluralism to questions of justice as well as the good rather than going in the opposite direction.

²³ See for example, Michael Walzer, "Michael Sandel's America", in *Debating Democracy's Discontent*, pp175-182 at p175.

²⁴ Thomas Pangle, "The Retrieval of Civic Virtue", in *Debating Democracy's Discontent*, pp17-31, p30

²⁵ Michael Sandel, *Democracy's Discontent*, p64

²⁶ Michael Walzer, "Sandel's America", *Debating Democracy's Discontent*, p176

²⁷ Peter Berkowitz, "Giving Liberalism its Due", accessed at www.peterberkowitz.com/givingliberalismitsdue.htm

²⁸ Chandran Kukathas, *The Liberal Archipelago*, p30

²⁹ One of the many problems which pertains to Sandel's stylised contrast between procedural liberalism and civic republicanism is that it fosters the impression that the only influential strands of liberalism are ones premised on a Kantian conception of individual autonomy thereby negating competing strains such as those of Kukathas's which are informed less by the assumptions of Enlightenment rationality than by the importance of respecting cultural diversity.

³⁰ Michael Sandel, *Democracy's Discontent*, p321

³¹ *ibid.*,

³² Rogers Smith, "America's Contents and Discontents; Reflections on Michael Sandel's America", *Critical Review*, vol. 19, no.2, pp73-96 at p78

³³ Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1997), px

³⁴ Charles McCann, "Hayek: The Liberal as Communitarian", *Review of Austrian Economics*, vol.15, no.1, (Jan 2002), pp5-34, at p8

³⁵ Michael Sandel, *Liberalism and the Limits of Justice*, pix-xi.

³⁶ *ibid.*,

³⁷ Richard Dagger, *Civic Virtues: Rights, Citizenship and Republican Liberalism*, (Oxford: Oxford University Press, 1997), p123

³⁸ Paul M. Angle, ed., *Created Equal? The Complete Lincoln-Douglas Debates of 1858*, (Chicago: Chicago University Press, 1958), p374

³⁹ Michael Sandel, *Democracy's Discontent*, p22

⁴⁰ Rogers Smith, *America's Contents and Discontents*, p84

⁴¹ Michael Sandel, *Democracy's Discontent*, pp81-90

⁴² *Collin v Smith*, 578 F.2d (1978), p1202

⁴³ Michael Sandel, *Democracy's Discontent*, pp89-90

CHAPTER THREE: RAWLS'S COMMUNITARIANISM

Introduction

In the last chapter it was argued that Sandel's civic republicanism did not offer a satisfactory alternative to liberal individualism. His persistence in arguing that the philosophical options open to interrogation consist of either an unencumbered or an encumbered self is a particularly gratuitous example of 'the fallacy of the false dilemma' which continues to plague both Sandel's work and the communitarian critique of liberalism more generally.¹ The question still needs to be addressed however as to whether he is right to impute to Rawls the notion of the unencumbered self which presupposes that Rawls's Kantian conception of human nature results in him espousing an atomistic ontology. Sandel seems to believe that the philosophical assumptions which informed *A Theory of Justice* are still in place and that it is merely the way in which Rawls argues for these assumptions which have changed in his later work. By contrast, many other critics have argued that, while it is true that Rawls's emphasis in *A Theory of Justice* on a hypothetical social contract which presupposed rational and disembodied individuals left him vulnerable to the charge that he was guilty of asocial individualism, this is an impression which he rectifies in his later work where he attempts to ground his theory on more communitarian foundations. In the next chapter where I will discuss Rawls's *Political Liberalism* I will endeavour to show that while Rawls's theory is indeed communitarian this is not in the way that is commonly supposed. In this chapter through a discussion of *A Theory of Justice* I will argue that contrary to conventional opinion, Rawls actually adopts a holistic rather than an

atomistic ontology with the result that his theory is much less Kantian in its assumptions than is often supposed.

Justice Goodness and Congruence: Stability in Rawls's Theory of Justice

A Theory of Justice has been described as “the most substantial and interesting contribution to moral philosophy since the war”.² The huge impact, which it made at the time of its publication, can be largely attributed to the fact that it revived substantive moral philosophy at a time when it was on the defensive. Moral scepticism which doubts that it is possible for moral beliefs to be underpinned by rational foundations has been pervasive throughout the history of Western political thought although it rarely became orthodoxy. This changed however, in the decades preceding the writing of *A Theory of Justice* in which logical positivism and linguistic philosophy emerged as the dominant philosophical currents. Rawls book largely represented a reaction against these trends. It aimed to provide a substantive theory of justice in which it was not sufficient simply to formulate principles of justice, but also to show how they correlate with our considered judgements in reflective equilibrium. It was thus concerned with the critical question of how to maintain a public sense of justice and the specific institutions and practices requisite for its continued reproduction. Rawls's theory of justice is based on Kant's conception of the self and Rousseau's moral psychology. As one reviewer argues, in the context of western thought, it can be seen as the culmination of the effort begun by Kant and Hegel and continued by idealists such as T H Green and Bernard Bosanquet to adapt Rousseau's notion of the general will to modern liberal democracies.³ In constructing his theory, Rawls deploys

a two stage strategy similar to that which takes place in Rousseau's *The Social Contract* and *Emile*. After formulating the principles of justice through the device of the original position, he aims to show that our natural sentiments and moral psychology would render such a conception stable. Fortunately, according to Rawls, the principles developed in the original position cohere with 'our nature as noumenal beings'.⁴ What reason requires will be confirmed and sustained by the emergence of the appropriate natural and moral sentiments:

Thus a well-ordered society satisfies the principles of justice which are collectively rational from the perspective of the original position; and from the standpoint of the individual, the desire to affirm the public conception of justice as regulative of one's plan of life accords with the principles of rational choice.⁵

This chapter will proceed, firstly by elaborating upon the tools of liberal contract theory which Rawls employs in order to formulate his principles of justice. In addition, it will show the extent to which concentration by critics on these tools in isolation from the other aspects of his theory have prompted unwarranted claims that he relies on an abstract, unencumbered self. Then, I will move on to show how his theory of moral development contained within part III of *A Theory of Justice* is based on the fostering of a social environment conducive to the cultivation of a sense of justice. In order to accomplish this task, he is forced to deviate away from the arid rationalism of Kant with his eviscerated moral psychology and turn his attention instead to moral philosophers such as Philippa Foot and Bernard Williams in formulating his views about the importance of moral sentiments.⁶

The Original Position

In part one of *A Theory of Justice*, Rawls aimed to derive a conception of justice from the deliberations of rational agents who were regarded as mutually disinterested. This reflects Rawls' initial intention of casting his conception of justice as part of a theory of rational choice. For this purpose, Rawls constructed an original position in which rational actors were subject to constraints of reasonableness, which guaranteed their impartiality in determining principles of justice. There was thus no need for the rational actors in the original position to be informed by a theory of moral personality which would require them to take into account the equal interest of all, for this impartiality was guaranteed by morally substantive situational constraints in which those agents choose principles for a system of fair cooperation. These normative constraints resulted in a veil of ignorance being thrown over the mutually disinterested though free and equal parties. Because they did not know what their status would be in the society, which it was their task to design principles of justice for, they were thus already constrained by their self-interest to reflect on what is equally good for all.

Rawls's adoption of a rational choice format provoked much criticism from theorists who believed that it simply was not possible to derive principles of justice from deliberations conducted between rationally choosing actors who are blind to issues of justice. Thus, Rawls' contractual approach to political theory, as exemplified in the original position, came under severe criticism from communitarians who believed that it represented a commitment to asocial individualism. One can identify in this line of attack two distinct senses in which Rawls's work is perceived as individualistic which

are often misleadingly conflated together. The first sense in which Rawls' view of society is regarded as narrowly individualistic can be attributed to the fact that people in the decisive choice situation {i.e the original position} are characterised asocially and ahistorically. This view can be defined as *metaphysical individualism* in the sense that it embodies an atomistic ontology. Critics have thus attacked Rawls's original position for being predicated on a metaphysically abstract view of persons in which the individual is regarded as prior to society. The second sense in which Rawls's theory is perceived as individualistic is based on the fact that people in the decisive choice situation are regarded as self-interested. This view can be defined as *ethical individualism* in the sense that individuals are characterised as acting for solely egoistic reasons.⁷ Thus critics have criticised Rawls for predicating his theory on an ethically impoverished conception of the person. For example, communitarians believed that Rawls by conceiving of politics as a forum in which people cooperate solely in order to further their own private interests neglected the importance of substantive goods whose content is defined communally. In particular, Rawls ignored the fact that for many people, the value of political community consisted of a constitutive attachment in which common institutions were regarded as intrinsic and not just instrumental goods.

Both these arguments seem to be based on the premise that because individuals in the initial choice situation are characterised either abstractly and/or self-interestedly, then it logically follows that a well-ordered society informed by Rawls's substantive principles of justice will also be atomistic and or egoistic. Such a position however seems to rest on a misconstrual of the role which the original position plays in Rawls's theory. In

particular, it fails to recognise that the original position served as a heuristic device and was not meant to be interpreted literally, as if those in it were actual persons. Indeed,

Rawls made that point perfectly clear in *A Theory of Justice*:

The fact that in the original position the parties are characterised as not interested in one another's concerns *does not entail* that persons in ordinary life that hold the principles that would be agreed to are similarly disinterested in one another...The motivation of the persons in the original position must not be confused with the motivations of persons in everyday life that accept the principles that would be chosen and have the corresponding sense of justice.⁸

Thus, even in *A Theory of Justice*, Rawls makes it clear that the original position is a 'device of representation' and is best interpreted as a figurative way of establishing the constraints which it is reasonable to place on individuals when engaged in deliberation over the principles of justice.⁹

Those critics who interpreted *A Theory of Justice* as one designed solely for rational prudential agents failed to take seriously enough Rawls's distinction between rational and full autonomy. The parties who deliberate in the original position are characterised simply by rational autonomy. Rationally autonomous agents differ from fully autonomous ones in the sense that in determining the principles of justice which should be adopted from the available alternatives, the constraints of the reasonable are imposed from outside. "In their rational deliberations the parties...recognise no standpoint external to their own point of view".¹⁰ Rawls states that as merely rationally autonomous, the parties are no more than artificial persons fashioned to inhabit the original position as a device of representation. Citizens in a well-ordered society, by contrast, are fully autonomous because they freely accept the constraints of the

reasonable.

The principles of practical reason are no longer external impositions but are intrinsic features of individuals' moral personalities. Our capacities for practical reasoning as applied to issues of justice are embodied in two moral powers which Rawls ascribes to fully autonomous citizens: Namely, our capacity for an effective sense of justice and a capacity to form, revise and rationally pursue a conception of the good. It is real life *citizens*, who by affirming and acting upon the principles of justice that are fully autonomous. Thus, from *A Theory of Justice* through to *Political Liberalism*, Rawls has consistently distinguished between the rational and the reasonable. In particular, in *Political Liberalism*, Rawls states that the reasonable is not derived from the rational.

In an important footnote, Rawls makes this explicit stating that:

Here I correct a remark in *Theory* {*A Theory of Justice*}, p16, where it is said that the theory of justice is part of the theory of rational decision... this is simply incorrect. What should have been said is that the account of the parties, and of their reasoning, uses the theory of rational decision, though only in an intuitive way. This theory is itself part of a political conception of justice, one that tries to give an account of reasonable principles of justice. There is no thought of deriving those principles from the concept of rationality as the sole normative concept.¹¹

Rationality is self-regarding in that it relates to how citizens choose and order their ends. Rational agents lack the particular form of moral sensibility which constitutes reasonable agents: namely, the desire to engage in fair social cooperation on terms others might reasonably be expected to endorse. This point should have been obvious even from *A Theory of Justice*. Even there Rawls stated that the distinctive features of the original position are meant to model the two moral powers which he attributes to

citizens of stable constitutional regimes.¹² The fact that autonomy in both Kant's and Rawls's theories is attributed to persons who are both reasonable and rational explains why moral psychology is important for Rawls in a way which does not pertain to traditional social contract theories. The latter, understood in a Hobbesian sense proceeded from what was understood to be people's given ends and attempted to forge a compromise between them. By contrast, Rawls understood that the moral powers are not fixed, but are shaped and developed within a shared public culture. Thus, any viable social contract depends on fostering basic institutions that will help develop our capacity for a sense of justice.¹³ It is for this reason that Rawls attaches so much importance to moral psychology as shall be shown below.

Rawls's Principles of Moral Psychology

Rawls adopts a modernised version of Rousseau's moral psychology in which through the neutralisation of man's egoistic impulses individuals will be socialised into adopting a sense of justice. In one key respect, Rawls's theory represents an advancement over Rousseau's. In his well-ordered society "the hazards of the... prisoner's dilemma are removed by the match between the right and the good".¹⁴ Even in the good society Rousseau believed that there would be tension between the general will and individual interest. In this context, he was prepared to use coercion to reinforce our social habits. Rawls is more optimistic in speaking of "our natural sociability" and therefore anticipates convergence between the predicates of a just society and individuals' moral dispositions. It is in this respect that Rawls's work is truly original in that he claims to have resolved one of the classic conundrums of political philosophy

without resort to the methods of indoctrination employed by Rousseau and other classical republicans: As Chapman states: “In the great society, what right permits is reconciled with what interest prescribes... collective and individual rationality coincide”.¹⁵ In a well-ordered society constructed in accordance with Rawls's theory of justice, individuals' rational desires and their natural sentiments will be mutually complementary.¹⁶ Thus, Rawls believes that we are unified moral beings in which reason and feeling are interdependent. I will now examine Rawls's account of moral development in *A Theory of Justice* in more detail with specific reference to chapter eight.

Rawls first grappled with the problem of how to secure the stability of his principles of justice in one of his earliest articles entitled ‘*The Sense of Justice*’, which forms the basis for the account of moral development embodied in the third part of *A Theory of Justice*. In a suggestive opening phrase he cited Rousseau’s view in *Emile* “that the sense of justice is no mere moral conception formed by the understanding alone, but a true sentiment of the heart enlightened by reason, the natural outcome of our primitive affections”.¹⁷ Rawls endeavours in the first part of the article to ‘set out a psychological construction to illustrate the way in which Rousseau’s thesis might be true’.¹⁸ He further adds; “in the psychological construction to follow, the stages of a development are described by which the sense of justice might arise from our primitive natural attitudes”.¹⁹ Before exploring this psychological construction in more detail it is worth briefly exploring how this account of moral development differs from that of Kant as he plays such a pivotal role in so many other respects in Rawls's work. Kant is adamant

that feelings are to have no place in the establishment of morality. He states that “no moral principle is based on any feeling whatsoever...For feeling, no matter by what it is aroused, always belongs to the order of nature”, i.e nature, as contrasted with freedom.²⁰ As Susan Moller Okin notes, Kant is only able to come to the conclusion that feeling and love have no place in the foundations of morality because he neglects a very important type of human love.²¹ In his *The Doctrine of Virtue*, Kant defines two types of love. The first he calls ‘practical love’ which can sometimes *result* from the activation of the duty to help others. Such moral feelings, far from leading to principles of morality, as they do on Rawls's account, are merely derivative from independently established principles. The second type of moral feeling, which he elucidates, is affective love which, belonging to the order of nature rather than that of autonomy or reason, is restricted from playing any role in the formulation of moral law.

The account of moral education, which Kant presents towards the end of *The Doctrine of Virtue*, illustrates the dichotomy, which he asserts exists between emotive feelings on the one hand and rational moral development on the other. In the context of a dialogue between teacher and pupil, the teacher questions the pupil, and then, “the answer which he methodically draws from the pupil’s reason must be written down and *preserved* in precise terms which cannot be easily altered, and so be committed to the pupil’s memory”. These memorised pieces of reasoning are then reinforced by the teacher’s good example and the example of others.²² This rationalist account of moral education is deficient in that it reduces love to two types. Firstly, the sense of benevolence that emanates from the acknowledgement of duty and the affective love, which he describes

as “mere inclination”. In doing so, Kant fails to realise the importance of one’s upbringing and social environment in acquiring a sense of justice. In complete contrast, Rawls is totally aware of the emotive as opposed to the merely rational character of the sense of justice. He is thus concerned with exploring in chapter eight how and under what circumstances a sense of justice can arise from more ‘primitive’ affections’.

In a much neglected section of *A Theory of Justice* Rawls stressed the importance of the family as the earliest school of moral development *and* accorded it a pivotal role in the fostering of just citizens. This is in stark contrast to political theorists both past and present. While past philosophers such as Rousseau and Hegel argued for the key role of the family in the moral development of citizens, they nonetheless adhered to a public/private dichotomy which enabled them to endorse inegalitarian, hierarchical family structures. They did not question the extent to which this may be incompatible with the socialisation of children into the demands of just citizenship. Contemporary political theorists have been equally inattentive to questions of justice within the family. Communitarians for example, most notably Sandel, have argued that justice is a remedial virtue, which is required only when the shared norms of a group disintegrate and are replaced by conflict over the distribution of necessary goods. Instead of justice, private associations such as families are constituted by benevolence and spontaneous affection. Thus, the progenitors of modern liberalism such as Locke and Kant relegated the family to the realm of nature, which was subordinated to the sphere of justice. Sandel argues similarly that the family is ‘beyond justice’ in the sense of being too elevated for the principles of justice to be necessary.²³ Therefore, both Sandel and Kant,

despite their contrasting conceptions of human nature, presuppose a dichotomy between the domains of justice and emotional feeling.

In *A Theory of Justice*, Rawls attempts to transcend this dichotomy through his psychological construction which is comprised of three stages. These stages are the morality of authority, the morality of associations and the morality of principles.²⁴ The first stage is concerned with the interaction between children and their parents. The love, which a parent expresses for his child, is reciprocated in turn by the child, who correspondingly develops a strong sense of self-worth. As Rawls states:

the parents must love the child and be worthy objects of his admiration. In this way they arouse in him a sense of his own value and the desire to become the sort of person they are...In the absence of affection, example, and guidance, none of these processes can take place, and certainly not in loveless relationships disrupted by punitive threats and reprisals.²⁵

Rawls emphasises that the child's love for his parents does not have a rational instrumental explanation. "He does not love them as a means to achieve his initial self-interested ends".²⁶ Rather, the child's love is a response to the fact that they first loved him. The child's love and trust will manifest itself in a desire to respect the parents' injunctions. While a child will be tempted to transgress these parental precepts, once he has given in to temptation he will experience feelings of guilt for disobeying the parental injunctions. This is what Rawls describes as authority guilt. The absence of guilt feelings would betray the absence of love and trust.

The second stage of moral development is the morality of association. This stage

encompasses many different associations including the school and the neighbourhood. Our membership to these associations enables us to move through a sequence of roles and associations through which our moral understanding increases. Through participation in associations, we develop the capacity to take up the point of view of others and to see things from their perspective. Without this experience, “We cannot put ourselves into another’s place and find out what we would do in his position” which we need to be able to do in order “to regulate our own conduct in the appropriate way by reference to it”.²⁷ Those who take part in the various associations of society develop their “capacity for fellow feeling” and “ties of friendship and mutual trust”.²⁸ Thus Rawls states that just as in the first stage certain natural attitudes develop towards the parents, “so here ties of friendship and confidence grow up among associates. In each case certain natural attitudes underlie the corresponding moral feelings: a lack of these feelings would manifest the absence of these attitudes”.²⁹

It is only when individuals have passed through the first two stages in which they acquire attitudes of love and trust that they are able to progress to the more Kantian third stage, the morality of principle. It is here that the individual develops a common allegiance to the principles of justice themselves as the highest-order principles regulating their society. The morality of principles holds that if “we and those for whom we care are the beneficiaries’ of just institutions, those institutions and the benefits we derive from them will “engender in us the corresponding sense of justice”. Consequently, “we want to do our part in maintaining these arrangements”. When we act contrary to our sense of justice we will encounter “feelings of guilt by reference to

the principles of justice".³⁰ Rawls asserts that the morality of principles is the highest stage in the individual's moral development. Unlike the first stage it does not depend on the relationship with our parents. Nor, as in the case of the morality of association does it depend upon the ties of friendship that we have established towards particular persons. It depends solely upon our commitment to the principles of right which transcend these contingencies. If we violate these principles, we feel guilty not because we have injured our parents or friends but because we have hurt people whom we have never been acquainted with. In this context, Rawls states that the sense of justice 'is continuous with the love of mankind'.³¹ As Rawls states:

Our moral sentiments display an independence from the accidental circumstances of our world, the meaning of this independence being given by the description of the original position and its Kantian interpretation.³²

Thus, in a surprising twist, Rawls ends up endorsing a Kantian conception of the person by adopting a moral psychology vastly different from the one that underpinned Kant's own writings. In contrast to Kant with his arid, rationalistic account of moral learning, in which any feelings antecedent to the establishment of moral principles were rendered illegitimate, Rawls appreciates the importance of feelings in the development of moral thinking. As Schwarzenbach notes, in this respect Rawls work evinces close similarities with Hegel's concept of expression. In positing this concept Hegel aimed to overcome the rigid Kantian dualities such as those between mind and body, and reason and desire.

As Schwarzenbach argues:

In contrast to Kant's view, where the physical, mechanical world forever remains a foil to our transcendental freedom, the sensuous material world in Hegel (including our own sensuous desire) is viewed as the necessary *medium* in which our freedom is embodied and revealed.³³

Hegel's departure here from Kant also seems to be fully accepted by Rawls. In "Kantian Constructivism in Moral Theory", Rawls stated explicitly that his thought should be viewed as an attempt to overcome the many dualisms of Kantian philosophy.³⁴ Our ability to acquire a sense of justice depends greatly on the moral character of the environment in which this takes place. This is clear from Rawls statement that the principles of moral psychology are 'reciprocity principles'.³⁵ Rawls's conception of justice is anchored in reciprocity. This can be seen from a crucial passage where Rawls states that the three stages of moral psychology governing the development of the Rawlsian self:

assert that the active sentiments of love and friendship and even the sense of justice, arise from the manifest intention of other persons to act for our good. Because we recognise that they wish us well, we care for their well-being in return...The basic idea is one of reciprocity, a tendency to answer in kind.³⁶

Each of the three stages of moral development (the morality of authority, the morality of association and the morality of principles) depends on the one prior to it which means that the family takes on a pivotal importance as the foundation stone for the development of a sense of justice. Justice requires the participation of other selves to be preserved. As Alejandro notes, the Rawlsian self develops sentiments and attachments, *not out of itself*, but through the influence which is attained from its interaction with other selves. Justice does not rely solely on altruism in which we are moved by the general good but depends on a social context in which we react to 'the actions of others'.³⁷

The Relationship between the Ethic of Justice and the Ethic of Care

It should be clear in the light of this account of how individuals come to acquire a sense of justice that Rawls does not view moral agents as disembodied selves as certain communitarian and feminist critics have suggested. The principles of right are not acquired by isolated individuals, but are dependent upon social institutions and associations in which the self participates. The self is not disembodied or unencumbered as critics such as Sandel would have it. As this section has attempted to show, by analysing Rawls psychological construction, Rawls's account of moral development actually starts from the perspective of the concrete other and only in the final phase of moral development does it become committed to impersonal principles of right. Nonetheless, a number of critics have argued that the adoption of the perspective of the "generalised other" by fully autonomous adults in the final phase of moral development negates the importance of the concrete other. Benhabib, for example has argued that in Rawls original position, "*the other as different from the self*, disappears...Differences are not denied; they become irrelevant".³⁸

Susan Moller Okin has attempted to refute this argument in a compelling reconstruction of Rawls's theory where she disputes the claim that it involves the promotion of impartiality and universalisability at the expense of recognition of otherness and difference.³⁹ She states that when citizens step behind the veil of ignorance they are not mutually disinterested, but rather have cultivated capacities for empathy, benevolence and equal concern for others as for the self. As she notes, individuals will never actually be in an original position. The purpose of the device is to persuade us as moral subjects

to consider the needs and concerns of every other person, however different they may be from ourselves. Thus, as Okin states, “We, who do know who we are, are to think as if we were in the original position” and did not know who we are.⁴⁰ Thus, in striving for a broader conception of justice, Okin argues eloquently that the original position should be perceived not as an abstraction from the needs and concerns of particular persons but rather as inclusive of them. Okin writes “To think as a person in the original position is not to be a disembodied nobody...Rather, it is to think from the point of view of everybody, of every ‘concrete other’ whom one might turn out to be”.⁴¹ Adherence to the principles of justice requires moral persons to develop qualities of character which equip them to display an equal concern for the social and other human differences of their fellow citizens. In other words, Okin argues that Rawls’s theory of moral development is not based solely on a formal and abstract notion of mutual respect, which expresses an epistemological blindness to the features which individuate among selves in society. Rather, it embodies a much more content and context oriented notion of equal concern.

Okin’s reconceptualisation of the original position as a device of empathy and benevolence fostering a voice of care and concern for others rather than one which promotes a view of individuals as mutually disinterested maximisers has the merit not only of being much more attractive to communitarian and feminist critics. In addition, it is also much more congruent with Rawls’s own account of moral development presented in Chapter Eight of *A Theory of Justice*, which stresses the importance of cultivating the affective capacities that underlie our sense of justice. It can be added

furthermore that it is much more consistent with the thick republican conception of citizenship which he develops in *Political Liberalism* in which much emphasis is placed on citizens inculcating political virtues such as tolerance and fairness.⁴² Okin's argument that the original position should not be represented as a "rational choice" model is reinforced by Rawls's shift in emphasis in *Political Liberalism* from the rational to the reasonable. While the atomistic agent can exercise rationality, reasonable individuals operate in a social context for to be reasonable entails a commitment to a social order in which reciprocity is possible. Thus, as Frazer and Lacey note, the shift in focus from the rational to the reasonable means that the idea of reciprocity can no longer be seen as merely a means to ensuring the stability of justice as fairness. Rather, it represents a constituent value which underpins justice as fairness.⁴³ This argument would seem to support the critical attention which Okin pays to the principles of moral psychology in the third part of *A Theory of Justice* which as we saw earlier constitute principles of reciprocity governing the development of the Rawlsian self.

Nonetheless, Okin's critique remains open to a number of objections. For example, Benhabib, in responding to Okin's critique, agrees that she has greatly enriched Rawls's theory in highlighting its emotive or affective bases. She asserts however that Okin's reinterpretation of the moral structure of Rawls's theory so that it embodies both impartiality and empathy and care for others is undermined by the epistemic constraints which the original position and the veil of ignorance place on Rawls's moral subjects.⁴⁴ In order to assess the cogency of this argument we must briefly review the debate between the ethic of justice and the ethic of care as exemplified by the work of

Lawrence Kohlberg and Carol Gilligan. This will in turn enable us to consider more fully the utility of Rawls's theory as a means of reconciling these two seemingly divergent conceptions of morality.

The relationship or otherwise between the ethic of justice and the ethic of care has been a central concern of feminist theory since the publication of Carol Gilligan's *In A Different Voice*, which initiated a critique of Lawrence Kohlberg's stage theory of moral development.⁴⁵ In contrast to Kohlberg, Gilligan argued that men and women's moral sensibilities developed differently. Whereas Kohlberg's formalistic conception of morality emphasises the importance of individuals learning moral principles (namely principles of justice) and then applying them to concrete situations, Gilligan argues that women develop in a 'different voice' which prioritises emotional connectedness and responsiveness to concrete needs.⁴⁶ In her view, these two voices which she coined an "ethic of justice" and an "ethic of care" respectively are "fundamentally incompatible". Whereas justice stresses impartiality and universality, the ethic of care bases moral obligation on concern for particular relationships. In contrast to this view, a number of arguments have emerged suggesting that justice and care are complementary dimensions of morality. At first sight, as Dale Snauwert notes, there appears to be a marked divergence in the basic orientation of each conception. While the ethic of justice requires separation, the ethic of care embodies attachment. Separation is a necessary requirement for being able to judge moral claims impartially. Attachment on the other hand is needed for care, for care is rooted in empathy. Nonetheless, both the ethic of justice and the ethic of care presuppose reversibility. As Snauwaert asserts:

Moral development for both ethics is constituted by the enlargement of one's capacity for reversibility; one's capacity for care and fairness respectively are based upon the degree one is capable of identifying with other persons. Thus, one's capacity for both care and fairness is based upon the expansion of one's identity...as one's identification expands or contracts, one's capacity to respond and, thus to act morally expands or contracts. This is the essence of reversibility as a moral foundation and it applies to both care and justice.⁴⁷

Two key points can be derived from this claim. Firstly, it is wrong to dichotomise, as a number of care theorists do between learning the correct principles on the one hand and developing moral dispositions on the other. As Lawrence Blum argues, while justice entails applying correct principles, "what it takes to bring such principles to bear on individual situations involves qualities of character and sensibilities which are themselves moral and which go beyond the straightforward process of consulting a principle and then conforming one's will and action to it".⁴⁸ In other words, the ethic of justice no less than the ethic of care requires the cultivation of the virtues of empathy and reciprocity. Secondly, despite appearances to the contrary, the ethic of care is based on a universal commitment to our shared humanity. For example, one of Gilligan's subjects proclaims that we have a duty to "that giant collection of everybody...the stranger is still another person belonging to that group, people you are connected to by virtue of being another person".⁴⁹ Gilligan herself admits that the motivation of the ethic of care is "that everyone will be responded to and included, that no one will be left alone or hurt".⁵⁰ Thus, as Blum notes, while Gilligan states that "each person is embedded within a web of ongoing relationships, and that morality...consists in...emotional responsiveness toward the individuals with whom one stands in these relationships", she means this web to encompass all of humanity rather than one's

immediate circle of friends. Thus, the web of relations expands beyond the personal to embrace an ontological interdependence.⁵¹

On the basis of this account, it would seem that Okin is correct to argue that Rawls's theory of justice is well placed to capture the notion of morality as an integration of justice and care. His account of moral development in which individuals' progress from the morality of authority through to the morality of principle corresponds to the sequence of enlarged identification implicit in the work of many care theorists. However, a number of care theorists, most notably Benhabib, while acknowledging the interdependence of reason and feeling and justice and care in Rawls's work, argue that it still fails to adequately address the standpoint of the concrete other due to the epistemic restrictions which the veil of ignorance places on moral reasoning.⁵² Her point is not that Rawlsian selves are egotistical agents nor does she deny Rawls's commitment to moral reciprocity. Rather, her focus is on the epistemic constraints which the veil of ignorance imposes on the parties, which, by denying them knowledge of their key characteristics such as what conception of the good they would embrace, cannot as a consequence define themselves in distinction from other selves. The veil of ignorance forces individuals to think solely from the perspective of the generalised other at the expense of the concrete other.

Benhabib claims that reciprocity and reversibility can only be imperfectly realised in a theory which is limited to the perspective of the generalised other at the expense of the concrete other. She stresses that that the difference between the general and the

concrete other is not that one is universalised while the other is not. (She describes the former as substitutionalist universalism and the latter interactive universalism). Rather, it is the fact that whereas the former only stresses our *humanity*, the latter emphasises our human *individuality*. There is no moral requirement in the original position to face the "otherness of the other".⁵³ She argues that while "respect for the other and their individuality is a central concern of Rawlsian theory, the Kantian presuppositions which also underpin it are so weighty that the equivalence of all selves qua rational agents dominates and stifles any serious acknowledgement of the "concrete other".⁵⁴ The consequence is that there is no scope for human *plurality* behind the veil of ignorance. As a consequence, reversibility is incomplete as a necessary predicate of reversibility is a distinction between the self and the other.

Will Kymlicka has suggested that this argument cannot be sustained as an interpretation of Rawls's earlier work.⁵⁵ Her mistake, like that of many other feminist and communitarian critics, is to misrepresent the original position as a formalistic and literalistic device rather than one which is heuristic and figurative. This is illustrated by her claim that the original position involves a total abstraction from one's identity. As Kymlicka states, however, the veil of ignorance is not meant to be a theory of personal identity. It is meant rather to be an intuitive test of the arguments we employ when we engage in moral reasoning. The original position is designed to represent "equality between human beings as moral persons", and the concomitant principles of justice are those which people "would consent to as equals when none are known to be advantaged by social and natural contingencies".⁵⁶ The original position is thus an 'expository

device' which 'sums up the meaning' of our notions of fairness and "helps us to extract the consequences".⁵⁷ Even Benhabib seems to concede this point when she says that the original position is an idealisation which makes vivid to us the ideal of impartiality.⁵⁸

It can be argued that Benhabib's critique of Rawls is flawed because she misrepresents the role which the notion of abstraction plays in his work. Kymlicka hints at this when he states, in response to Benhabib's critique, that "the fact that people are asked to reason in abstraction from their own social position, natural talents and personal preferences when thinking about others does not mean that they must ignore the particular preferences, talents, and social position of others".⁵⁹ In other words, any political theory which aims to establish or identify principles which are universalisable must abstract in some sense for otherwise it would be unable to transcend either individual self-interest or communitarian relativism. This is no less true of Benhabib's theory than of Rawls's, for like Rawls, she believes in the principles of universal moral respect and reciprocity. In order to reciprocate in the first place, one must be able to abstract from one's own particular interests in order to consider those of others. The key point for any universalisable theory is not *whether* to abstract but rather *how* to abstract. I do not mean to suggest that Benhabib denies this when formulating her own normative position. Rather, she seems to deny it when critiquing Rawls by equating the original position and the veil of ignorance with the perspective of the generalised other. This is illustrated when she states "Okin is right that 'we who *do* know who we are, are to think as *if* we were in the original position' and did not know who we were".⁶⁰ This seems a clear example of misparaphrasing a quote, for Okin never said or implied that

when we acted as if we were in the original position, we had to imagine that we did not know who we were. That clearly would represent a bizarre theory of personal identity for (and I take this to be Okin's point) if interpreted in this way, it begs the question, how can a person empathise with other selves if they do not know who they are? It seems much more sensible to follow Kymlicka and regard the original position as a metaphorical way of representing the shared values and beliefs of existing societies. A similar point is made by Schwarzenbach when she states that the original position while clearly a form of "methodological abstraction from concrete particularity is devised simply to explicate the principles of personhood underlying the specifically modern period, our "post-Reformational public culture" which embody shared liberal understandings".⁶¹

The Relative Stability of Justice As Fairness

In the light of our exploration of Rawls's account of moral development in *A Theory of Justice*, it should now be clearer how the two parts of his theory conjoin together. In particular, Rawls makes clear that stability of the requisite sort is not guaranteed by the conditions of the original position. The third part of *A Theory of Justice* is devoted to resolving the problem which other social contract theorists such as Hobbes also encounter: Why would people who would choose the principles of justice in an initial situation such as the original position act in a way required by these principles once the limitations of the original position have been removed? Rawls articulates this dilemma even more explicitly in one of his earliest articles, "The Sense of Justice":

The aim of the analytic construction is to derive the principles of justice which apply to institutions. How persons will act in the particular circumstances when, as the rules specify, it is their turn to do their part is a different question altogether. Those engaged in an institution will indeed normally do their part if they feel bound to act on the principles which they would acknowledge under the conditions of the analytic construction. But their feeling bound in this way is not itself accounted for by this construction, and it cannot be accounted for as long as the parties are described solely by the concept of rationality.⁶²

This quotation illustrates how the two parts of Rawls's theory are related to one another. The device of the original position is first introduced to determine the content of justice, the principles which define it. Only once this task has been completed does Rawls develop a psychological theory which is designed to show how men can acquire a sense of justice in real life. While, from the standpoint of the original position, the principles of justice are collectively rational in that every individual benefits if all comply with these principles, Rawls acknowledges that in everyday life an individual may attain even greater benefits for himself by taking advantage of other individuals' cooperative efforts. It is this dilemma which the psychological construction formulated in chapter eight of *A Theory of Justice* aims to resolve.⁶³

It would be a serious mistake, however, to treat the two parts of the theory as entirely disjoint, for the problem of stability is very important for reasoning in the original position. Rawls regards any conception of justice as seriously deficient if its laws of moral psychology are such that it is unable to engender in human beings a corresponding sense of justice. Crucially, Rawls stipulates that this information is available to the parties in the original position, who will thus, other things being equal; adopt the more stable scheme of principles.⁶⁴ In order to support this claim, Rawls

convincingly argues that his theory of justice as fairness is more stable than its principal rival utilitarianism. This is so because the parties in the original position would reject a doctrine which required some citizens to accept lower life prospects for the sake of others. Yet, this is precisely what is required by the principle of utility as allegiance to the social system depends on individuals being prepared to forfeit potential advantages for the sake of the greater good of the whole. Rawls regards it as totally unrealistic to expect individuals to make such sacrifices involving as it were an appeal to unconditional altruism on the part of those whose life prospects have been diminished as a result of the adoption of utilitarian principles of justice. Instead, Rawls anticipates that the parties would design a social order reflecting the alternative principle of reciprocal advantage and would thus adopt something like Rawls's conception of justice.⁶⁵ Rawls believes that justice as fairness is a reasonably stable moral conception because it guarantees that in return for the unconditional concern displayed by other persons for our good, reflected in the granting of equal liberties for all, persons will develop stronger affiliations to the fellow members of their society. This is the point which he attempts to demonstrate through the psychological construction which he outlines in chapter eight.

Arguably, the most important advantage in terms of stability which justice as fairness boasts over utilitarianism is that the mutuality implicit in the principles of justice ensures that each person will develop a secure sense of their own worth. This is important because, as Rawls argues, those who respect themselves are more likely to respect each other and conversely. "Self-respect is reciprocally self-supporting".⁶⁶ In

contrast, utilitarianism would appear to be destructive of the self-esteem of those who lose out in calculating the greatest sum of well-being. It would seem for example to be stretching credibility to expect individuals to experience a stronger sense of fellowship for those who participate in a scheme of cooperation designed to maximise overall utility rather than in one which respects each individual as a free and equal moral person. Why would those who lose out have friendly feelings towards the more fortunate? The likely consequence would be that certain persons would acquire little desire to act justly (as defined by utilitarian principles) thus greatly destabilising that particular society.⁶⁷ The claim that Rawls's two principles of justice support citizens' self-respect by underlining society's commitment to treating them as ends in themselves is decisive in the argument over average utility because Rawls states that self-respect is the most important of the primary goods.⁶⁸ It is therefore impossible for a society to be stable if it does not cultivate a sense of self-respect amongst the vast majority of its citizens.

Thus, the above account has attempted to show that we are left with a much distorted understanding of Rawls's theory if we overlook the important role which psychological stability plays in his thought. Alternative depictions of the parties in the original position as rational interest maximisers concerned to further their own ends or as Kantian noumenal selves abstracted from all particular circumstance, while not entirely inaccurate, neglects the importance which needs to be attached to the universal psychological truths which guides the parties deliberations and leads them to favour justice as fairness over utilitarianism.⁶⁹ It also obscures one of the most original

features of Rawls's contract theory, namely, the sense in which he has transformed and enriched the contract tradition, the discussion of which, I now turn to below.

Two Versions of the Social Contract

While Rawls presents his theory as a revival of one strand of the social contract tradition, this can be misleading unless one understands the extent to which it differs from alternative social contract theories, both traditional and contemporary. In order to explicate this point I want to contrast Rawls's theory with that of Hobbes. Hobbes's and Rawls's theories can be regarded as exemplars of two very different types of social contract views, which following Samuel Freeman; I will call interest-based and right-based contract views.⁷⁰ Both views attempt to address the question of how and why individuals should be motivated to accept the legitimacy of a social contract when they might obtain greater benefits by disobeying it in practice. Interest-based contract views attempt to resolve this dilemma by appealing to individual self interest. Proponents of this view posit a world consisting of isolated individuals abstracted from social relationships all striving to achieve their antecedent desires and ends. From this perspective the only way individuals will be prepared to consent to the principles which underpin their society is by invoking instrumental considerations about what promotes their antecedent ends. Thus, instrumental views involve no appeal to irreducible moral elements. The task is instead to fashion principles which it will be rational for all individuals to accept in order to realise their interests. A leading exemplar of an interest-based view is Thomas Hobbes.

Right-based social contract views on the other hand approach the issue very differently. In contrast to Hobbesian views, they do not accept that reasons for adhering to social and political relations must always be couched in terms which refer to the antecedent ends of particular individuals. Rather, all proponents of right-based views assert that principles of justice cannot be accounted for without appealing to certain intrinsic moral ideals. The principles of right which are devised to constitute our social relations provide an independent common standard for *assessing* our ultimate ends and desires rather than simply acting as a means to promote them. As Freeman notes:

When some doubt arises as to the legitimacy of our ends or proposed actions, the question we normally confront is *not* whether abiding by these norms will effectively promote our purposes. It is, rather, whether our ends and proposed actions can be justified to others according to the system of norms generally accepted within the group.⁷¹

It can be argued that the major representatives of right-based views are Rousseau, Kant and Rawls. As a consequence, all three thinkers interpret the social contract very differently from Hobbes in the intrinsic importance which they attach to the notion of publicly justifying our ends to others. In the case of Rawls this can be evinced by recalling that his conception of social cooperation contains two elements: the rational and the reasonable. It is the existence of the latter component which makes Rawls's theory ideal-regarding rather than want-regarding. By obligating individuals to cultivate feelings of mutuality and reciprocity towards others, it assumes that individuals can recognise the importance of devising fair terms of cooperation which limit the ends and desires they are able to pursue. Thus, in contrast to interest-based contract theories such as those of Hobbes, Rawls's theory is distinct in the key importance which it attaches to

the notion of the reasonable which subordinates the rational.⁷² This is the natural result of Rawls acceding to a Kantian concept of autonomy in which the content of principles is determined by reference to individuals' reasoning capacities rather than the ends which they wish to uphold.

For our purposes, the significant feature which ought to be distilled from the delineation of the differences between the two types of contract theory outlined above is that ideal-based theories are required to pay a much greater amount of attention to the issue of moral psychology than interest-based theories. From the perspective of the latter, individuals most fundamental psychological dispositions can be determined in advance through the device of the state of nature. For theorists such as Hobbes and Locke, nature acts as a fixed standard through which one can identify the reality of the human condition unhindered by the distorting lenses of social convention. According to these contract theorists, man is a being who is driven primarily by a desire for self-preservation and whose decision to enter into a social contract is motivated by a desire to protect himself against others who are driven by the same selfish passions. Thus, the state of nature describes the reality which underpins civil society. It posits a picture of isolated agents who all have in common a fear of death and therefore, despite their natural unsociability, are prepared to consent to society as the only means through which their well-being can be secured. Thus, contract theorists such as Hobbes resolve the potential conflict between private interest and public good by stipulating that civil society can protect individuals' particular interests more satisfactorily than in the state of nature where each individual has a natural right to everything and thus is under no

obligation to respect other individuals' natural rights. Rational men concerned to preserve their lives would be prepared to forfeit their rights to everything in order to obtain effective rights against each other, which would be underwritten by sovereign power.

In contrast to Hobbes, nothing like the state of nature plays a significant role in Rawls's theory. The original position which critics have often compared to the state of nature represents an abstraction from individuals' particular ends rather than a scientific attempt to discover what they actually are. In contrast to the state of nature theorists, Rawls's starting point is society in which the development of individuals' natural sentiments is shaped by the social institutions in which we structure our lives. In this context, Rawls's theory is the exact opposite of the traditional contract teachings in which men's natural ends are assumed to be fixed before their entry into civil society. As Rawls himself states, "justice as fairness is not at the mercy, so to speak, of existing wants and desires".⁷³ Instead, "the social system shapes the wants and aspirations that its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of persons they are".⁷⁴ Thus, it is essential that social institutions are framed in such a way that they encourage a sense of justice amongst those who participate in them. In making this assertion, Rawls employs a view of moral psychology which can be traced back to Rousseau.

While Rousseau, like Hobbes also invokes the state of nature as an analytical device, he deduces from it very different conclusions than Hobbes does. Rousseau argued,

contrary to Hobbes, that as an isolated being, man is a “stupid and shortsighted animal”,⁷⁵ docile by nature and motivated purely by instinct. Being asocial he is deprived of language and therefore lacks any reasoning capacities. He is not driven by a desire to fulfill his future appetites, (Hobbes’s “power after power”), for without reason he does not possess any conception of himself or his life prospects. His reasoning capacities are only activated when he enters into cooperative circumstances. As Freeman notes:

Reason is the instrument of adaptation man acquires to deal with social environments, as instinct is his mode of adaptation to the state of nature. And as a socially adaptive capacity, its primary role is to enable him to understand, apply, act on, and, if necessary devise the norms of cooperation necessary for social life. It is in conjunction with the development and exercise of this social capacity *and not prior to it*, that man is able to apply his rational capacities.⁷⁶

It seems clear that Rawls would concur with this account of how individuals acquire the capacity to reason. Indeed, in *Kantian Constructivism in Moral Theory*, he asserts that individuals’ moral powers of reflection and judgment are not permanently fixed but are shaped and developed within the context of a shared public culture.⁷⁷

Rawls’s optimistic view of human nature in which he argues that individuals’ capacities for practical reasoning can be cultivated through the designing of appropriate social arrangements leads him to a very different perception of how power should be distributed in society once individuals have left the state of nature / original position than that which is upheld by Hobbes. Hobbes believes that the passions which motivated men in the state of nature remain with them when they enter civil society,

thus necessitating the need for a powerful sovereign in order to compel men to obey the law. In contrast, Rawls's assumption that in a well-ordered society, individuals will be motivated by a shared sense of justice means that there is not the same concern as there is with Hobbesian theories that men may be prepared to depart from justice and pursue their own selfish passions. In direct contrast to the Hobbesian view, Rawls asserts that:

Men's propensity to injustice is not a permanent aspect of community life; it is greater or less depending in large part on social institutions, and in particular on whether these are just or unjust.⁷⁸

Rather than simply transposing an institution such as a Hobbesian sovereign on to a system of cooperation in order to ensure stability, Rawls's argument suggests the possibility of forging social arrangements whose stabilizing effect comes through a transformation of our affective ties with one another. Rawls expresses this point most clearly in *The Sense of Justice* where he argues that relations of friendship and mutual trust can play an analogous role to the Hobbesian sovereign in reinforcing a scheme of cooperation. Whereby, Hobbes believed that stability could only be assured by belief in the sovereign's efficacy; Rawls believes that mutual trust between citizens entwined with an effective sense of justice can bring about the same result. In a well-ordered society where these sentiments and inclinations are prevalent there is no reason for an individual to advance his interests at the expense of others or to believe that he must violate the rules in order to ensure protection of his legitimate interests.⁷⁹

Conclusion

This chapter has critically explored the argument, which has been developed from a variety of ideological perspectives including in particular, feminist and communitarian thinkers, that Rawls's theory of justice is underpinned by an atomistic or egoistic individualism. These critics have argued that the individualistic assumptions can be located within Rawls's methodological apparatus (the original position and the veil of ignorance) which he utilises to formulate his conception of justice. It was argued above that two different senses in which Rawls's theory has been labelled individualistic ought to be differentiated from each other. The first is ethical or psychological individualism, which presupposes that the inhabitants of a Rawlsian society are motivated solely by individualistic values at the expense of communitarian ideals. On this interpretation, Rawls's original position seems to yield not a neutral theory but a substantive one in which individuals are understood as rational egoists. The second and more common sense in which Rawls's theory has been perceived as individualistic focuses not on the psychological attributes which are ascribed to individuals who inhabit the original position. Rather, this position, which can be termed metaphysical individualism, is concerned with the epistemic constraints, which govern their deliberations over what normative principles of justice should be chosen. The problems for critics as diverse as Sandel and Benhabib is not that individuals are encumbered by self-interested ends which precludes them choosing communal attachments but rather that they are unencumbered by any ends due to the weight of the epistemic constraints imposed upon them. As a consequence, many communitarian and feminist critics of Rawlsian liberalism have argued that the original position is populated by depersonalised ciphers

from which all differences have been eviscerated thereby bearing little relation to actual human beings.

It has been contended in this chapter that it is a mistake to attribute either sense of individualism to Rawls. This mistake can be explained by the fact that critics of Rawls's conception of liberty have misconstrued the role that the original position plays in his political theory. Its purpose is not to supply a theory of personal identity whether it is that of a Hobbesian rational egoist or a Kantian unencumbered self. Rather, it is to model the type of moral reasoning that actual individuals should employ when engaged in normative argument. In this context, it is important to note that Rawls is anxious to demonstrate that his principles of justice can receive the consent of citizens in a well-ordered society. Thus, even in the original position, while the deliberating parties are denied access to the particular characteristics that shape their personality, they are in possession of general information including knowledge as to which conceptions of justice are most conducive to empirical stability. It is for this reason that Rawls argues that the parties would reject utilitarianism, as it demands too much of individuals requiring even those whom are disadvantaged by the application of the utility principle to sacrifice their own ends in order to maximise the social good. As there is a strong likelihood that many individuals would defect from such arrangements, deliberators in the original position would conclude that utilitarianism could not engender in actual human beings the requisite sense of justice, which would render a society empirically stable. The strains of commitment are simply too great.

While Rawls argues that the adoption of a utilitarian schema would impose intolerable burdens on too many individuals for it to underpin a well-ordered society, it remains incumbent upon him to show how his own principles of justice can perform the requisite stabilising function. This is the purpose of the third part of *A Theory of Justice* where he aims to demonstrate that under the right conditions, it is possible to attain congruence between the right and the good, in the sense that the virtue of justice is supremely regulative of one's good. This is an especially important task for Rawls to accomplish, as in contrast to Hobbes, Rawls's conception of practical reason does not function by establishing norms of social cooperation which conform to individuals antecedent desires and ends. Rather, it requires the construction of social institutions, which will shape and transform individuals final ends thereby ensuring the development of a sense of justice that will guarantee their full compliance with the normative arrangements proposed. It is for this reason that Rawls offers a rich moral psychology that focuses on the role of social institutions such as the family in transmitting just conduct across generations. Therefore, Rawls's conception of practical reason should not only be differentiated from Hobbes's but also from Kant's. Rawls does not argue as Kant does, that the principle of autonomy is implicit in an individual's moral consciousness. His holistic ontology presupposes that children develop attachment bonds within the family, which is a prerequisite for their psychological and moral development. Whereas Kant argues that feelings have no place in the establishment of morality, Rawls argues that our sense of justice can only arise from our primitive natural attitudes. Therefore, it can be concluded that in contrast to the assertions of feminist and communitarian critics, Rawls does in fact accept their claim

that humans are situated encumbered selves. Furthermore, he endorses a version of what Sandel calls a formative project that is predicated on the importance of social institutions in shaping individuals qualities of character so that they willingly comply with liberal normative ideals.

Rawls's defence of a well-ordered society constituted by liberal principles of justice as set out in *A Theory of Justice* can be regarded as a paradigmatic instance of the Enlightenment project. It presupposes the possibility of fostering a normative consensus on the legitimacy of a liberal political order that can command the assent of all citizens. Underpinning this normative consensus is the belief that one can discern a universal conception of human nature that will supply Rawlsian liberalism with both philosophical foundations such as a Kantian conception of autonomy and a robust moral psychology to complement it. In this way, one can attain a convergence between the right and the good, justice and empirical stability without resort to the methods of state coercion, which are assumed by non-liberal political theories. As the next chapter will show, this optimistic or utopian belief in the Enlightenment ideal does not survive Rawls's redefining of his conception of justice as a political rather than a comprehensive doctrine. Rawls no longer believes that it is possible to reconcile justice with the good in the manner presented in *A Theory of Justice* because liberal societies will always contain a multiplicity of non-liberal conceptions of the good whose substantive content will be incompatible with that of Kantian liberalism. As Rawls now stresses in his later work that such pluralism is compatible with human reason, he no longer believes that it is possible to justify political liberalism with reference to a

Kantian conception of human nature. Consequently, the account of empirical stability outlined in part three of *A Theory of Justice* is also jettisoned for Rawls no longer believes that in conditions of reasonable pluralism it is possible to construct a harmonious link between liberal ideals and all reasonable individuals deepest personal beliefs.

At the same time, however, while Rawls wishes to revise the philosophical justification for his liberal principles of justice so that they are cognisant of the epistemic fact of reasonable pluralism, he has no desire to revise the actual substance of these principles. He therefore proposes that one can construct an overlapping consensus of reasonable, comprehensive doctrines that will converge on his political conception of justice as constitutive of a well-ordered liberal society. Therefore, while Rawls now argues that one has to jettison the universalist and foundationalist aspirations of the Enlightenment project, he still supports its ideal of normative consensus as applicable to modern liberal democracies. However, I will argue in the next chapter that Rawls's retention of the consensus aspiration while rejecting the other components of the Enlightenment project produces insuperable problems for both the philosophical and psychological coherence of his theory. In particular, Rawls's rejection of his theory of justice as a comprehensive doctrine results in a sharp disjunction between the right and the good and the public and private spheres which part III of *A Theory of Justice* endeavoured to avoid. It is not clear why an individual brought up with an illiberal conception of the good would be prepared to suspend their psychological history when engaging in the public sphere. Furthermore, it is not apparent how Rawls can supply a philosophical

argument as to why they should do so without invoking a comprehensive philosophical doctrine that prioritises the political over the non-political domain. Therefore, it will be claimed in the next chapter that Rawls exacerbates rather than solves the problem of stability pertaining to his theory of justice.

Chapter Three Endnotes

- ¹ John Hasnas, "The Dangerous Dichotomy of *Democracy's Discontent*", or "Michael Sandel and the Fallacy of the False Dilemma" can be accessed at www.mason.gmu.edu/~jhasnas/SandelWeb.htm, pp1-20, at p1
- ² Stuart Hampshire, "A New Philosophy of the Just Society", *New York Review of Books*, vol.18, no.3, (February 24, 1972), p34
- ³ See John Chapman's excellent article, "Rawls's Theory of Justice", *American Political Science Review*, vol.69, no.2 (June 1975), pp588-593
- ⁴ John Rawls, *A Theory of Justice*, (Cambridge: Harvard University Press, 1971), p225
- ⁵ John Rawls, *ibid.*, p577
- ⁶ See Susan Moller Okin, *Justice, Gender and the Family*, (New York: Basic Books, 1989), p99
- ⁷ An excellent account of this argument can be found in C. F. Delaney's "Rawls and Individualism", *Modern Schoolmen* vol. 60, no.1 (January 1983), pp112-22. A key weakness in Delaney's article however, is that he does not provide any specific examples of theorists who have committed either of these errors. Nonetheless, I would suggest that mistakes of this kind can be found scattered in the works of many of Rawls' critics. See for example, Alasdair Macintyre, *After Virtue*, (2nd ed. University of Notre Dame Press, 1984, pp232-3, Anthony Arblaster, *The Rise and Decline of Western Liberalism*, (Oxford: Basil Blackwell, 1984), p334-5, Maureen Ramsey, *What's Wrong with Liberalism* (Leicester UP, 1997), p119, Quentin Skinner, *The Republican ideal of Political Liberty*, (Cambridge: Cambridge University Press, 1990), p304, Chantal Mouffe, ed. *Dimensions of Radical Democracy*, (London: Verso, 1992) p23. Even so astute a theorist as William Galston seems to me mistaken when he argues that the ideal of the person is not the foundation but rather the outcome of the principles of justice which are chosen in the original position. See *Liberal Purposes*, p119. This seems to ignore Rawls's comment that "in searching for the most favoured description of this situation {i.e. the original position} we work from both ends". In other words, the principles of justice chosen in the original position must correspond with our intuitions about justice. For what issues at one end in a theory of justice must issue at the other in a theory of the person. This is what Rawls means by reflective equilibrium. See *A Theory of Justice*, p20
- ⁸ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971) p148. See also pp120, 584
- ⁹ Indeed, even in *A Theory of Justice*, p138, Rawls hints that the original position is not essential to the construction of his theory when he states: "To say that a certain conception of the person would be chosen in the original position is equivalent to saying that rational deliberation satisfying certain conditions and restrictions would reach a certain conclusion. If necessary, the argument to this result could be set out more formally. I shall however, speak throughout in terms of the notion of the original position. It is more economical and suggestive". Thus, a number of interpreters have suggested that it can be seen as a thought experiment which aids us in identifying what are fair terms of cooperation for citizens regarded as free and equal in practice but which his theory, in principle could do without. I think that this position can also be supported by Rawls discussion of the original position in *Political Liberalism*. See for example, Peter Jones Review Article, "Two Conceptions of Liberalism, Two Conceptions of Justice", *British Journal of Political Science* vol. 25, no.4 (Oct 1995), p523
- ¹⁰ John Rawls, "The Basic Liberties and Their Priority", reprinted in *Political Liberalism*, (Columbia University Press, 1993), pp289-371, p306
- ¹¹ *ibid.*, p53 Rawls argument that in Justice as Fairness, the reasonable and the rational are complementary and that one cannot do without the other is clearly set out in *Political Liberalism*, pp48-54
- ¹² John Rawls, *A Theory of Justice*, p18
- ¹³ See Samuel Freeman, "Reason and Agreement in Social Contract Views", *Philosophy and Public Affairs*, vol.19, no.2, (Spring 1990), pp122-157, pp155-156
- ¹⁴ John Rawls, *A Theory of Justice*, p577
- ¹⁵ John Chapman, "Rawls's Theory of Justice", p589
- ¹⁶ This remark requires a certain amount of qualification. While Rawls in *A Theory of Justice* wishes to seek stability of a non-Hobbesian kind, he is prepared to invoke Hobbesian methods if there is a radical disjunction between the principles of justice and individuals' conceptions of the good. See for example, the penultimate section, 'The Good of the Sense of Justice' where he states "It can happen that there are

many who do not find a sense of justice for their good; but if so, the forces making for stability are weaker. Under such conditions penal devices will play a much larger role in the social system. The greater the lack of congruence, the greater the likelihood...of instability with its attendant evils", p576. Rawls hoped to avoid having to resort to coercion by asserting in Chapter Nine that stability can be attained by appealing to the 'Kantian interpretation' of the principles of justice. Of course as will be discussed in the next chapter, Rawls no longer appeals to the Kantian interpretation' as the basis for reconciling the right with the good as this would necessitate the adoption of a comprehensive conception of the good which Rawls now rejects as illiberal. Instead, Rawls now wishes to confine his principles of justice to the political sphere alone. The consequence of this position, however, is to locate many non-public associations beyond the scope of his principles of justice. This has resulted in the fear, prevalent amongst liberal critics in particular, that Rawls's conception of justice is now much less empirically stable than it was in *A Theory of Justice*. It seems to encourage a psychological dualism or even schizophrenia amongst individuals who are expected to be good liberal citizens in the public sphere while being allowed to adopt non-liberal attachments in the private sphere. The problematic nature Rawls's later work will be elaborated upon in much more detail in the next chapter.

¹⁷ John Rawls, "The Sense of Justice", in Joel Feinberg, *Moral Concepts*, (Oxford: Oxford University Press, 1970), pp120-138, p120

¹⁸ *ibid.*,

¹⁹ *ibid.*, p284

²⁰ Immanuel Kant, *The Doctrine of Virtue*, pt 2: *Metaphysic of Morals*, trans. Mary J Gregor (New York: Harper and Row, 1964), p33

²¹ Susan Moller Okin, "Reason and Feeling in Thinking about Justice", *Ethics*, vol.99, no.2, (January 1989), pp229-249

²² Immanuel Kant, *The Doctrine of Virtue*, pp151-52. An even clearer account of Kant's belief that feelings can play no genuine role in moral development can be found in the last section of *The Critique of Practical Reason*, (Cambridge University Press, 1997) entitled '*The Methodology of Pure Practical Reason.*' See especially p161 where he states: "In our times, when men hope to have more effect on the mind through yielding, soft-hearted feelings...which wither instead of strengthening the heart, than through the dry and earnest idea of duty which is more fitting to...progress in goodness, attention to this method is more needed than ever".

²³ Michael Sandel, *Liberalism and the Limits of Justice*, (2nd ed. Cambridge: Cambridge University Press, 1998), pp31-34. It is important to note that Sandel now claims that critics were wrong to discern from *Liberalism and the Limits of Justice* that it was his contention that justice does not applies to families. He states that in citing Hume's view that the need for justice in the family recedes as mutual benevolence increases was not to endorse Hume's vision of the family, or to infer that families were beyond justice. It was simply to show that Rawls could not base his case for the primacy of justice on Hume's empiricism but must found it on much stronger metaphysical presuppositions; See in particular, Michael Sandel, 'Reply to Critics', *Debating Democracy's Discontent*, P332. Sandel's point is well taken and indeed, it is one of the central claims of this thesis that Rawls cannot found his principles of justice on empirical grounds as he attempts to do in *Political Liberalism* but must rely on more contestable assumptions about he nature of the self. However, Sandel himself does not seem to appreciate that these misunderstandings arise at least partly because of his false dichotomy between liberalism and civic republicanism. Thus, while Sandel makes it clear that he deplors the subordination of women and wishes to distance himself from the coerciveness and exclusiveness which has often characterised the republican tradition, he still does not stipulate that families should conform to liberal principles of justice.

²⁴ John Rawls, *A Theory of Justice*, pp462-479

²⁵ *ibid.*, p465

²⁶ *ibid.*, p464

²⁷ *ibid.*, p469

²⁸ *ibid.*, p470

²⁹ *ibid.*, p471

³⁰ *ibid.*, p474

³¹ *ibid.*, p476

³² *ibid.*, p475

- ³³ Sybil Schwarzenbach, "Rawls, Hegel and Communitarianism", *Political Theory*, vol.19 no.4 (November 1991), p274
- ³⁴ John Rawls, "Kantian Constructivism in Moral Theory", *Journal of Philosophy*, vol.77, no.9, (Sept 1980), pp515-572, p516
- ³⁵ John Rawls, *A Theory of Justice*, p453. Rawls reaffirms this point in *Political Liberalism*, p17
- ³⁶ John Rawls, *A Theory of Justice*, p494
- ³⁷ Robert Alejandro, "Rawls's Communitarianism", *Canadian Journal of Philosophy*, vol 23 no.1 (March 1993), pp302-303
- ³⁸ Seyla Benhabib, *Situating the Self*, p161
- ³⁹ Susan Moller Okin, "Reason and Feeling in Thinking about Justice", pp229-249
- ⁴⁰ *ibid.*, p246
- ⁴¹ *ibid.*, p248
- ⁴² John Rawls, *Political Liberalism*, p157
- ⁴³ E. Frazer and N. Lacey, "Politics and the Public in Rawls Political Liberalism", *Political Studies*, vol 43, no.2, (June 1995), pp233-247, p237
- ⁴⁴ Seyla Benhabib, *Situating the Self*, p167
- ⁴⁵ Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development*, (Harvard University Press, 1982).
- ⁴⁶ *ibid.*, p19
- ⁴⁷ Dale Snawwaert, Ecological Identification, Friendship and Moral Development; Justice and Care as Complementary Dimensions of Morality, *Philosophy of Education*, 1995, (Urbana, 111.: Philosophy of Education Society, 1996), pp438-443, p438
- ⁴⁸ Lawrence Blum, "Gilligan and Kohlberg": Implications for Moral Theory, *Ethics*, vol 98, no.3, (April 1988), pp472-491, p485.
- ⁴⁹ Carol Gilligan, *In a Different Voice*, p53
- ⁵⁰ *ibid.*, p63
- ⁵¹ Lawrence Blum, "Gilligan and Kohlberg", p473. Owen Flanagan and Keith Jackson provide a detailed account of the inconsistencies present in Gilligan's work concerning the relations between the ethics of justice and the ethics of care. They state: "her recent work still shifts between the ideas that the two ethics are incompatible alternatives to each other...and that each is deficient without the other and ought to be integrated". See "Justice, Care and Gender: The Kohlberg-Gilligan Debate Revisited", *Ethics*, vol. 97, no.3, (April 1987), pp622-37, p628
- ⁵² Benhabib, *Situating the Self*, p166
- ⁵³ *ibid.*, p159
- ⁵⁴ *ibid.*, p167
- ⁵⁵ Will Kymlicka, *Contemporary Political Philosophy*, (Oxford: Clarendon Press, 1991), pp262-63
- ⁵⁶ *ibid.*,
- ⁵⁷ *ibid.*,
- ⁵⁸ Seyla Benhabib, *Situating the Self*, p166
- ⁵⁹ Will Kymlicka, *Contemporary Political Philosophy*, p274
- ⁶⁰ Seyla Benhabib, *Situating the Self*, p163
- ⁶¹ Sybil Schwarzenbach, "Rawls, Hegel and Communitarianism", p550. This argument of course implies that there is a much greater degree of continuity between in *A Theory of Justice* and *Political Liberalism* than many critics often supposed. Whereas, it is commonly thought that the latter work represents a retreat from the universalist aspirations of the former book, Schwarzenbach's argument would imply that the original position was always meant to mirror the liberal ideals implicit in public political culture of democratic societies.
- ⁶² John Rawls, "The Sense of Justice", pp123-124
- ⁶³ An excellent account of the relationship between the two parts of Rawls theory and in particular the differences between the motivational assumptions of the parties in the original position and those which inform actual human beings in real life can be found in Stanley Bates, 'The Motivation to be Just', *Ethics* vol. 85, no.1 (Oct 1974), pp1-17
- ⁶⁴ John Rawls, *A Theory of Justice*, pp138, 176, 455, 498
- ⁶⁵ *ibid.*, See Section 29, esp. pp176-180 and section 76
- ⁶⁶ *ibid.*, p179

⁶⁷ *ibid.*, pp499-502

⁶⁸ *ibid.*, p440

⁶⁹ Shortly after the publication of *A Theory of Justice*, Brian Barry perceptively noted that Rawls attached such importance to the notion of psychological stability as a reason for choosing justice as fairness over utilitarianism "that it seems to be in imminent danger of short-circuiting the whole elaborate {original position} argument in favour of the two principles". Brian Barry, *The Liberal Theory of Justice: A Critical Examination of the Principal Doctrines in A Theory of Justice by John Rawls* (Oxford: Clarendon, 1973), p14. One commentator takes this argument to its natural conclusion by developing a conception of justice based purely on the criterion of stability thus avoiding appeal to the device of the original position with its problematic notion of what it would be rational to choose under conditions of radical uncertainty. See Edward F McClennan, "Justice and the Problem of Stability", *Philosophy and Public Affairs*, vol. 18, no.1 (Winter 1989): pp3-30

⁷⁰ Much of the above account is indebted to the excellent article by Samuel Freeman, 'Reason And Agreement in Social Contract Views', *Philosophy and Public Affairs*, vol. 19 (1990), pp122-57

⁷¹ *ibid.*, p108

⁷² See in particular, John Rawls, "Kantian Constructivism in Moral Theory", pp528-29

⁷³ John Rawls, *A Theory of Justice*, p261

⁷⁴ *ibid.*, p259

⁷⁵ Jean Jacques Rousseau, "On Social Contract or Principles of Political Right", in *Rousseau's Political Writings*, ed. Alan Ritter and Julia C. Bondanella (New York: Norton, 1988), bk.1, chap 8, p95. See also in the same volume, his *Discourse on Inequality*, pp15-34

⁷⁶ Samuel Freeman, "Reason and Agreement in Social Contract Views", p109

⁷⁷ John Rawls, "Kantian Constructivism in Moral Theory", p560

⁷⁸ John Rawls, *A Theory of Justice*, p261

⁷⁹ John Rawls, "The Sense of Justice", pp128-129. See also *A Theory of Justice*, pp497-498

CHAPTER FOUR: BETWEEN KANT AND HEGEL: RAWLS'S POLITICAL LIBERALISM

Introduction

The previous chapter addressed objections placed against Rawls from a variety of sources alleging that the reliance in his seminal work, *A Theory of Justice* on Kantian versions of modernist political theory vitiated his attempt to provide a political philosophy that was both coherent and morally attractive. Both these faults were attributed to the conceptual apparatus employed by Rawls in which, by stripping the parties to the original position of their particular characteristics, presupposed an untenable atomistic ontology. It was argued, however, that such a position could only be sustained by neglecting the account of moral development which Rawls provided in the third part of *A Theory of Justice*, which attempted to explicate a theory of moral development that aimed to show that the principles of justice formulated in the original position could be rendered congruent with individuals' particular conceptions of the good. As a consequence, it could be argued that Rawls, through his extensive discussion of moral psychology, does in fact understand the importance of people possessing a sense of justice in order for a well-ordered society to be sustainable. However, this attempt to show the extent to which Rawls does in fact provide the motivational resources to animate a liberal political culture fails to address two other intertwined objections which have been levelled against the book. Firstly, that his account of justice presupposed an Enlightenment philosophy of history which illegitimately assumed the universality of liberal moral ideals and secondly, that it

resulted in a truncated view of the political sphere due to his normative commitment to a Kantian conception of moral autonomy which resulted in an ethical monism through the privileging of justice over all other virtues.¹

During the last couple of decades, a large number of contemporary critics embodied within the pragmatist tradition, encompassing thinkers as diverse as Benjamin Barber, John Gray and Jurgen Habermas, have implicitly cast doubt on whether *A Theory of Justice*, for all its undoubted merits should be regarded as a work of *political* philosophy.² A fundamental feature of liberal political theorists working in the 1970s, irrespective of their ideological divergences was their belief in what Benjamin Barber has described in a similar vein to John Dewey, one of the progenitors of pragmatist thinking, as the ‘seductions of foundationalism’.³ Thus, irrespective of their contrasting views over the meaning of justice, both Rawls and Nozick adumbrated the view that it must stem from a notion of right prior to politics. Thus, as Barber states, “for both men, philosophically constructed notions of liberty and justice are made to produce a politics; neither understands these notions to be produced by a politics”.⁴

In this context, by attempting to illuminate the political world by assimilating politics to prior philosophical categories, theorists such as Rawls, far from representing a break from the philosophical scepticism articulated by Bertrand Russell, merely embodied its continuation in a new form. Rawls’s work came to be perceived as the paradigmatic example of the desire by the foundationalist to describe the political universe through the lens of an unimpeachable epistemology. Unlike the charge of atomism, this concern

cannot be alleviated through claiming, as I did in the last chapter, that Rawls's ontology, far from being based on atomistic assumptions accepts the fact that human identity is established through a dialogical encounter with others. While this is true, it does not alter the fact that the holistic account of human identity outlined by Rawls is both universalistic and foundationalist. It depended on assumptions about human beings derived from evolutionary psychology that were held to be universally valid for all people in all contexts. In this sense, Rawls evades the objection that citizens are autonomous ciphers (a charge emanating from the way he designs the original position), only to risk succumbing to another. Namely, that he has repeated the mistakes of classical liberal theorists, such as Locke, by according liberal beliefs a metaphysical and anthropological priority, which presupposes that liberal ideals are the natural and essential standpoint rather than contingent products of history. In this respect, for all the differences between Rawls's epistemology and the substantive content of his theory outlined in the previous chapter, they both converge in the assumption that political theory can be judged by the cognitive standard of truth and falsity. In Rawls's case, this can be summed up in the view that at the foundation of humanity is our capacity for justice.

Rawls's writings subsequent to *A Theory of Justice*, which culminated in the publication of *Political Liberalism*, can be viewed largely as a response to the severe criticism which the view of political philosophy as the search for universal foundations received at the hands of his detractors. They disputed his belief that the task of philosophy was to establish an abstract political theory free from contamination by

particularism and subjectivism. Rawls now eschews modernist liberal philosophy's traditional claims to cognitive essentialism and universalism and aims instead to retrieve his theory of justice by recasting it in post-metaphysical terms. Rawls's theoretical system does not receive its justification by appealing to rational choice theory nor is the stability of his paradigm secured by psychological laws, which are presumed to be true as was the case with his earlier work. Instead, Rawls proceeds in a hermeneutic fashion by dissociating his conception of justice from comprehensive philosophical doctrines and locating them instead in "intuitive ideas" embedded within the political culture of democratic societies. Through the adoption of this method, whereby Rawls aims to avoid the metaphysical disputes that constitute plural societies, he aims to circumvent the claims of anti-foundationalists that his theory is based on untenable metaphysical presuppositions.⁵

Despite these reformulations of his theory, Rawls's paradigm has been assailed from all sides. These criticisms largely centre on both the coherence and desirability of Rawls's continuing attempts to defend the priority of the right, while claiming to avoid metaphysical questions. In particular, Rawls has been accused of making an implausible attempt to separate the political sphere from the background culture of civil society by assessing questions of political morality in isolation from the comprehensive moral views of citizens.⁶ It has also been argued that this attempt to isolate the political sphere from comprehensive conceptions of the good has resulted in an unwarranted restriction of political discourse. For example, anti-foundationalists such as John Gray allege that Rawls remains wedded to the Enlightenment project of formulating

determinate principles and entrenching them so that they are immune from the contingencies of political life. In this context, political liberalism as articulated by Rawls, far from representing a rupture from the Enlightenment tradition, as Rawls himself imagined, has instead been perceived as its continuation in another guise in which the public sphere is de-politicised at the outset.⁷ On the other side of the philosophical spectrum, comprehensive liberals have attacked what they consider to be unwarranted concessions to fashionable intellectual currents such as post-modern relativism which allege that universal human rights represent an imposition of Enlightenment notions of freedom and selfhood on a plethora of world cultures which do not subscribe to these notions. In contrast, they argue that the Enlightenment heritage should be extended to encompass non-Western vocabularies which have been traditionally regarded as inimical to the spread of human rights doctrines.⁸

This chapter will argue that critics of the Rawlsian enterprise are justified in their claim that Rawls fails to provide an adequate account of the concept of the political. The key problem is that Rawls's identification of his theory as a description of ideas latent within the culture of democratic societies remains reliant on the notion of these societies as ideal realms in which liberalism is the dominant political culture. This ahistorical reading fails to consider the extent to which liberal political ideals have intersected with illiberal ideological commitments in a way which greatly complicates Rawls's attempt to maintain the conceptual independence of the political sphere by confining alternative illiberal traditions to citizens' private views of morality. If this argument is correct then it would seem that Rawls cannot base the meaning of

liberalism on a study of citizens' reasonable intuitions. Rather, liberals must pay much more attention to the need to foster civic virtues or at least modes of socialisation which will challenge illiberal notions embedded within the heart of democratic societies that cannot simply be banished to the private sphere. Furthermore, the empirical and normative value of Rawlsian liberalism is reduced by its continual insistence on theorising society as a closed system whose internal principles of justice have to be divined before being applied universally. This is normatively undesirable for it tends to foster the implicit assumption that the political community has a special moral significance rather than being one association among many. Thus, as Kukathas puts it, it ignores the extent to which the terms of the free society ought to be "an account of the terms by which different ways of life *coexist* rather than an account of the terms by which they *cohere*".⁹ At an empirical level Rawls's theory ignores the extent to which as David Held aptly puts it, we no longer live in a world of discrete national communities but rather 'overlapping communities of fate' where the trajectories of nations are enmeshed with each other.¹⁰ This in turn results in a much more complex and fluid understanding of the public sphere than the one theorised by Rawls and renders his rejection of universalism redundant.

Rawls's Account of Stability in *A Theory of Justice* and *Political Liberalism*

In the Introduction to *Political Liberalism*, Rawls asserted that the differences between his earlier and later work can be attributed to what he now regards as the inadequate account of political stability which he provided in Part III of *A Theory of Justice*.¹¹ He argues that as used in *A Theory of Justice*, the idea of a well-ordered society of justice as fairness is unrealistic, because it was dependent on citizens adopting this conception

on the basis of a comprehensive philosophical doctrine. This is problematic because a modern democratic society consists of a pluralism of incompatible but reasonable comprehensive doctrines. Thus, the key question which Rawls sets himself in *Political Liberalism* is how one ensures the existence over time of a well-ordered just society in the midst of social and ideological pluralism. In order to resolve this dilemma, Rawls proposes recasting his theory as a political conception of justice rather than as a comprehensive moral doctrine. With this response Rawls makes a sharp break from the leading political philosophers in the Western tradition, who from Plato to Mill argued that it was impossible to separate the virtue of justice from a comprehensive theory of the good life to which all humans should aspire. In contrast, Rawls argues that the foundations of political justice are to be found in “intuitive ideas” which are detached from comprehensive religious, moral or philosophical doctrines and are located instead in the public political culture of democratic societies.¹²

It is not always recognised, either by Rawlsian sympathisers or his critics that the meaning of stability in Rawls’s work appears to change between *A Theory of Justice* and *Political Liberalism*. This is partly due to the fact that in both works justice as fairness consists of two stages. The first stage is to work out a conception of justice for the basic structure of society. The second is to show that this conception of justice is stable. As was argued in the previous chapter, in the case of *A Theory of Justice* the first stage can be described as the *justificatory* stage as it was concerned with identifying and then justifying the principles of justice. The second stage on the other hand represented the *motivational* stage as it was concerned with showing how a Rawlsian

just society would be self-sustaining. Through the adoption of the principles of moral psychology outlined in the final part of *A Theory of Justice*, individuals would naturally develop a sense of justice, which would be congruent with their various conceptions of the good life. Thus, Part III of *A Theory of Justice* showed how stability could be secured by the willing consent of citizens rather than through Hobbesian methods. The problem which Rawls came to believe existed with this solution to the problem of stability is that it took for granted not only that competing conceptions of justice had been repudiated, but also that citizens did not hold substantive religious or philosophical beliefs which conflicted with their allegiance to the doctrine of justice as fairness. Rawls now regards this assumption as morally illegitimate, for in any free society there is likely to be a multiplicity of religious and other metaphysical worldviews, which will be affirmed by reasonable citizens, not all of which endorse justice as fairness as it was presented in *A Theory of Justice*. Thus, Rawls now asserts that:

“Political liberalism assumes that, for political purposes, a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime”.¹³

Thus, as Susan Mendus notes, while Rawls’s main priority in the final section of *A Theory of Justice* was to show that those who have endorsed the principles of justice will be motivated to act on them, this is no longer what Rawls means primarily when discussing stability in *Political Liberalism*.¹⁴ The central question which animates the book is not “why should people who accept the two principles be motivated to act on them?” Rather, it is, “How can we justify the two principles to people who have comprehensive conceptions of the good which conflict with them?”¹⁵ Rawls states, for

example, that “justice as fairness is not reasonable unless in a suitable way it can win its support by addressing each citizen’s reason, as explained within its own framework”.¹⁶ Therefore, the problem of stability becomes one of justification and not simply motivation. This can be adduced to his belief that the account of motivation provided in the last section of *A Theory of Justice* was illegitimate in that it was underpinned by a comprehensive conception of the good that was universally applicable.

Thus, critics who regarded Rawls’ concern in *Political Liberalism* as one of empirical stability are not entirely accurate. Rawls’s principal theme in this book is not psychological stability, but rather philosophical stability. Initially, critics assumed that the decision to recast his theory of justice as a political conception was a strategic one designed to make it easier for citizens animated by illiberal conceptions of the good to accept liberalism as legitimate within the public sphere. As it would now be interpreted as a political conception it need not challenge the truth claims of comprehensive doctrines. However, as Thomas Hill has stated, if stability as a practical concern did lie at the heart of Rawls’s revisions, then it would not be simply sufficient to show that what Rawls calls an overlapping consensus of reasonable comprehensive doctrines converging in their acquiescence of a political conception of justice is remotely ‘possible’. As Hill states, if the overlapping consensus has replaced the principles of moral psychology as the stabilizing force of a just society, one would want some reassurance that such a consensus would be likely to develop and endure. As he does not provide this reassurance it is appropriate to conclude that practical stability is not the principal aim of his book.¹⁷

This interpretation of Rawls's political project has gained increasing ground in the scholarly literature and has been most eloquently outlined by Robert Talisse.¹⁸ As Talisse states, comprehensive liberal theories aspire to identify specific philosophical premises from which a liberal political order may be justified. However, the 'fact of reasonable pluralism' renders such an attempt inadmissible for there are no philosophical premises which can command the assent of all reasonable persons. Insofar as comprehensive liberal theories are underpinned by controversial philosophical foundations, they are self-refuting. As Rawls states, "the question the dominant tradition has tried to answer has no answer".¹⁹ That is, the existence of reasonable pluralism vitiates any effort to vindicate liberal political commitments by reference to substantive philosophical claims. As Talisse puts it in his paraphrasing of Rawls's argument; "a consistent liberalism...must be *thoroughly* liberal. It must be liberal not only in its conception of *justice*, but also in its conception of political justification".²⁰ In this context, Rawls's concern with stability is intrinsic to reason and therefore internal to the process of normative theorizing rather than extrinsic which is the assumption of those who hold Rawls's account of stability to be empirical rather than theoretical.

If this reinterpretation of Rawls's theory is correct then it would appear to recast the role that the notion of the overlapping consensus plays within Rawls's framework. Its purpose would not be to serve as an index of the utility of a political conception of justice but rather as a means to legitimize it in the context of irreducible pluralism

which is the natural result of the exercise of human reason in conditions of liberty. However, this argument needs to be qualified. After all, Rawls himself is keenly aware of the need for a liberal democratic regime to command the support of the vast majority of the population.²¹ It is unlikely that he would consider the revisions he makes in *Political Liberalism* worth the effort, if he did not think that one of its attractive features was the greater prospects which it presents of gaining the consent of actual citizens in societies characterized by perpetual social and ideological diversity.

The ambiguity in Rawls' work over the precise meaning of stability and his concomitant elision between acceptability and acceptance reflects a deeper problem which plagues all neutralist theories whose appeal seems to be based on their dual ability to transcend difference while simultaneously appearing to leave difference intact. On the one hand, the modus vivendi appearance of neutrality gives the impression at first sight that its main function is to mediate between conflicting conceptions of the good. However, this appearance is deceptive for only those forms of life which can be accommodated within a liberal state will be salvaged.²² Thus, as Glen Newey aptly puts it, neutralist theories claim to profess moral abstinence, only to smuggle in moral ideals, which determine how much diversity can be tolerated within a liberal regime. Thus, paradoxically, neutralist theories, of which political liberalism is only the most popular variant, defend moral abstinence by invoking moral ideals to justify that abstinence. This leaves them vulnerable to the charge that their reasoning is circular. "The neutral state's justification depends on moral ideals whose reasonableness stems from the fact that reasonable people (read: liberals) are disposed

to accept them”.²³ This is what Newey calls ‘liberalism in, liberalism out’. (lilo). “The lilo is a more congenial craft, to be sure, than the raft of the *Medusa* offered by many actual states. But it is also buffeted by...ambiguity...It aims for the cachet of meta-ideology while never getting above sea level”.²⁴

Rawlsian liberalism may appear particularly vulnerable to this charge due to the substantive notion of reasonableness which it employs. In order for a Rawlsian society to be both legitimate and stable, it is necessary that it is populated by both reasonable citizens and reasonable comprehensive doctrines. In *Political Liberalism*, Rawls distinguishes two aspects of reasonableness as a virtue of persons. The first aspect functions in a similar manner to the way Rawls employed the notion in *A Theory of Justice*. Persons are reasonable when “they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so”.²⁵ The second aspect refers to the ‘burdens of judgement’, which entails the recognition by citizens that even reasonable people arrive at different and conflicting opinions. Thus, citizens cognisant of the burdens of judgment will refrain from imposing their comprehensive doctrine upon others.²⁶ Rawls also attaches reasonableness to comprehensive doctrines. Doctrines are reasonable when they accept liberal principles as requisite for the constitution of the public sphere even when animated by truth claims that do not accord ultimate value to liberal beliefs.

Taken together, the two aspects of the reasonable elucidated by Rawls illustrate the extent to which political justice is a moral conception and not simply a *modus vivendi*

between tired combatants, whose concurrence with liberal values is based on purely prudential reasons. Political justice aspires to a more ambitious goal of a stable agreement between people committed to being fully cooperating members of a just society in which liberal principles are regarded as intrinsic goods. This however, raises in a stark form the issues which will be discussed in the remainder of this chapter: Namely, the nature of the relationship between liberal ideals and non-liberal conceptions of the good. Is it really possible for adherents to non-liberal beliefs to maintain loyalty to a liberal regime, without compromising their convictions? And conversely; how does Rawls propose to cultivate the political virtues needed to ensure the sustainability of a liberal regime as he conceives it when he restricts the forums where individuals construct their identities to the non-public sphere? It is these questions which I turn to below.

The Problem of Congruence in Political Liberalism

The most significant repercussion occasioned by Rawls's decision to extricate his political conception of justice from comprehensive truth claims is the sharp dichotomy between the public and non-public spheres, which is produced as a result. The political conception of the person embodied in the original position remains largely Kantian in outlook. Thus, citizens' public identity is not defined by the ends we regard as constitutive of our selves outwith the political realm. As free persons, citizens are "independent from and not identified with any particular such conception with its scheme of final ends".²⁷ Our public identity therefore is undisturbed by changes over time in our conceptions of the good. The major difference from Rawls's earlier work is

that he no longer holds this to be true in the non-public realm. While in our role as *public selves* we remain committed to justice as the fundamental virtue, as *private selves* this is not necessarily the case. Instead, we may choose to see ourselves through the prism of our deepest beliefs, which may actually conflict with liberal ideals.²⁸

While I do not think Rawls' argument works, it is important to explore it in some detail, for on the surface it would seem to offer a major advance over comprehensive liberalism in being more inclusive of social and ideological diversity. By confining liberalism to the public sphere, Rawls's political conception of justice is predicated on the view that it will prove a more acceptable basis for government in a pluralistic society, which consists of illiberal groups which do not value autonomy as a general value and thus regard comprehensive liberalism as inherently oppressive. It is important to note that Rawls's project does not, as some critics have implied, reject the idea of autonomy altogether but rather wishes to restrict its scope. In his latest work, Rawls makes clear that he still conceives of citizens as fully autonomous in the sense that they are reasonable as well as rational. In particular, he restates his view that citizens only realize their full autonomy when they act from (and not simply comply with) the principles of justice that specify the fair terms of cooperation appropriate for persons regarded as free and equal. In this respect, *Political Liberalism* is continuous with Rawls's earlier work. The main difference is that he now stresses that autonomy is a political and not an ethical value. He wishes to continue appealing to it in political contexts while avoiding it in other contexts. Rawls states that:

This full autonomy of political life must be distinguished from the ethical values of autonomy and individuality, which may apply to the whole of life...as

expressed by the comprehensive liberalism of Kant and Mill.²⁹

Rawls regards Mill's liberalism as comprehensive, in that it encouraged for example, the critical questioning of the value of social customs and traditions by persons in all areas of life, not just political life. Indeed, Mill's primary concern was with the way people blindly followed social conventions in their everyday personal lives. Thus, Mill's liberalism is underpinned by an ideal of rational reflection that applies to all aspects of human life and that is intended to inform "our thought and conduct as a whole".³⁰

Political liberalism, by contrast, accepts that in their private lives some persons are so deeply constituted by certain ends and commitments that they are incapable of subjecting them to critical reflection. This is in marked contrast to the view of classical liberals such as Mill and Kant, (and indeed the Rawls of *A Theory of Justice*), all of whom believed that the dignity and worth of human beings was only secured when they were regarded as autonomous choosers of their own ends. Rawls now acknowledges the communitarian objection that this may not be an accurate portrayal of our deepest self-understandings. Indeed, in *Political Liberalism*, Rawls concedes the Sandelian claim that many individuals will regard certain ends as constitutive of their moral identity when he states that:

It can happen that in their personal affairs, or in the internal life of associations, citizens may regard their final ends and attachments very differently from the way the political conception supposes. They may have, and often do have, at any given time, affections, devotions and loyalties that they believe they would not, indeed should and could not, stand apart from and evaluate objectively. They may regard it as simply unthinkable to view themselves apart from certain religious, philosophical and moral convictions, or from certain enduring attachments and loyalties³¹

Thus, Rawls now accepts the communitarian claim that peoples' ends and attachments are not necessarily a matter of autonomous choice. The value of certain ways of life can only be appreciated if our allegiance to them is regarded as integral to our sense of who we are. However, Rawls argues that in a well-ordered society, Sandelian modes of self-understanding must be confined to the non-public sphere. In the political domain, by contrast, we ignore the fact that our personal identity may be bound to particular ends in such a way as to preclude critical reflection. In other words, Rawls continues to believe that as *citizens*, we still see ourselves as fully autonomous with a capacity for the two moral powers and indeed, a highest order interest in exercising them, while we may reject the value of autonomy as *private individuals*. One way to understand his project is to say that people can be liberals in public life and communitarians in private life. It is in this distinction between individuals' public and private identities that political liberalism marks a sharp break from the comprehensive liberalism of Kant or Mill in which *citoyen* and *homme* converge.³²

There are serious concerns, which need to be addressed over Rawls's sharp distinction between the political and the personal in the life of every individual. These concerns focus on both the coherence and desirability of this political conception. In particular, it appears to imply a vicious dualism of the self in which for political purposes, we have to abstract from the ends and attachments which inform our identity in our private lives. Political liberalism requires individuals to bracket their fundamental beliefs in the political domain. It can be objected that real human beings cannot regard themselves as being split in this way. In *Political Liberalism*, Rawls fails to allay these concerns,

noting rather lamely that citizens must adjust and reconcile these two aspects of their moral identity. In *Kantian Constructivism in Moral Theory* where Rawls first formulated the distinction between the political and the personal, he claims that this dualism is in no way vicious.

Within different contexts we can assume diverse points of view toward our person without contradiction so long as these points of view cohere together when circumstances require.³³

The problem is that Rawls has not shown that these points of view do cohere. In particular, Rawls has not explained why anyone would accept the ideal of autonomy in political contexts unless they also accepted it as a more general value. Rawls makes it clear that in a well-ordered society, citizens will regard themselves as fully autonomous in the sense that they are viewed as free and equal persons. By contrast, in the non-political aspects of their lives, they may believe in a social hierarchy legitimised by aristocratic or religious values. As a number of commentators have noted, these two notions are very difficult to reconcile.³⁴ Imagine, for example, a child who has been brought up in a fundamentalist religious household and educated entirely at a religious school and within a religious institution such as a church. These non-political settings may well have indoctrinated the child into believing that gender inequalities are divinely ordained, homosexuals are not worthy of respect and more generally, that families and churches can, and should be organized hierarchically. How precisely are children who have been socialised in institutions such as these going to regard themselves as free and equal citizens in the political sphere as Rawls requires?

Indeed, Rawls appears to address this question by not consistently adhering to the public-non-public dichotomy which underpins his distinction between political and

comprehensive liberalism. For example, Rawls's attempt to illustrate the difference between political and comprehensive liberalism through reference to the duties of a religious community that inhabits a liberal society, but repudiates its values raises more questions than answers. While the state should not impose its conception of the good over the adherents of that religious community, its children, claims Rawls, should be educated "to be fully cooperating members of society and... to be self-supporting".³⁵ Furthermore, after stating that justice as fairness does not cultivate the values of autonomy and individuality, he goes on to argue:

Justice as fairness honours, as far as it can, the claims of those who wish to withdraw from the modern world in accordance with the injunctions of their religion, *provided only* that they acknowledge the principles of the political conception of justice and appreciate its political ideals of persons and society.³⁶

There are numerous problems with this passage. In particular, it appears to be both ambiguous and self-contradictory. It is ambiguous in the sense that it is not clear what Rawls means by the word appreciate. It is possible that Rawls is suggesting that there is a difference between *cultivating* values and *acknowledging* them. However, it is not clear what this distinction means in practice. To the extent that children are required to be socialized into acceptance of liberal ideals at least in political contexts and indeed to actively promote them, the option of withdrawal is not available to those children despite Rawls's claims to the contrary.

The doubts over how much cultural diversity Rawlsian liberalism, even in its minimalist form, can accommodate are strengthened if one considers briefly the dilemmas posed by the Amish community due to their rejection of liberal ideals such as autonomy and individuality. Controversy was ignited when the state of Wisconsin

attempted to compel children of the Old Order Amish Community to attend school until their sixteenth birthday. The Amish argued that schooling for their children beyond the eighth grade would represent a threat to their way of life and to the salvation of themselves and their children. Wisconsin state objected arguing that some degree of education is necessary, both for political participation and in order to ensure that individuals are adequately equipped to be self-reliant members of society. Despite the seeming strength of these arguments, The Supreme Court decided that the Amish claim to religious freedom superseded the state's insistence on the overriding priority of a public education.³⁷

Most perfectionist liberals such as Amy Gutmann or Richard Dagger would dispute this verdict.³⁸ They would argue that the important mission which schools have in cultivating qualities of character such as autonomy and a sense of justice has overriding importance. As the above discussion suggests, it is not clear that Rawlsian liberalism despite its claims to be more sensitive to the demands of cultural diversity than perfectionist liberalism would represent any great difference in practice. To the extent that education in a Rawlsian polity aims to cultivate the political virtues and to equip citizens to be fully cooperating members of society, its aspirations appear to dovetail with the arguments employed by Wisconsin state against the Amish community's desire to withdraw from that society. Indeed, Rawls himself seems to implicitly accept the degree of practical convergence that may occur between political and comprehensive liberalism when he writes:

It may be objected that requiring children to understand the political conception in these ways is in effect, though not in intention, to educate them to a

comprehensive liberal doctrine...And certainly there is some resemblance between...political liberalism and...comprehensive liberalisms...The unavoidable consequences of reasonable requirements for children's education may have to be accepted, often with regret.³⁹

It is important to note at this point that Rawls's theory, while aspiring to be less 'sectarian' than comprehensive liberalisms such as those of Kant and Mill, does not require for its justification a social world which is maximally accommodative of social and cultural diversity. In order to emphasise this point, Rawls draws a distinction between neutrality of aim and neutrality of effect, which parallels the division between theoretical and empirical stability outlined above. Liberalism is not premised on neutrality of effects but rather on neutrality of aim.⁴⁰ As David A. Reidy notes, this means that a liberal political regime should remain neutral with respect to comprehensive doctrines that are not radically inconsistent with liberal political justice. It emphatically does not mean that in practice, a liberal political regime will not have radically non-neutral and potentially devastating repercussions for certain comprehensive doctrines. Instead, this is a price, which according to Rawls, must simply be accepted with regret.⁴¹

The utility of Rawls's distinction between political and comprehensive liberalism is suspect enough when it appears unable to accommodate comprehensive doctrines which Rawls defines as unreasonable, such as those which aspire to transform the political world so that it corresponds with their own belief system. It is rendered particularly problematic, however, when it appears also to discriminate against religious communities which enter into the discourse of the larger society as a means of protecting their cultural autonomy, rather than to transform the political realm so that it

corresponds with their ethical values. It might have been thought that religious communities such as these would be the paradigmatic examples of the ability for political liberalism to accommodate cultural diversity in a way not open to comprehensive liberalism. However, if the above discussion is correct, this appears not to be the case. An overriding key factor can be adduced which explains why the political liberalism of Rawls is no more able to accommodate cultural communities antithetical to liberal ideals of individual autonomy than comprehensive liberal doctrines. This is the fact that Rawls, in a similar fashion to comprehensive liberals and many communitarians, assumes the centrality of the political community as the basis for philosophical reflection.

Rawls attempts to differentiate political liberalism from comprehensive moral doctrines including his own *A Theory of Justice* by arguing that a political community underpinned by a comprehensive moral doctrine would, by its very nature require the oppressive use of state power.⁴² However, while refusing to consider political society as a community, a red thread which runs through his work from *A Theory of Justice* to *Political Liberalism* (and the *Law of Peoples*) is the belief that political society is not just one community among many, but an order which subsumes all other communities. As Chandran Kukathas notes, “pluralism is recognized; but the quality of that pluralism is circumscribed by its subordination to the moral standards of a political community”.⁴³ The imperatives of securing the social unity and stability of the political order relegate cultural pluralism to a secondary status.

The normative value of political society for Rawls is already evident in *A Theory of Justice* where he conjures up the image of a well-ordered society as a ‘social union of social unions’ and adds; “Everyone’s more private life is so to speak a plan within a plan, this superordinate plan being realized in the public institutions of society”.⁴⁴ Even here Rawls is careful to claim that this larger plan does not appeal to a totalistic doctrine such as religious unity, but is rather a constitutional order in which the principles of justice are achieved. Rawls remains consistent in his conviction of the overriding normative value of political society in *Political Liberalism* stating, for example, “The values that conflict with the political conception of justice and its sustaining virtues may be normally outweighed because they come into conflict with the very conditions that make fair social cooperation possible on a basis of mutual respect”.⁴⁵ Thus, when the values of political justice conflict with those of a particular comprehensive scheme; the former “have sufficient weight to *override all other values* that may come into conflict with them”.⁴⁶ It is in this context that we can understand the difficulties which Rawlsian liberalism has in accommodating cultural minorities which do not adhere to liberal values. Indeed, in *Political Liberalism*, Rawls goes so far as to argue that there is no philosophical incompatibility between political liberalism and classical republicanism. On the face of it, this seems extraordinary. After all, republicanism, as defined in the writings of JGA Pocock and Quentin Skinner is a school of thought which seems to bear little resemblance to the liberal contractarian tradition.⁴⁷ However, Rawls argues that one can differentiate between classical republicanism and civic humanism. Whereas civic humanism is a comprehensive doctrine which regards politics as a privileged form of the good life, classical

republicanism affirms political virtues as of only instrumental importance to the preservation of negative liberty. Therefore, classical republicanism eschews a comprehensive conception of the good in a similar manner to political liberalism. If Rawls is correct that there is no 'fundamental opposition' between classical republicanism and political liberalism then political liberalism can utilize the motivational resources of republican arguments.⁴⁸ As Dagger states in his commentary on this argument;

Political Liberalism seems to enjoy the best of both worlds. It is a neutral doctrine {in that its adoption of impartiality carries justificatory force} but it also contains a conception of moral and political virtues robust enough to provide motivational force as well. In this way political liberalism appears to be self-sustaining rather than self-defeating.⁴⁹

Even if one grants for the sake of argument Rawls's tendentious distinction between classical republicanism and civic humanism there are still many problems with trying to align the former with political liberalism. While appealing to the political virtues implicit in classical republicanism renders redundant communitarian charges that political liberalism is too individualistic a theory to inspire people to place the common good above their own, it does so at the expense of discriminating against conceptions of the good which have no interest in participating in the wider political sphere. Furthermore, Rawls glides over a paradox implicit in classical republicanism as defined by theorists such as Skinner.

Skinner makes two central claims about classical republicanism. Firstly, that it upholds the same negative concept of liberty as liberalism i.e. that individual agents are only free when they pursue their own ends. However, classical liberals are also committed to

a second proposition which would seem to directly contradict this definition of negative liberty. Namely, that to assure our own individual liberty we must engage enthusiastically in a life of public service. Furthermore, as citizens often do not recognize that the maintenance of their own liberty depends on the distillation of public duties, individuals may sometimes have to be forced to be free. In other words, humans often act irrationally and hence it is sometimes necessary for public institutions to exercise coercion in order to safeguard individual liberty.⁵⁰ From a liberal perspective, this seeming equation of freedom with reason and coercion will look just like any other positive theory of freedom, simply paradoxical and incoherent. Thus, Rawls in his eagerness to boost the motivational resources of liberalism by forging a republican-liberal hybrid is in danger of subverting what is surely liberalism's most distinctive feature; namely its commitment to an autonomous private sphere insulated from state coercion. As William Galston argues;

the liberal citizen is not the same as the civic-republican citizen. In a liberal polity there is no duty to participate actively in politics, no requirement to place the public above the private and to subordinate personal interest to the common good systematically, and no commitment to accept collective determination of personal choices.⁵¹

Rawls's Kantian Moral Psychology

If the argument above is correct then it would seem that Rawls's republican-liberal hybrid makes his theory less rather more tolerant of cultural difference. In order to evade this charge Rawls needs to show that his theory allows for a more expansive notion of the private sphere than appears to be suggested by his prioritization of the public realm. Will Kymlicka has suggested one possible route, which is articulable

within the parameters of political liberalism which would provide a greater deal of scope for accommodation of cultural minorities than Rawls offers. Kymlicka has argued that the moral powers which inform the citizens of a Rawlsian polity (a capacity for a sense of justice and a capacity for a conception of the good) require for their attainment a horizon of stable socio-cultural identifications. To decenter those identifications, by for example, educating children in a manner contrary to their parents' values and beliefs would entail psychological violence by alienating children from their parents, thus potentially threatening the stability of the liberal polity. A liberal society ought not to institute policies which dismember the socio-cultural beliefs of significant elements of the population, unless there is clear evidence that they pose a threat to the stability of the political system.⁵² Unfortunately, the public-non-public dichotomy initiated by Rawlsian liberalism renders this attempt to provide a foothold for accommodationist intuitions impossible.

It will be recalled that in the last chapter, it was argued that one of the attractive features of Rawls's thought was the holistic ontology outlined in the final part of *A Theory of Justice*. In contrast to the psychological individualism of many liberal theories, Rawls, in his rich theory of moral psychology, acknowledges that children's psychosocial development is a product of their social history and cultural practices. Thus, to psychologically disembod people from their relationship environment is counter-productive and even incoherent. Within this perspective, the individual is not, as was commonly perceived to be the case with classical liberal models, seen as someone who enters the world as an *a priori* psychologically discrete entity. Rather, the

individual develops as it internalises many of the properties of the social environment in which it was formed. This conception of the self refutes the Cartesian notion of the mind as a 'self-contained world of thoughts and experiences', essentially independent of the external world'.⁵³ On this understanding, our consciousness and capacity for self-reflection are not natural pre-givens. Their emergence results from the individual's engagement with society. Thus, in contexts where the social body becomes fragmented, the psychological coherence of the self dissolves and the possibility of social reciprocity diminishes as a result. This argument clearly has serious normative implications for the possibility of a well-ordered stable polity, liberal or otherwise. Rawls appreciated this in *A Theory of Justice*, with the result that he espoused a social ontology which provided the possibility for integrating an ethic of care into a deontological theory of justice.

His revised theory of justice, by contrast, results in the segregation of the two ethics with the care ethic confined to the private sphere where we formulate our conceptions of the good and the ethic of justice, from which the political virtues are delineated, restricted to the public realm. As many feminist theorists, including those broadly sympathetic to the Rawlsian project, such as Susan Moller Okin, have noted, however, the adoption of this position results in an impoverished moral psychology which fails to adequately account for the importance of social institutions such as the family as the first school of moral development in which a sense of justice is nurtured.⁵⁴ Indeed, the problems which Rawls has in locating the family within his public-non-public dichotomy are salutary. In *A Theory of Justice*, Rawls stated that the family was part of

the basic structure of society and therefore subject to the principles of justice.⁵⁵ He reaffirms this in *Political Liberalism*. However, in other parts of the book, he contradicts this commenting that “the grief, the personal and the familial are...three examples of the non-political”.⁵⁶ There is thus, an internal inconsistency within *Political Liberalism* and between it and *A Theory of Justice*. Okin offers a convincing reason for this conceptual confusion;

The problem we face is that the family is an institution that defies the political / non-political dichotomy that Rawls has clearly emphasized in recent years. For families do clearly fall within the basic structure as defined, yet they are for the most part comparatively private relationships, where things both good and bad are frequently hidden from public view.⁵⁷

Rawls’s ambivalence over the conceptual status of families is indicative of two wider difficulties within his theory. Firstly, the moral psychology provided is much more attenuated than in *A Theory of Justice*. While Rawls pays considerable attention to the importance of inculcating political virtues in citizens in order to ensure the stability of a well-ordered society, his account of how this happens is as Okin notes, much “more Kantian - more autonomous and intellectualized, less relational and concerned with moral feelings in *Political Liberalism* than is the much fuller account of moral development in *Theory*”, (i.e *A Theory of Justice*).⁵⁸ It is much less plausible because it says nothing about the importance of trust and love in the early phase of a child’s life for their possibilities of nurturance and growth. Rawls now seems to assume that the sense of justice which requires the exercise of empathy and compassion for its operation can be attained solely from citizens’ experiences in political life.

The second major difficulty which needs to be mentioned is that in the same way that

the public / non-public dichotomy fails in the case of the family, one can imagine it also failing in other contexts. Indeed, it will be argued in the second part of the chapter that it does. Rawls's attempt to establish the freestanding character of liberal principles by insulating them from the comprehensive schemes, which constitute the background culture of civil society, cannot be sustained. Many important areas of public discord within constitutional democracies emanate from or encompass the institutions which shape the non-public sphere. The unitarian and harmonious thread which underpins Rawls's attempt to privatize difference by the establishment of social unity in the public sphere is coupled with a restrictive moral psychology. Both these themes emanate from Rawls's conviction that the moral resources needed to sustain a liberal sense of justice will have worked themselves into the culture of liberal democratic regimes as a "normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime".⁵⁹ It will be argued in the next section that this confidence is misplaced. The public political sphere consists of both reasonable and unreasonable pluralism, (by Rawls's definitions) which renders Rawls's distinction between the political conception of justice and comprehensive moral doctrines untenable.

The Illiberalism of Western Constitutional Democracies

A fundamental problem with Rawls's version of liberalism to which he accords inadequate attention is the extent to which his attempt to ground liberal beliefs on the basis of their widespread acceptance within Western constitutional democracies is vitiated by his failure to acknowledge the extent to which these societies are permeated

by illiberal ideals. The existence of these ideals challenges the teleological account of history which underpins his political liberalism. By locating the foundations of political justice within the public political culture of democratic societies, he attempts to circumvent the problem of grounding his theory of liberalism within a comprehensive belief system. Instead, by engaging in a hermeneutic or interpretive enterprise, Rawls hopes that his version of political liberalism can be rescued from the charge of abstract metaphysics. Unfortunately, however, as noted by Eric Brown, the criteria which Rawls has adopted to give priority to liberal ideas within the cultural contexts of Western societies at the expense of alternative interpretations of these societies' political, social and ideological development is not clearly delineated. As Brown notes:

Rawls's hermeneutic has led him to select as fundamental ideas of democratic societies and public cultures variations on the doctrines of Immanuel Kant, an author hardly read, understood or appreciated in American public culture...Basing one's political theory on Kant's moral psychology is a defensive enterprise, but holding that Kant's moral psychology is...*the* fundamental idea of democratic culture requires a much more elaborate hermeneutic exposition and justification.⁶⁰

Rawls's failure to provide such an exposition can be attributed to the liberal use of idealisation which permeates his work despite the seeming 'pragmatic turn' in his recent thought. Onora O'Neill argues that through the historicist turn in his work, Rawls believes he has avoided the problem of idealisation.⁶¹ However, as Eric Brown argues, he has in fact merely compounded the problem for the criteria employed by Rawls in selecting certain ideas as the fundamental components of democratic societies in contrast to other interpretive possibilities is not elucidated sufficiently clearly.⁶²

As Marc Stears has argued, Rawls's *Political Liberalism* represents the most famous example of a widespread tendency evident amongst normative political theorists to portray liberalism as the dominant ideological belief system within modern society.⁶³ The most significant feature (and I will argue weakness) of *Political Liberalism* is its ideal-type historical account of how liberalism came to be the hegemonic belief-system in societies such as the United States. The employment of this strategy lies at the centre of Rawls's attempts to reconcile the prescriptive determinacy of the liberal ideals which he advocates with his hermeneutic methodology. By synchronising the two together, Rawls attempts to show that a justification for liberal beliefs can be divined through an analysis of the historical evolution of Western societies. Rawls first of all argues that a liberal constitutional order was initially accepted as a *modus vivendi* between competing factions exhausted by conflict in the sixteenth and seventeenth centuries. It was only after a period of time observing the advantages garnered by the acceptance of this constitutional order that liberal ideals became internalised within particular societies to such an extent that they were perceived as intrinsically valuable in themselves and not simply a temporary device to be ended when one side in a conflict became stronger than the other.⁶⁴ As a consequence, most citizens came to understand that in order for polities to be legitimate it was essential for them to be governed by liberal political principles which abstained from adjudicating between competing comprehensive moral and religious doctrines even if they regarded them to be true. Thus, liberal notions of justice which were initially accepted as of only instrumental value became an intrinsic part of citizens' shared social understandings. Rawls clearly believes that this process of liberal socialisation was so successful that by the end of the

twentieth century, the articulation of liberal principles became in effect a description of the intuitions held by reasonable citizens in liberal democracies.⁶⁵

Through the adoption of this strategy, Rawls attempts to argue that within contemporary liberal democracies one can retrieve the Enlightenment aspiration for a convergence on liberal normative ideals. It is possible to transcend particularity and contingency through the paradoxical adoption of a method which is particularist and contingent. In this manner, Rawls, very much like Rorty, aims to eschew the metaphysical foundationalism of the Enlightenment tradition, while continuing to assert the validity of its philosophy of history. Another way of understanding this is to recall that Enlightenment liberalism was constituted by three main components. Firstly, its legitimacy depended on its derivation from foundational philosophical premises such as Locke's doctrine of natural rights. Secondly, and following on from the first, it asserted its belief in a universal human nature which underpinned liberal tenets such as the importance of civic equality. Finally, it invoked the possibility of achieving a consensus on the validity of these principles. Rawls's version of political liberalism departs from Enlightenment liberalism in its eschewal of the first two components, while remaining wedded to the consensus criterion. His conviction that Western societies are constituted by an acceptance of a liberal belief system as a hegemonic public philosophy enables Rawls to relegate theories of the good to the private sphere. The fundamental difference between Rawls and value pluralists such as John Gray is that the latter maintains that the traditional aspirations of liberal theory cannot be sustained in the light of pluralism due to the fact that there are no philosophical premises which all humans can share.⁶⁶

Rawls argues on the other hand that, while modern societies are constituted by incompatible philosophical doctrines, they can be reconciled with the full exercise of common human reason. Thus, Rawls's commitment to pluralism at the epistemological level does not in his opinion preclude the possibility of a normative consensus on liberal principles in the public sphere.⁶⁷

It is this view that it is possible to retrieve a consensus on liberal beliefs in Western societies, while jettisoning the universalist and philosophical aspirations which previously animated the Enlightenment project, which I want to consider in the remainder of this section. As stated above, his refutation of comprehensive liberalism forces him to locate the foundations of political liberalism not in any metaphysical system of thought, such as natural law theory, but rather in the discernment of historical patterns of evolution which culminate in the embedding of liberal principles in societies that have been subject to the influence of the Enlightenment legacy. The empirical claims which underpin this belief in the liberal nature of the public political culture of Western societies are suspect. As theorists such as George Klosko pointed out a decade ago, Rawls provides no empirical evidence to sustain these claims and appears to take for granted the existence of shared assumptions that provide a non-controversial background against which liberal principles of justice can be delineated.⁶⁸ As a consequence Rawls fails to adequately situate modern liberalism within its historical, political and ideational context. This accounts for the analytical abstraction that pervades *Political Liberalism* and its failure to bridge the gulf between the theoretical

ideals which animate his version of political liberalism and the contingencies of practical politics.

This neglect disables the Rawlsian paradigm in three significant ways. Firstly, it fails to acknowledge the extent to which liberalism, rather than gradually emerging as the dominant political discourse in Western societies, has instead been forced to engage in constant competition with alternative, illiberal ideological traditions which precludes any possibility of fashioning a popular consensus on liberal values. Thus, for example, Rogers Smith contends that the ideology which he terms ‘ascriptive inegalitarianism’ has been a powerful opponent of liberalism throughout the history of the United States.⁶⁹ This ideology which he defines as the assignation of the benefits and burdens of citizenship on the basis of ‘ascribed characteristics’ such as race, gender, nation or religion is the very antithesis of Rawlsian liberalism (which regards these human characteristics as morally arbitrary) and receives its most powerful expression in the nativist, anti-immigration discourses which continue to inform much of political debate. As political scientists such as Rogers Smith have illustrated, the pervasiveness of these ideological traditions is not a by-product of the failure on the part of citizens to attain ‘reflective equilibrium’, i.e. the harmonisation of liberal principles with each other as stipulated in the Rawlsian paradigm, but rather because of the embeddedness of illiberal beliefs within Western populations.⁷⁰ One important feature of this conclusion is the extent to which it renders Rawls’ public-non-public dichotomy untenable. As Stears notes, the influence exacted by these alternative illiberal traditions is not confined to citizens private beliefs, their ‘comprehensive doctrines’ as political liberalism requires

but rather animates their 'conceptions of the political' as well.⁷¹ Thus, in their role of public selves, citizens often exhibit illiberal commitments in their political deliberations.

A second theoretical consideration which Rawls fails to pay adequate attention to is the extent to which the very way liberal principles are interpreted is partly dependent on the historical context in which they are shaped. There are two ways to understand this argument. The first is to claim that the very content of liberalism has changed over time so that positions that were considered illiberal at one time are no longer regarded as such in a different period. The second is to suggest that while the conceptual values implicit within liberal thought are stable, the application of these principles is contingent. Neither position is entirely satisfactory for a deontological liberal such as Rawls. The first lends itself to an empty relativism while the second risks giving too much scope to political contingency in shaping how liberal principles are to be employed. In both cases, liberal principles can mean whatever a particular ideologist wants them to mean. The language of individual rights is employed strategically to buttress illiberal ideological commitments. Rawls fails to account for this ambiguity because his ahistorical conceptualisation of liberal ideals is abstracted from the political context in which they take concrete form.

These theoretical deficiencies in Rawlsian thought are compounded by his static conception of the public sphere which fails to account for social and economic trends such as those wrought by globalisation and paradigm shifts resulting from seismic

geopolitical events such as the terrorist attacks of 9/11. Both these factors have had a major impact in challenging the legitimacy of liberal principles even in Western societies as I will explain in more detail below. As Benhabib notes, Rawls's failure to attend to the sociological and institutional realities of citizenship in the modern world can be partly attributed to his reliance on the fiction of a closed society with non-porous borders which assumes "that a democratic society, like any political society, is to be viewed as a complete and closed social system...entry into it is only by birth and exit from it is only by death".⁷² In the light of global trends such as immigration and ecological interdependence, this premise is implausible. The empirical reality of globalisation means that it is impossible to formulate theories of domestic justice without taking into account the international dimension. The majority of political theories including that of Rawls's from its earliest incarnation in *A Theory of Justice* through to its final crystallisation in *The Law of Peoples* are hamstrung by their increasingly obsolescent views of geographical space. As a consequence, the significance of trends such as the globalisation of informal violence manifested in the exploitation of modern technologies by non-state actors for violent ends is eviscerated.⁷³ Even more fundamentally, these external challenges resulting from globalisation intersect with the theoretical difficulties confronting modern liberalism outlined above to create a much more volatile political culture than Rawls appears to appreciate.

Pluralizing Public Reason: A Contradiction in Terms?

Rawls's revisions of his theory of justice did not stop with the publication of *Political Liberalism*. In particular, he was anxious in his later writings to address the charge outlined above that his notion of the public sphere was one in which social unity and social harmony were prioritised over divisiveness and instability. In particular, critics asked why it was not possible that the reasonable pluralism which Rawls argued existed between competing conceptions of the good could not apply also to principles of justice.⁷⁴ In addition, it was also asked whether Rawls's exclusion of comprehensive doctrines from the public sphere was not an arbitrary restriction of political discourse. Rawls attempts to answer these criticisms in *The Idea of Public Reason Revisited* by developing and clarifying the nature of public reason.⁷⁵ Public reason as Rawls conceives it governs political discourse at least pertaining to matters of basic justice. In order for the exercise of political power to be legitimate citizens must offer reasons which are accessible to all irrespective of whatever comprehensive doctrine they may affirm in their private lives. Thus, as Bruce Ackerman notes, the ideal of public reason presumes an idealised form of political discourse which actually marks a sharp break with how democratic discussions are normally conducted in liberal democracies.⁷⁶ It also serves once again to demonstrate the republican themes embedded in Rawls's political liberalism. Two common views of how public discourse should proceed in liberal democracies are either, that citizens can vote on the basis of whatever comprehensive doctrine they consider true or that they can make decisions based on their subjective personal preference. Rawls's rejects both these views in that they both violate the duty of civility which mandates that citizens make decisions on the basis of

reasons that all citizens can reasonably be expected to endorse. In this context, he explicitly compares public reason and its duty of civility with Rousseau's *Social Contract*.⁷⁷

Rawls's restriction on the type of reasons which are admissible in public discourse has been criticised for displaying insensitivity to the *political* nature of political theory. This criticism has been advanced by many critics. Value pluralists such as John Gray have argued that the removal of contingency and indeterminacy which characterise any genuine conception of politics means that Rawls's liberalism has been politically emasculated.⁷⁸ His efforts to attain a consensus on liberal principles of justice by conceiving their content in terms of determinate, prescriptive principles effectively results in the abolition of politics by transposing political life into legal contexts. Gray argues that a genuinely 'political liberalism' requires the adoption of a *modus vivendi* which acknowledges the contingency of any consensus on liberal principles rather than trying to render them immune from revision.⁷⁹ This is precisely the understanding of politics which Rawls repudiates for it would make liberalism 'political in the wrong way' by failing to guarantee stability which can only be attained when individuals have an intrinsic and not merely instrumental commitment to liberal principles of justice.⁸⁰ Rawls's rejection of politics as an arena of conflicting claims in which principles of justice are constantly renegotiated is seen by critics such as Gray and Mouffe as a debasement of the notion of politics altogether.⁸¹

It is important to note that this criticism of Rawls differs from the ones discussed earlier in the chapter which were concerned primarily with the *scope* of the political sphere and the extent to which it encroached on the private sphere. These criticisms largely emanated from liberal diversity theorists such as Kukathas and Galston. The principal objection of theorists such as Gray and Mouffe by contrast is not with the scope of politics but rather with the particular conceptualisation of it underpinning Rawls's liberalism. In effect, while the former set of critics feared that liberalism as Rawls conceived it was too political, the latter set worried that it was not political enough. It is the second set of objections which Rawls aims to combat in *The Idea of Public Reason Revisited*. In that work Rawls argues that it is a misconstrual of his theory to argue that political liberalism expels diversity from the public sphere. In particular, he now emphasises that political liberalism should not be conflated with justice as fairness. As a result, there are according to Rawls many forms of public reason and a family of political conceptions of justice rather than just one. At the same time this family of political liberalisms is united by its continuing adherence to the criterion of reciprocity to be applied between free and equal citizens all of whom are considered reasonable and rational. Rawls thus claims in contrast to previous impressions which he may have fostered that political liberalism does not aspire to give a definitive account of the nature of public reason.⁸²

Rawls appears anxious to recast his political theory in terms of deliberative democracy rather than in a Kantian garb.⁸³ Thus, he even argues that political liberalism can encompass Habermas's discourse theory of legitimacy with which Rawls's political

liberalism is often juxtaposed.⁸⁴ This is a particularly striking assertion. After all, it has generally been assumed both by Rawlsians and their critics that one key difference between Rawls and Habermas is that whereas Rawls's theory is essentially monological, Habermas's is dialogical. Whereas Rawls believes that principles of justice are justified separately from within each comprehensive worldview, Habermas affirms both the possibility and the *moral necessity* of basing normative justification on the attempt to find shared reasons for adopting principles of justice. It is on this basis that Habermas explicitly criticised Rawls for endeavouring to find a convergence on various norm-contents from within diverging and therefore not discursively interrelated comprehensive doctrines.⁸⁵ However, Rawls now makes clear that comprehensive doctrines can be introduced into public discourse subject to certain conditions. This is what he calls *the proviso*;

reasonable comprehensive doctrines...may be introduced in public political discussion at any time, provided that in due course proper political reasons - and not reasons given solely by comprehensive doctrines - are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support.⁸⁶

Once again we can see that Rawls is engaged in a delicate balancing act. After all, there is a danger that if he gives comprehensive doctrines too large a role in the public sphere then as John Horton notes, the problems presented by conflicting comprehensive doctrines which persuaded Rawls to adopt a method of abstraction in the first place will be replicated within public reason itself.⁸⁷ Rawls is aware of this when he states that political values "are not puppets manipulated from behind the scenes by comprehensive doctrines".⁸⁸ However, it will be argued below that Rawls's attempt to sidestep the charges of critics who regard his notion of public reason as an expression of a Kantian

conception of morality and therefore of a sectarian comprehensive doctrine can only be purchased at the expense of making public reason indeterminate.

It is of course true that there are certain political fundamentals on which at least in constitutional democracies there is unlikely to be reasonable disagreement. For example, as Rawls acknowledges, advocates of theocracy or other forms of autocracy and dictatorship are not going to satisfy the criterion of reciprocity and a commitment to the basic liberties which underpins political liberalism. However, the real test of the utility of public reason, as Horton points out, comes not in differentiating between those who affirm and those who reject the values implicit within constitutional democracy, who most commentators would agree with Rawls can be considered unreasonable. Rather, it lies in whether public reason can assist in resolving disputes over political fundamentals between reasonable citizens.⁸⁹ This seems unlikely for reasons which are not exclusive to Rawls's conception of public reason but rather are due to the incoherence of liberal projects of public justification more generally. This can be illustrated by a number of examples.

The first example is supplied by Horton which is the controversy surrounding the publication of Salman Rushdie's *The Satanic Versus* and specifically whether the book ought to be prohibited on the grounds that it could be deemed highly offensive to deep-rooted religious beliefs. At first sight this might appear to be a conflict which can be easily adjudicated within the bounds of public reason. Many liberals would affirm that the right to freedom of expression is absolute (at least where there is no direct threat of

physical harm to any individual or group) and declare those calling for the ban of the work apologists for religious tyranny. We thus have a clear example of how public reason can prescribe a determinate resolution to the issue at least if we accept for argument's sake Rawls's reasonable/unreasonable distinction. However, matters are not so simple. After all, as Horton points out, almost all the reasons proffered by Muslim leaders for the banning of this publication are articulable within the terms of public reason. They did not argue for example that the book should be banned on the basis that it violated the truth of Islam. Rather, they argued on the basis of reasons that are reasonably accessible to all citizens irrespective of their religion. These reasons included the importance of mutual respect, religious tolerance and respecting individuals' constitutive identities, all of which, it could be argued were undermined by *The Satanic Versus*. As Horton argues;

What they mostly objected to, as they saw it, was a deliberately offensive and abusive ridiculing of their deepest convictions and the way of life of their community which represented an attack on their self-respect and an encouragement of religious hatred and intolerance towards an already disadvantaged minority. Whatever the merits of these arguments, there was no direct appeal to the truth of Islam".⁹⁰

Thus, while it is true that questions about the status of free speech can be translated into the discourse of public reason, thereby satisfying Rawls's claim that its idealising preconditions do not lead a priori to the application of prescriptive conclusions, this is a hollow victory. It is attained only at the cost of making public reason indeterminate. After all, surely in this case public reason is being manipulated by comprehensive doctrines in just the way Rawls feared. On the one side, there is a Millian commitment to absolute free speech. On the other, there is an appeal for the respect which ought to

be accorded individuals' constitutive identities. Public reason is merely the vessel in which this dispute is played out in order for both sides to appear more reasonable than the other and indeed, to argue that they better satisfy the criterion of reciprocity.

The apparent indeterminacy of public reason in resolving disputes concerning the legitimacy of free speech is also applicable to many other issues. For example, in disputes as disparate as the nature of the relationship between civil liberties and national security or the merits of the precautionary principle, while both sides can formulate arguments in terms of public reason, it is the competing philosophical and metaphysical visions which underpin the stances taken by the competing sides which are of most relevance. Thus, to take the first example, individuals who wish to assign absolute primacy to civil liberties may well be motivated by a Kantian belief in the priority of individual liberty over all other considerations. By contrast, those who insist that civil liberties must sometimes be circumscribed in order to protect the public good may well be motivated by utilitarian considerations. If public reason is formulated in a loose way there is no reason why it cannot accommodate both arguments as both sides share a commitment to the fundamental principles of liberal democracy and are arguing in good faith from reasons which are universalisable. On the other hand, if public reason is formulated in a way which excludes one of the two competing sides then its pluralistic character is undermined. The same is true in relation to the precautionary principle. It is perfectly plausible to make reasonable arguments for and against the precautionary principle or to advocate it in some contexts but not in others depending on how one chooses to interpret risk and how much weight one places on scientific

uncertainty in relation to issues such as global warming. These arguments are made more intractable by the fact that underpinning these disagreements are metaphysical differences over the relationship between humans and nature. Thus, proponents of the free market who place great faith in scientific and technological progress will perceive the precautionary principle as an unnecessary restriction on activities which could bring incalculable benefits. Supporters of the precautionary principle by contrast will argue that economic and scientific progress needs to be at least regulated as advances in technology are often accompanied by new risks to the health and integrity of the biosphere; risks which opponents of the precautionary principle will argue are outweighed by the potential benefits that stem from the exploitation of nature. Not only can arguments such as these not be decisively resolved by appeals to public reason, there is no obvious reason why interlocutors on either side of the debate should regard laws which do not reflect their views as more legitimate simply because they can be shown to be the result of processes of political deliberation which are consistent with public reason. In this context, Rawls's conception of public reason will not be any more stable than a *modus vivendi* as those who are not in the majority may still feel that their views are a better reflection of what public reason commands in any one instance.

Conclusion

This chapter has attempted to show that it is a serious error to regard Rawls's political liberalism as primarily a hermeneutic project designed to beat communitarians at their own game by demonstrating that liberal political ideals are a better representation of the shared understandings which constitute modern liberal democracies as some

contextualists such as Rorty have argued. In particular, such a view represents a serious misunderstanding of the meaning which Rawls attaches to stability which is primarily theoretical rather than empirical. Rawls's project remains a justificatory one. The fact of reasonable pluralism is not for Rawls a contingent feature of late modern society, but rather a reflection of the exercise of human reason which is unlikely to be superseded at any point in the future. Rawls's belief that his political conception of justice needed to be revised so that it no longer reflected any particular comprehensive moral doctrine was not based on the fact that no comprehensive doctrine could achieve empirical stability, but rather that any comprehensive doctrine including a liberal comprehensive doctrine was theoretically deficient in that it could not be justified to people who were both reasonable and rational. In order for liberalism to be truly liberal, it must not only be liberal in its substantive content, but also in the way in which it justifies itself. Any political theory including a liberal political theory, which attempted to identify philosophical premises from which normative beliefs could be derived, will be ipso facto illiberal in that these foundations will not be shared by all reasonable people.

It is striking to note that while the methods by which political liberalism is justified have undergone substantial change the normative content of the theory has not. In this sense there is a much greater degree of philosophical continuity between *A Theory of Justice* and *Political Liberalism* than many critics have imagined. In particular, Rawls continues to subordinate diversity to social unity in a way similar to *A Theory of Justice*. As Kukathas notes, while Rawls's theory may be distinctive in the way in which it presents itself the metaphors which symbolise its substance such as the notion

of the well-ordered society are symptomatic of traditional political theory in that it understands the existence of social life as parasitical on a unified political order which regularises human conduct and insists on the importance of congruence between the private and public spheres at least when specifying principles of justice. In Kukathas's words;

such a political order ...is a bounded, self-sufficient, self-directing and self-ordering whole. Like the human body, the body politic is not the site of conflict, or of unstable or divergent tendencies. It may contain different elements; but all must be standardised or detoxified and incorporated into the bodily whole.⁹¹

While this may seem a harsh criticism to direct against Rawls it can be argued that it is supported by the extent to which he privileges the political over the non-political sphere and even argues that classical republicanism can be made consistent with political liberalism. His neo-republican conception of political virtue means that the state will be required to intrude to a much greater extent into the private sphere in order to ensure the requisite socialisation of citizens than one might assume would be the case with a political theory that aimed to be inclusive of diversity. A key conceptual problem with Rawls's distinction between political and comprehensive liberalism is that it presupposes that all liberal theories must retain at their core a commitment to autonomy. Thus, the two examples which Rawls cites as exemplars of comprehensive liberalism, Kant's conception of moral autonomy and Mill's notion of individuality, are contrasted with Rawls's political liberalism which confines autonomy to political contexts. As a consequence, Rawls's schema fails to take into consideration the existence of comprehensive liberal doctrines which are much more sympathetic to

diversity than Rawls's theory and which do not accord a privileged place to autonomy as a moral ideal in either the political or comprehensive sense.

In his very latest writings Rawls has tried to combat the objection that the emphasis which he places on social unity in the public realm stifles diversity. In response to critics such as Mouffe and Gray who argue that Rawls's political liberalism is evacuated of all political content, he has responded by trying to carve out a more capacious conception of the political sphere. The problem with this argument is that to introduce comprehensive doctrines into the public realm risks undermining the idealising presuppositions of public reason and thereby render the theory no more stable than a *modus vivendi* understanding of politics. While Rawls does not say so, it seems that he has been forced into this concession by an acknowledgement that reasonable pluralism can pertain to the political sphere as well as the non-political sphere. Initially, Rawls had argued that modern liberal democracies had been characterised by an evolutionary progression from a *modus vivendi* in which liberal principles were of only instrumental value to one where they possessed intrinsic worth. Therefore, Rawls believed that while it was necessary to jettison the philosophical and universalist aims of the Enlightenment project it was still possible to retrieve its aspiration to a normative consensus on liberal political ideals by locating them within the shared intuitions possessed by reasonable citizens of liberal democracies. However, this argument is undermined by the plethora of ideological belief systems which comprise modern societies many of which reject Rawls's public/private dichotomy. Therefore, Rawls is confronted with a dilemma. Irrespective of whether he formulates

political liberalism as a justificatory project in which political liberalism is legitimated by its sensitivity to the existence of reasonable pluralism or as a motivational project designed to appeal to existing comprehensive doctrines his project lacks foundations. His theory effectively says that reasonable persons are those who endorse political liberalism, with those who reject it being declared unreasonable. However, in order for this stance not to be entirely arbitrary he must invoke a philosophical theory in which the normative value of reasonable pluralism is given greater epistemic weight. This is precisely the argument developed by Habermas whose theory I will explore in the next chapter.

Chapter Four: Endnotes

¹ See for example, Thomas Bridges three reviews of Political Liberalism entitled respectively; "Rawls's Strongly Apolitical Liberalism", "Rawlsian Reasonableness and the Creation of Citizens", "Rawls and the Rethinking of the Priority of the Right over the Good" at <http://www.civsoc.com> for an excellent articulation of both these objections against *A Theory of Justice*.

² Benjamin Barber, *The Conquest of Politics* (Princeton: Princeton University Press, 1988), pp54-91, John Gray, *The Enlightenment's Wake*, (London: Routledge, 1995), pp1-10, Jurgen Habermas, "Reconciliation through the Public Use of Reason: Remarks on John Rawls Political Liberalism", *Journal of Philosophy*, vol.92.no.3, March 1995, pp109-131.

³ Benjamin Barber, *The Conquest of Politics*, p6

⁴ *ibid.*, p7

⁵ John Rawls, *Political Liberalism*, (New York: Columbia University Press, 1993), pp9-10

⁶ This criticism is probably the most familiar charge made against Rawls's later work and unites virtually all of the critics of political liberalism as Rawls conceives it including those who welcome his attempt to formulate a political theory which does not rest upon controversial metaphysical presuppositions. See Shane O' Neill, *Impartiality in Context*, (Albany, NY: SUNY Press, 1997), pp13-33.

⁷ John Gray, *Enlightenment's Wake*, p76, Noel O' Sullivan, "Difference and the Concept of the Political in Contemporary Political Philosophy", *Political Studies*, vol.45.no.4, (September 1997), pp739-754

⁸ Michael Ignatieff, "The Attack on Human Rights", *Foreign Affairs*, November/ December 2001, pp102-116

⁹ Chandran Kukathas, *The Liberal Archipelago*, (Oxford: Oxford University Press, 2003), p19

¹⁰ David Held, Globalization after September 11, accessed at www.polity.co.uk, p7.

¹¹ John Rawls, *Political Liberalism*, p xvii

¹² *ibid.*, p8

¹³ *ibid.*, p xviii

¹⁴ Susan Mendus, "The Importance of Love for Rawls's Theory of Justice", *British Journal of Political Science*, vol 29, no.1, (Jan 1999), pp57-75 at p75

¹⁵ *ibid.*, p75

¹⁶ John Rawls, *Political Liberalism*, p143

¹⁷ Thomas Hill, "The Stability Problem in Political Liberalism", *Pacific Philosophical Quarterly*, vol.75, nos3-4, (Sept-Dec 1994), pp333-352, at p343

¹⁸ Robert Talisse, "Rawls on Pluralism and Stability", *Critical Review*, vol.15, nos1-2, (Winter 2003), pp173-194.

¹⁹ John Rawls, *Political Liberalism*, p135

²⁰ Robert Talisse, "Rawls on Pluralism and Stability", p176

²¹ John Rawls, *Political Liberalism*, p38

²² John Rawls himself explicitly differentiates his theory from a *modus vivendi* because whereas the latter position is contingent on the prevailing distribution of political power, a political theory of justice is a moral conception affirmed on moral grounds and thus will be supported regardless of shifts in political power". See John Rawls, *Political Liberalism*, pp146-148

²³ Glen Newey, "How Do you Like Your Liberalism: Fat or Thin"? *London Review of Books*, vol.23, no.11, (7 June 2001), pp3-6, p4

²⁴ *ibid.*, p4

²⁵ John Rawls, *Political Liberalism*, p46

²⁶ *ibid.*, p54

²⁷ *ibid.*, p30

²⁸ *ibid.*, p31

²⁹ *ibid.*, p78

³⁰ John Rawls, "The Idea Of An Overlapping Consensus", *Oxford Journal of Legal Studies*, vol.7, no.1, (Jan 1987), pp1-25, p6

³¹ John Rawls, *Political Liberalism*, p31

³² Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, (Oxford: Oxford University Press, 1995), p162

- ³³ John Rawls, "Kantian Constructivism in Moral Theory", *Journal of Philosophy*, vol.77, no.9, (Sept 1980), pp515-572, p545, John Rawls, *Political Liberalism*, p30
- ³⁴ See for example, Will Kymlicka, *Multicultural Citizenship*, p162
- ³⁵ John Rawls, *Political Liberalism*, p199
- ³⁶ *ibid.*, p199
- ³⁷ *Wisconsin v Yoder*, 406 U. S. 205 (1972).
- ³⁸ Amy Gutmann, "Civic Education and Social Diversity", *Ethics*, vol.105, no. 3 (April 1995), pp557-579, Richard Dagger, *Civic Virtues*, (Oxford: Oxford University Press, 1997), pp186-187
- ³⁹ John Rawls, *Political Liberalism*, pp199-200
- ⁴⁰ *ibid.*, p190-200
- ⁴¹ David Reidy, "Accommodating Pluralism: Liberal Neutrality and Compulsory Education"- Paper given at the Twentieth World Congress of Philosophy, Boston, Massachusetts, August 10-15, 1998.
- ⁴² John Rawls, *Political Liberalism*, p37
- ⁴³ Chandran Kukathas, "Liberalism, Communitarianism and Political Community", *Social Philosophy and Policy*, vol 13, no.1, (Winter 1996), pp81-104, p85
- ⁴⁴ John Rawls, *A Theory of Justice*, p537
- ⁴⁵ John Rawls, *Political Liberalism*, p157, See also pp139, 155
- ⁴⁶ *ibid.*, p159
- ⁴⁷ For example, Quentin Skinner asserts: "In a manner that contrasts sharply with liberal individualism {the republicans} link the idea of personal liberty with that of virtuous public service. Moreover, they are no less emphatic that we may have to be forced to cultivate the civic virtues, and in consequence insist that the enjoyment of our personal liberty may often have to be the product of coercion and constraint" quoted in Quentin Skinner, "The Republican ideal of political liberty"; Gisela Bock, Quentin Skinner, and Maurizio Viroli, eds. *Machiavelli and Republicanism* (Cambridge: Cambridge University Press, 1990) p306
- ⁴⁸ John Rawls, *Political Liberalism*, p206
- ⁴⁹ Richard Dagger, *Civic Virtues*, pp186-187
- ⁵⁰ See for example, Quentin Skinner, "The Paradoxes of Political Liberty", *The Tanner Lectures on Human Values*, Delivered at Harvard University, Oct24/25 1984, pp1-26, pp5-6
- ⁵¹ William Galston, *Liberal Purposes: Goods, Virtues and Diversity in the Liberal State* (Cambridge: Cambridge University Press, 1991), p225
- ⁵² Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Oxford University Press, 1991), p84
- ⁵³ David Bakhurst and Christine Synpovich, *The Social Self* (London: Sage Publications, 1995), p3. See also David Howe, Psychosocial and Relationship- based theories for child and family social work: Political Philosophy, Psychology and Welfare Practice, *Child and Family Social Work*, vol.2, no.3, (August 1997), pp161-169
- ⁵⁴ Susan Moller Okin, "Political Liberalism, Justice and Gender", *Ethics*, vol 105, no.1, (October 1994), pp23-43. See esp.pp23-28
- ⁵⁵ John Rawls, *A Theory of Justice*, p7
- ⁵⁶ John Rawls, *Political Liberalism*, p137
- ⁵⁷ Susan Moller Okin, *Political Liberalism, Justice and Gender*, p25-26
- ⁵⁸ *ibid.*, p34
- ⁵⁹ John Rawls, *Political Liberalism*, p220
- ⁶⁰ Eric Brown, "Rawls and the Duty of Civility", in *Locations of the Political*, ed. S. Gorman, Vienna: IWM Junior Visiting Fellows Conferences, Vol.15, (2003), p11
- ⁶¹ Onora O'Neill, *Towards Justice and Virtue*, (New York: Cambridge UP, 1996), p40
- ⁶² Eric Brown, *Rawls and the Duty of Civility*, p11
- ⁶³ Marc Stears, "Beyond the logic of liberalism: learning from illiberalism in Britain and the United States", *Journal of Political Ideologies*, vol 6, no.2, (June 2001), pp215-230, p220
- ⁶⁴ John Rawls, *Political Liberalism*, p163-164
- ⁶⁵ *ibid.*, p14
- ⁶⁶ John Gray, "Pluralism and Toleration in Contemporary Political Philosophy", *Political Studies*, vol.48, no.2, (June 2000), pp323-333, *Two Faces of Liberalism*, (New Press, 2000).
- ⁶⁷ See for example, Robert Talisse, "John Gray's Two-Faced Liberalism", *Critical Review*, vol.14, no.4, (Dec 2000), pp 441-458.

- ⁶⁸ George Klosko, "Rawls's Political Philosophy and American Democracy", *American Political Science Review*, vol. 87, no.2, (June 1993), pp348-359.
- ⁶⁹ Rogers M Smith, *Civic Ideals, Conflicting Visions of Citizenship in US History*, (New Haven, CT: Yale University Press, 1997).
- ⁷⁰ *ibid.*,
- ⁷¹ Marc Stears, "Beyond the logic of liberalism", p221
- ⁷² Seyla Benhabib, "Citizens, Residents and Aliens in a Changing World: Political Membership in the Global Era", *Social Research*, vol.66, no.3, (Fall 1999), pp709-744. John Rawls, *Political Liberalism*, p41
- ⁷³ Robert Keohane, *The Globalization of Informal Violence, Theories of World Politics, and "the Liberalism of Fear"*, Paper for Delivery at the 2002 Annual Meeting of the American Political Science Association, August 29-September 1, 2002.
- ⁷⁴ John Gray, *Enlightenment's Wake*, pp131-143
- ⁷⁵ John Rawls, *The Law of Peoples with The Idea of Public Reason Revisited*, (Cambridge: Harvard University Press, 2001), pp131-180
- ⁷⁶ Bruce Ackerman, "Political Liberalisms", *The Journal of Philosophy*, vol.91, no.7, (July 1994), pp364-386
- ⁷⁷ John Rawls, *Political Liberalism*, p219
- ⁷⁸ John Gray, *Enlightenment's Wake*, p76
- ⁷⁹ John Gray, *Enlightenment's Wake*, pp72-73; pp77-78, Chantal Mouffe, *The Democratic Paradox*, (New York: Verso, 2000), pp18-30
- ⁸⁰ John Rawls, *Political Liberalism*, pp14
- ⁸¹ John Gray, *Enlightenment's Wake*, pp72-73, Chantal Mouffe, *The Return of the Political*, (New York: Verso, 1993), p47
- ⁸² John Rawls, *The Idea of Public Reason Revisited*, p142
- ⁸³ Chad Cyrenne, "Should Political Liberals Uphold Universal Values", Delivered at 2004 CPSA annual meeting. Accessed at www.cpsa-acsp.ca/papers-2004/cyrenne.pdf, Anthony Laden, "The House that Jack built: Thirty Years of Reading Rawls", *Ethics*, vol.113, no.1 (Jan 2003), pp367-390, p389
- ⁸⁴ John Rawls, *The Idea of Public Reason Revisited*, p142
- ⁸⁵ Jurgen Habermas, "Reconciliation through the Public Use of Reason: Remarks on John Rawls's Political Liberalism", pp109-131, John Davenport, "Habermas's Democratic Balance between Rights and Popular Sovereignty: A Response to Charles Larmore", accessed at www.fordham.edu/philosophy/davenport/texts/larmore.htm.
- ⁸⁶ John Rawls, *The Idea of Public Reason Revisited*, p152
- ⁸⁷ John Horton, "Rawls, Public Reason and the Limits of Liberal Justification", *Paper for the Political Studies Association-UK 50th Annual Conference 10-13 April 2000*, London, p16
- ⁸⁸ John Rawls, *The Idea of Public Reason Revisited*, p145
- ⁸⁹ John Horton, "Rawls, Public Reason and the Limits of Liberal Justification", p18
- ⁹⁰ *ibid.*, p22
- ⁹¹ Chandran Kukathas, *The Liberal Archipelago*, pp20-21

CHAPTER FIVE: MODERNISING MODERNITY: HABERMAS'S DISCOURSE ETHICS

Introduction

One of the most striking features of recent political thought has been the emergence of deliberative democracy as an alternative response to the perceived failings of both Kantian liberalism and communitarianism/ civic republicanism to adequately conceptualise political and moral norms to govern complex modern societies. The central charge which has often been levelled against both of these opposing traditions is that they lack the resources to respond to the challenges of moral and social diversity characteristic of postmodern societies. On the one hand, as was shown in the last chapter, Kantian liberals such as Rawls have been justifiably accused of formulating substantive principles of justice which relegate difference to the private sphere and consequently end up with a public realm which has been depoliticised from the outset. On the other hand, communitarian thinking, particularly in its civic republican guise, has frequently been faulted for either promoting a unitary vision of community which is unrealistic in its inability to take seriously the divergent shared understandings which constitute all polities or alternatively promoting a 'thick' multiculturalism in which communities are assumed to be hermetically sealed entities immune from inquiry or critique. As we saw in chapter two, Sandel oscillates between both civic republicanism and radical multiculturalism. In the eyes of many theorists, the common error of both these traditions is their 'displacement' of the political by subordinating the political to an anti-political concept of virtue whether that be conceived of in terms of substantive principles of justice or thickly shared social understandings.

Both political and comprehensive liberals, such as Macedo and Gutmann aim to derive political norms from substantive first principles which transcend our particular differences, as was illustrated in chapter four.¹ Proponents of deliberative democracy, on the other hand, offer as their model a vision of community which is defined by engagement between a diversity of situated perspectives, while simultaneously retaining a normative view of moral justification.

The most theoretically sophisticated version of deliberative democracy is Jürgen Habermas's discourse theory of legitimacy and it will thus form the main focus of discussion during the course of this chapter. The most distinctive virtue of discourse theory according to its proponents is its dissolution of normative hierarchies which have plagued all metaphysical systems of thought in which politics conceived as a participatory activity between citizens is subordinated to substantive principles which have been determined a priori, as for example, is the case with traditional natural law doctrines in both their religious and secular varieties. Instead, deliberative theory, in keeping with its claim to be postmetaphysical, aspires to shift the focus of deontology away from the metaphysical and religious justification of norms to the processes which communities ought to employ in validating moral judgements. Thus, according to Habermasians, it is wrong for political theorists to attempt to preempt the results of a free and equal democratic discussion about justice. Such a discussion can only be conducted amongst actual citizens. Habermas claims that such a postmetaphysical theory is protected from the pitfalls of subjectivism and conventionalism due to its adoption of a communicative rationality which guarantees the legitimacy of the outcomes generated by inserting procedural

considerations of fairness into the public debate. Habermas's insistence that democracy should be regarded as an emphatically procedural ideal appears at least on the surface to allow for a more capacious view of public reason than that found in traditional liberal models and is therefore potentially more accommodative of social diversity.

Nonetheless, Habermas's theory has come under sustained attack from many theorists who have argued that his identification of politics with communicative rationality means that he cannot succeed in reconciling the claims of moral legitimacy with those of diversity. Postmodernists in particular have asserted that his equation of the political with the rational leaves him unable to take radical diversity seriously and instead represents a flight into a rationalist version of utopia.² On the basis of this argument at least at its most severe, Habermas's discourse theory, despite its insistence on the intersubjective nature of rationality, becomes just one more example of a theory which conflates the political with a substantive metaphysical worldview that is insensitive to radical difference. More precisely, in the case of discourse theory, the validation of differences is dependent on their compliance with the norms of communicative rationality. This chapter will express some sympathy for this criticism of discourse ethics, at least as it is formulated by Habermas. Underpinning the Habermasian worldview is an emphasis on evolutionary models of individual and social development which ultimately culminate in a celebration of the transcendence of conventional moralities. They are replaced by a post-conventional morality in which the normative authority of practical reason is no longer predicated on any metaphysical belief system, but instead derives its support from the pragmatic presuppositions which are built into

the very structure of communicative reason.³ It is this attempt by Habermas to salvage the legacy of the Enlightenment by arguing that its principal object, the grounding of a moral and political universalism, can be retrieved from contemporary skepticism over the possibility of establishing such norms that has led to the negative critiques of his theory from postmodernists, communitarians and even Marxists. Underpinning their objections is the belief that Habermas's faith in the consensual powers of human reason to supersede conventional moralities as a basis for legitimating moral norms in effect does little more than reiterate the prior Enlightenment bias for excluding difference and particularity from the public sphere. This view is supported by the (typically Kantian) binary oppositions which Habermas establishes between morality and ethics and justice and evaluative conceptions of the good which he continues to adhere to.

While this chapter will express some sympathy for these critiques, it will be argued that it does not justify the conclusions which often emanate from them, such as that an attempt to salvage the Enlightenment project by developing a more context-sensitive version of impartiality should be discarded. Instead, discourse theory should (and has to) be reformulated in a more inclusive fashion which is marked by a dialectical interplay between universal principles of right and concrete conceptions of the good rather than the superseding of the latter by the former. Such a reconceptualisation of discourse ethics would not only represent a more desirable normative ideal to the common construal of communicative ethics as a secular metanarrative. It would also blunt criticisms that as an empirical thesis it is hamstrung by its individualist foundations which occlude the communal nature of

personal identity and in particular, the importance of religion as a cultural variable in determining people's normative commitments.

Discourse theory shares with substantive liberal justice certain normative principles such as a commitment to universal moral respect and individual autonomy, which will place it in contention with some conceptions of the good which regard such norms as a threat to their identity. Thus, it is impossible for it to be ethically neutral as Habermas has at least in the past seemed to wish. It is impossible to preserve the purity of discourse ethics from contamination by any substantive-ethical presuppositions. More positively, however, it will be argued that many of Habermas's postmodernist critics have seriously underestimated the capacity of his theory to engage divergent conceptions of the good, particularly those of a religious nature in dialogue over substantive political issues without forfeiting an appeal to impartiality. It will be argued with reference to Benhabib's refined version of communicative ethics that, while it cannot possibly satisfy the demands of postmodernists, discourse theory represents a coherent and plausible attempt to craft an interactive universalism in which universalistic moral norms are constructed out of the diversity of situated communities which comprise the modern polity.⁴ Furthermore, discourse theory by perceiving pluralism as a dynamic rather than static phenomenon posits a more accurate articulation of the complex interrelationship between the public and private spheres than either political liberalism (Rawls) or sectarian communitarianism (Sandel) which presuppose in their different ways a strict quarantining of the political sphere from the particular contexts in which individuals obtain their identity.

Reasoning in a Posttraditional Age

Of the many normative models of deliberative democracy which have been proposed in recent years as a means of bridging the gap between liberal and communitarian approaches to justice, none have been more influential than Jürgen Habermas's discourse theory of legitimacy. The fundamental objective of this theory is to try and salvage a public basis for morality in a modern society characterised by a plurality of competing worldviews. In response to postmodernist scepticism over the possibility of recovering a rational basis for moral and legal norms, Habermas remains rooted in the Enlightenment tradition of thought by arguing that normative questions can be supplied with a cognitive content. At the same time, his theory involves a sharp break with traditional Enlightenment thought in his refusal to appeal to prepolitical conceptions of human nature. This refusal is motivated by the belief that we now live in a 'postmetaphysical' age in which religious and metaphysical worldviews can no longer serve as the public basis for morality. While, in contrast to radical antifoundationalists, Habermas argues that philosophy should continue to invoke universal standards of rationality, these standards can no longer be supplied with metaphysical foundations.

The normative foundations of the political must instead be derived from a purely proceduralist rendering of justice rather than located within any transcendent notion of reason. As noted by Thomas McCarthy, Habermas directs practical reasoning away from a transcendent realm and relocates it within modes of communication which gain legitimacy under certain ideal conditions.⁵ In this sense, Habermas's discourse ethics can be understood as a procedural reformulation of Kant's categorical imperative. Thus, Habermas attempts to redefine philosophy away from

a paradigm of consciousness and replace it with a paradigm of intersubjective understanding. As Shane O'Neill notes:

the philosophy of consciousness sought to secure its foundations in the lone, isolated, autonomous subject...independent of all social and historical contingency. Even though these foundations would seem to have crumbled under our feet, we need not be paralysed philosophically by accepting the contingency of our situatedness in real historical and cultural contexts. We can be rescued from the fate of such a paralysis by refusing to see reason as disembodied, but...as historically situated in *the communicative practice of everyday life*.⁶

For this to be possible, an impartial assessment of normative claims can only proceed through actual dialogues in concrete historical contexts, rather than monologically, as Habermas claims occurs in Rawls's original position in which the content of principles of justice are determined in philosophical isolation. It is Habermas' concern with rational deliberation in which the entire citizenry participates that explains the guiding conception of radical democracy which informs his most recent political writings, in particular *Between Facts And Norms*.⁷ In these writings, Habermas elucidates his procedural understanding of democracy in contradistinction to both the liberal and civic republican traditions which he believes are informed by untenable metaphysical presuppositions. At the same time, he attempts to weave together elements from both traditions into his discourse theory. It is this bold attempt to forge a republican-liberal hybrid which I now turn to below.

The Internal Relationship between the Rule of Law and Popular Sovereignty

Discourse theory departs significantly from both the liberal and republican paradigms in its understanding of the relationship between the rule of law and popular sovereignty. Ever since the Enlightenment theorist Benjamin Constant

posited his famous distinction between the liberties of the moderns and the liberties of the ancients, political philosophers have disputed which one should be accorded primacy.⁸ Liberal philosophers have argued on the one hand that individual rights should be construed as external constraints on the exercise of democratic self-rule. On this account, the legitimacy of a polity is determined by its success in applying abstract principles of justice which are already known in advance. It is therefore a question of determining the substance of laws not who wrote them. The purpose of the state is to arrogate to individuals negative rights which insulate them from external compulsion. Habermas believes that this liberal vision of the state is flawed in that it subordinates political association to independently derived moral norms. In the context of a posttraditional society in which metaphysical and religious worldviews have been rendered obsolete, individuals can only be subjected to political principles if they are simultaneously able to recognise themselves as the authors of those principles:

Without religious or metaphysical support, the coercive law designed for legal behaviour can preserve its socially integrative function only insofar as the *addressees* of legal norms may at the same time understand themselves in their collectivity as the rational *authors* of those norms⁹

In order to develop a truly autonomous conception of democracy, it is necessary to reject the classical or premodern ideal of a normative hierarchy whose pinnacle is characterised by independent moral principles such as the abstract right models which have informed liberal thought. In order to be truly modern, we must understand political principles as being embodied in the autonomous will of citizens who have full sovereignty over the laws which constitute them. At first sight, this characterisation of democracy appears to equate Habermas's discourse theory with

the republican vision in the importance which it attributes to positive political rights of participation and his adaptation of the Rousseauian view that to be truly free individuals should only be bound by laws which they have collectively willed.

However, Habermas's theory differs in important respects from the republican vision at least when it is given a communitarian reading. The problem with republican thought is that it breaks with the key modern insight that the state should be neutral between ethical conceptions of the good. Instead, the republican model articulates a substantive vision of the ethical life of the community. Thus, the republican tradition "overburdens" democracy by assimilating "politics to a hermeneutical process of self-explication of a shared form of life or collective identity".¹⁰ Whereas the liberal model goes wrong in detaching normative validity claims from the process of political will formation, the republican model eschews the impartialist project altogether by subordinating individual rights to the collective self-understandings of a particular community. In contrast to both these positions, Habermas attempts to transcend this dichotomy by asserting the equiprimordiality of private and civic autonomy. The rule of law and popular sovereignty presuppose one another. "The private autonomy of citizens must neither be set above, nor made subordinate to their political autonomy".¹¹ In line with republicanism, discourse ethics emphasises the importance of political opinion and will-formation. However, the individual rights guaranteed by the constitution are not to be considered secondary. Instead, they are embodied within the rules of practical discourse themselves. Habermas insists that a procedural mode of argumentation is sufficient to ground impartial judgements and ensure the protection of private rights as well as public rights of participation. In this respect, Habermas departs from both Kant and

Rousseau in his refusal to derive rights from prior prepolitical worldviews such as the metaphysics of natural law theory or conceptual devices such as the original position. On his view, rights are political from the outset, in the sense that they are derived from the intersubjective relations of citizens in actual debates.

The crux of Habermas's philosophical argument, namely that a proceduralist conception of deliberative politics should replace both the republican conception of the state as the embodiment of a collective will and the liberal conception of the state as the protector of individuals' negative rights leads to a reconceptualization of the relationship between state and society. For all their differences, both the liberal and republican models "presuppose a view of society as centered in the state - be it as guardian of a market society or the state as the self-conscious institutionalisation of an ethical community".¹² In contrast, the discourse theory of democracy assumes the image of a decentered society in which independent public bodies distinct from both the market and state administration form the basis of popular sovereignty.

Discourse theory shares with republicanism a principal emphasis on political opinion and will-formation. It wishes to retain the key republican insight that civic self-determination is not parasitic on the strategic action which envelops market processes, but is instead rooted in a public communication oriented towards mutual understanding. The fundamental problem with the republican view is its reduction of society to political society and its assignment of the praxis of civic self-determination to an all-encompassing macrosystem which embodies the will of a collectively acting citizenry. This makes the mistake of limiting politics to questions of ethical self-understanding in which it is assumed that practical reason cannot or

should not be detached from its anchor in a specific historical or cultural framework. The pluralistic character of modernity renders suspect the advocacy of any one historical tradition or social convention as a source of moral legitimacy.¹³ The concept of deliberative politics, on the other hand, acknowledges the plethora of forms of communication in the production of a common will. Consequently, Habermas proposes a two-track theory of democracy based on the simultaneous existence of formal and informal democratic-discursive arenas. Representative institutions such as parliamentary bodies and constitutional courts (which constitute the formal arenas) are forced to interact with a vibrant civil society which encompasses voluntary associations, social movements and other networks of communication. In this context:

discourse theory works...with the *higher-level intersubjectivity* of communication processes that flow through both the parliamentary bodies and the informal networks of the public sphere. Within and outside the parliamentary complex, these subjectless forms of communication constitute arenas in which a more or less rational opinion and will-formation can take place.¹⁴

The open and fluid structures of civil society thus constitute locales of democratic discourse which, while unable to enact positive laws, serve as streams of public opinion which exert a key influence on the formal arenas which make positive law. As Jurgen Habermas notes, this has the effect of designating civil society as a proto-legislative constitutional organ:

The power available to the administration emerges from a public use of reason... Public opinion worked up via democratic procedures cannot itself 'rule' but it can point the use of administrative power in specific directions.¹⁵

The multiple arenas for deliberating over society's problems thus serves as the basis for democratic self-government and political autonomy. The image of a decentered society constitutes an alternative to the republican view which monopolises power

in a sovereign citizenry. Instead, democratic-discursive validation is dependent not on a “collectively acting citizenry”, but rather on an interplay between legally institutionalised will-formation and culturally mobilised publics.

Habermas’s relocation of the ideal of popular sovereignty in the institutions of civil society rather than in a unitary assembly is not simply an empirico/sociological response to the functional differentiation which characterises complex modern societies in which communicative action has to compete with the logic behind money and administrative power as means of integrating and regulating modern societies. Nor is it solely an acknowledgement of the exhaustion of the republican project and all other metaphysical worldviews in conditions marked by irreducible cultural heterogeneity. It is also a reflection of the importance which Habermas attaches to the lifeworld as both the locus of the individual’s psychological identity and as the linguistic context in which communicative action transpires. The lifeworld constitutes the matrix of cultural and social practices in which an individual’s conception of the good is fulfilled. Habermas regards the concepts of communicative action and the lifeworld as complementary. As Habermas states, “the network of communicative actions is nourished by resources of the lifeworld and is at the same time the medium by which concrete forms of life are reproduced”.¹⁶

The importance which Habermas attaches to the concept of the ‘lifeworld’ illustrates the way in which he cannot be understood simply as an abstract idealist who conjures up a social world founded on a metaphysic or cosmology plucked out of the ether. The lifeworld forms the ‘context-forming horizon’ of social action and

consciousness. Understood in phenomenological terms, the lifeworld is the substratum of all our conscious worldviews (Weltanschauungen). The way in which Habermas envisages the interrelationship between worldviews and the lifeworld is similar to the way in which the conscious is related to the unconscious for Freud. As Michael Pusey notes, “Just as Freud saw the conscious life of the ego as a fragmentary and partial expression of a great storehouse of forgotten but ever-active experience in the Unconscious, so also Habermas, in a similar way, argues that the lifeworld ‘stands behind the back of each participant in communication’”.¹⁷ Phenomenologically, the lifeworld comprises the background consensus of everyday life, ‘the storehouse of unquestioned cultural givens’ which shapes the experience of our everyday interactions. It is Habermas states, ‘so unproblematic that we are simply incapable of making ourselves unconscious of this or that part of it at will’.¹⁸ There is no vantage point of observation detached from the lifeworld. We cannot step out of the lifeworld into an unconditioned realm where we can function as noumenal agents.

It is important to note that Habermas’s use of the concept of the lifeworld does not only distance him from overly individualistic conceptions of practical reason which do not pay sufficient heed to the particular contexts in which individuals are formed. Through employment of the concept of the lifeworld, Habermas also repudiates functionalist notions of socialization in which individuals’ sense of identity and meaning are shaped by their conceptualisation of the world in terms of rigid social roles from which rewards and sanctions are distributed. Instead, the very idea of socialisation is reworked so that it is understood as a process of *mutual learning*, which develops incrementally within the expanding horizons of the lifeworld. The

most important example of this is the importance which Habermas attaches to Laurence Kohlberg's theory of moral development as providing an essential empirical corroboration of his non-empirical theory of communicative action¹⁹. The essential insight which Habermas gleans from Kohlberg is that individuals develop morally in six stages. An individual's maturity grows as he progresses through the six stages discarding the failed cognitive structures of the previous stage until ultimately by the time he reaches stage six he is able to adopt a fully reflexive attitude towards the socially current norms and expectations which he had previously taken for granted. This is the postconventional stage in which individuals are expected to adopt a hypothetical stance towards their own traditions. At this level concrete norms are subordinated to universal ethical principles.²⁰ The research of psychologists such as Kohlberg reassures Habermas that humans develop into participants in argumentation. This is essential for Habermas as unlike other neo-Kantians he posits argumentation over abstract principles as the central component of communicative action. The problem as we shall see later is that this emphasis on postconventional reasoning in which a strict reification is drawn between the lifeworld and the discursive sphere where all social norms can be problematised seems to reinvoke the charge of abstractionism which cannot simply be allayed by shifting from monological to dialogic modes of argumentation.

The dialectical interrelationship between the lifeworld and communicative action illustrates the importance in Habermas's view of moving from a philosophy of consciousness to a philosophy of intersubjective understanding. In response to objections that recognition can be achieved through solitary reflection, Habermas argues that the formation of an individual's personal identity can only be achieved

in the context of mutual recognition and intersubjective agreement which undergirds the lifeworld. Thus, communicative action is given precedence over strategic action, for the very existence of strategic action presupposes the maintenance and renewal of the lifeworld through which the socialisation of individuals occurs.²¹ The symbiotic relationship between the lifeworld and communicative action which informs Habermas's discourse ethics has led proponents of his model to argue that it offers significant advantages over other versions of deontological ethics in that the conception of impartiality which it provides is grounded in the particular life contexts which shape individuals conceptions of the good. It is therefore, so the argument goes, much more sensitive to social and cultural diversity than other conceptions of impartiality which presuppose an unencumbered moral subject. It is this bold claim that Habermas has successfully developed a context-based account of impartiality that guides the main trajectory of debate surrounding his work.

Critiques of Habermas's Discourse Ethics

There can be no doubt that of the many versions of deliberative democracy the Habermasian model is the most theoretically sophisticated. It also appears to offer significant advantages over more liberal models of public reason. Its most fundamental insight is its shift from a monological to a dialogical mode of normative legitimation and its corresponding insistence on the intersubjective nature of rationality. This enables it to posit a much more expanded concept of the public sphere than that which undergirds political liberalism and hence allows its proponents to argue that it is more inclusive of diversity without abandoning the view that morality has a cognitive dimension. At first sight, therefore, discourse ethics appears to offer the best of both worlds. On the one hand, it continues to

retain the perspective of universality and impartiality, while on the other, it eschews the Kantian subject by rooting communicative rationality in the particular life contexts which inform the individual's identity.

Nonetheless, both the coherence and the desirability of the discourse-theoretic project have been subjected to sustained attack from many divergent theoretical positions ranging from postmodernists on the left to neoconservatives on the right. In spite of their ideological differences, their critiques tend to converge on one common theme. Namely, that despite insisting on the postmetaphysical nature of his theory, Habermas cannot steer a middle path between transcendentalism and contextualism. Instead theorists as diverse as Charles Larmore and Stanley Fish have argued that discourse ethics is bolstered by a set of substantive metaphysical assumptions which undermine Habermas's claim to have formulated a universalist moral theory which is more sensitive to the reality of moral pluralism in a posttraditionalist world.²² While Habermas has attempted to avoid the rigid formalism which has hamstrung traditional versions of the Kantian project by providing an intersubjective basis for practical rationality, critics have argued that the reconstruction of reason in communicative terms does not insulate him from the charge that he fails to sufficiently incorporate contextualist insights within his impartialist project. This criticism is motivated by the binary oppositions between justice and the good life, morality and ethics, procedure and substance, and the generalized and the concrete other which inspire Habermas's deontological approach.

Benhabib has argued that universalistic moral theories since Kant have suffered from a conflation between ethical cognitivism and ethical rationalism with the consequent occlusion of the affective and emotive bases of ethics.²³ The rationalist underpinnings of Kantian theories has led to an abstraction from difference and particularity and an exclusive focus on the standpoint of the generalised other in which individual identity is defined solely by an agent's capacity for choice. However, as we saw in chapter three when we explored her critique of Rawls, Benhabib argues that the notion of a self prior to its concretisation is incoherent. The problem with Rawlsian constructs such as the original position and the veil of ignorance is that the equivalence of all selves qua rational agents which underpin such conceptual models means that individuals have only definitional identity. This invites the charge of epistemic incoherence which has been placed against universalistic moral theories, for in a situation where there is no criteria for individuating among selves, there can be no genuine reversibility of perspectives in which the agent is forced to take the standpoint of the other.²⁴

At first sight Habermas seems well placed to escape Benhabib's critique of Rawls. Rather than attempting to eradicate pluralism as arguably occurs behind the veil of ignorance, discourse ethics contains as its prerequisite real life moral argumentation between a plurality of participants. In Habermas's theory, differences between individuals are not effaced but rather are to be given "full play in discourse". Dialogic impartiality requires an articulation of rather than an abstraction from difference. Concomitantly, communicative action is conceived as a historically situated activity in which all normative validity claims arise within a particular context. Rational discourses exist like "islands in the sea of everyday practice".²⁵

The revocation of epistemic restrictions on moral reasoning enables “complete reversibility” to take place which can account for the concrete differences amongst actual moral discussants.

There is however, a serious ambiguity at the heart of Habermas’s theory of moral justification which leaves him vulnerable to the same charge of epistemic incoherence which has been placed against Rawlsian liberalism. The driving motivation of the discourse-theoretic project is after all to establish an impartial basis for critiquing existing social norms. The validity of a norm does not depend on the degree of its cultural embeddedness, but rather on the fact that it can be rationally justified in a practical discourse. It is in order to gain critical leverage on existing social practices which may be oppressive or exploitative that Habermas has posited throughout his work a sharp distinction between moral and ethical discourses. Whereas moral discourses aim to establish norms which can be justified universally, ethical discourses are rooted in particular conceptions of the good life and are thus not susceptible to universal agreement. Thus, as it is only by virtue of “the moral point of view” that one can forge agreements which are universal, what Habermas terms moral practical discourses “require a break with all of the unquestioned truths of an established, concrete ethical life”, the “distancing of oneself from the contexts of life with which one’s identity is inextricably woven”.²⁶

At this point, communicative ethics appears to founder on a paradox which undermines the claim by its proponents that it more successfully incorporates contextualist insights into impartialist moral theory than Rawls does. On the one hand, the actors share as a background a lifeworld that forms the context for

communication. However, these same actors are required by discourse ethics to detach themselves from that very background in order to problematize the commitments and convictions they have acquired as participants in the lifeworld. Moral discourse which determines substantive principles of justice must adhere to “communicative presuppositions that require a break with the certainties of the lifeworld and ...a hypothetical attitude towards the norms of action and claims of validity that have been made the object of attention”.²⁷ As Shane O’ Neill notes, discourse ethics draws a sharp dichotomy between the unquestioned intersubjectively shared certitudes of the lifeworld and the content on which participants in communicative action reach agreement.²⁸ This content has become detached from the diverse background culture of the lifeworld and taken on “the character of knowledge linked with a potential for reasoning, knowledge that claims validity and can be criticised, that is, knowledge that can be argued about on the basis of reasons”.²⁹ This differentiation is what Habermas calls a decentered understanding of the world.

With this decentered understanding of the world, the lifeworld is distanced from the objective and social worlds in order that they can be problematized. In the context of the objective world, assertions which had been unquestioned may now be deemed true or false. In the case of the social world, the normativity of existing institutions is brought into sharp focus. The problem here as contextualist critics of Habermas have argued is that the requirement of communicative ethics that the conduct of moral discourses necessitates individuals to detach themselves from their favourite projects as a means of “relativising one’s own form of existence to the legitimate claims of other forms of life” seems to lead to the very abstraction from

difference which prioritises the generalised over the concrete other.³⁰ Consequently, this reintroduces the problem of epistemic incoherence which Benhabib argues has haunted the vast majority of Kantian theories.³¹ The suspicion that Habermas's version of discourse ethics rests on a reification between the general and concrete other is further heightened by the fact that he asserts that the need to establish impartial moral norms to govern a social world constituted by an ever greater multiplicity of lifestyles "must be satisfied at higher and higher levels of abstraction. For this reason the consensual norms and principles become ever more general".³²

In response to assertions such as these, the postmodern literary theorist and one of Habermas's strongest critics, Stanley Fish has argued in a fascinating exchange with Shane O'Neill, that contrary to the views of the latter, Habermas, "by demanding that you inhabit no particular point of view and especially not the points of view to which you have become attached, ... asks of you exactly what the original position asks of you - to assume nothing and be nowhere," with the only difference being that "you are to do it not in ignorance of everything you might become and desire, but in a wilful disregard of everything you have become and already desire".³³ In order to combat this charge it is necessary for communicative ethicists to show how ethical goods can be successfully implicated in justificatory processes of moral legitimation without at the same time abandoning the strict criterion of impartiality on which discourse ethics ultimately rests. Such an attempt has been made by Benhabib, who through a dialectical engagement with the work of communitarians, postmodernists and feminists has tried to reformulate communicative ethics so that it is more sensitive to contextualist insights. In particular, she has criticised

Habermas for attempting to restrict the domain of modern moral theory to matters of justice and argues instead for the inclusion of ethical goods in the subject matter of practical discourse as a means of correcting the one-sided formalism of most Kantian theories. The virtue of Benhabib's attempt to expand moral theory so as to incorporate ethical discourses is that it enables her to emphasise the emotive and affective bases of ethics. She is thus responsive to the concerns of feminist theorists such as Carol Gilligan who criticize the narrow rationalism, the "epistemological blindness" of most universalist theories.³⁴

Benhabib thus argues for the abandonment of Habermas's distinction between a moral and ethical use of practical reason and the extension of the moral domain to encompass practical reasoning concerning particular conceptions of the good. She states in contrast to what she regards as the Habermasian model that "communicative ethics need not restrict itself to the priority of justice. I see no reason as to why questions of the good life as well cannot become subject matters of practical discourses".³⁵ Benhabib thus aims to respond to contextualist critics of communicative ethics who argue that its strong deontological assumptions which privilege notions of justice leave it with the same impoverished conception of our moral experiences as that of other Kantian theories by shifting to a 'weak' deontology which facilitates moral debate over our conceptions of the good.

In many respects, this reformulation of communicative ethics which discards Habermas's distinction between morality and ethics and allows for intersubjective moral debate on evaluative questions renders the theory much more faithful to the dialogical assumptions underpinning discourse ethics as it does not arbitrarily

restrict the moral domain to questions of justice. As Benhabib notes, since practical discourses do not theoretically predefine the domain of moral debate and since individuals do not have to abstract from their everyday attachments and beliefs when they begin argumentation {in contrast to Rawlsian liberalism}, “we cannot preclude that it will not be only matters of justice, but those of the good life as well that will be thematised in practical discourses...the line between matters of justice and those of the good life is not given by some moral dictionary, but evolves as the result of historical and cultural struggles”.³⁶ Thus, Benhabib crafts a compelling vision of what she calls a *postconventional sittlichkeit* which more adequately situates a universalistic moral point of view within an ethical community than that achieved by other Kantian ethical theories, including Habermas’s. She locates her vision of an interactive universalism on a continuum between strong teleology and strong deontology. She argues that whereas the former position, most often espoused in the modern era by communitarians is unrealistic in its failure to appreciate the impossibility of asserting a univocal conception of the good in conditions of modernity, the latter remains wedded to the discredited metaphysical assumptions of Enlightenment universalism in which the moral point of view is perceived as an archimedean centre from which substantive principles of justice can be developed in isolation from particular historical and cultural contexts. By locating communicative ethics on a continuum between these two conceptual poles, she is able to enlarge the moral sphere to encompass both the generalised and the concrete other.

Before critically assessing in more detail whether such a postmetaphysical interactive universalism can be sustained in the face of objections from

postmodernists on the one side and Kantian liberals on the other, it is worth noting that her version of discourse theory is in fact much closer to Habermas's own position than she realises. In particular, as we saw above, (and before the publication of *Situating The Self*), Habermas had clearly stated that respect for the dignity of the individual requires the protection of the intersubjectively shared bonds on which the individual's identity is dependent.³⁷ Thus, by starting from the perspective of a particular lifeworld rather than that of an isolated agent, Habermas has already reconceptualised the moral self in such a way that moves him beyond the strict formalism of Kant. Furthermore, as Maeve Cook points out, while in the original version of discourse ethics, ethical issues are removed from deliberations on justice, Habermas has gradually relaxed his distinction between morality and ethics in ways which also distance him from the strong deontological position which prioritises state neutrality with respect to substantive conceptions of the good life and recognises the autonomy of individuals irrespective of their ethical convictions.³⁸

The three most significant developments in this regard are the inclusion of a category of ethical discourses, the insertion of such discourses into political debate, and the ethical patterning of the constitutional state. Whereas in *The Theory of Communicative Action*, Habermas had restricted discourse solely to modes of moral argumentation which could lead to the development of universal validity claims, by the end of the 1980s, Habermas had enlarged the category of discourse so that it embodied dialogue concerning ethical questions.³⁹ Then, in *Between Facts and Norms*, where Habermas developed his theory of deliberative democracy, he argued for the importance of discussion relating to ethical issues both in the formal

institutions which characterise modern democracies and in the informal processes of will-formation in the sphere of civil society.⁴⁰ Finally, in response to communitarian theorists, most notably Charles Taylor, who argued that deontological liberalism failed to sufficiently incorporate collective goals, Habermas now stresses 'the unavoidable fact' that every political community is ethically patterned.⁴¹ The persons who constitute a given polity interpret normative questions in the light of their shared collective understandings which inform their sense of identity. Thus, Habermas now argues that constitutional principles will be interpreted within the context of a nation's particular traditions, therefore the interpretation cannot be ethically neutral.⁴² In many respects, Habermas's insistence in his revised version of discourse ethics that conceptions of the good should not be bracketed from public political discussion but rather thematised in public processes of deliberation seems to render his theory more consistent with both his holistic ontology concerning the intersubjective constitution of moral agents and more generally his emphasis on a dialogical conception of impartiality.

The attempts by Benhabib and the later Habermas to dissolve the dichotomies which arguably disfigure Kantian theory by developing a more context-sensitive version of universalism have been regarded with scepticism by postmodernists who argue that any theory which purports to universality and impartiality has by definition to be formulated in terms which avoid contamination by ethical goods or otherwise it will fail to overcome the charge of cultural contingency. Stella Gaon states bluntly the horns of the dilemma on which she believes discourse ethics is impaled.⁴³ Habermas has no option but to maintain the rationality of the moral sphere against incursions from ethical beliefs for otherwise he cannot justify a

universalist perspective and will fall prey to the biases of ethnocentrism and metaphysics. Thus Gaon argues that if Habermas is to detranscendentalise Kantian moral theory without forfeiting the claim to impartiality then he must conceive discourse ethics in purely formal procedural terms. Therefore, Gaon asserts against Benhabib that the morality-ethics divide is structurally indispensable to the coherence of discourse theory. The autonomy of the moral sphere is crucial to the establishment of universal validity claims. If this argument were to be sustained it would leave Habermas with the rather unwelcome task of defending a theory which is both ethically empty and yet normatively full. As Gaon herself notes, this can only be achieved by removing the individual subject from the contingencies of everyday life, a solution which Habermas as much as Benhabib would find unpalatable. Rather than defending such a position which Gaon agrees with Benhabib would lead to the epistemic incoherence which she associates with a transcendental subject, she states that Habermas has no option but to forego the discourse ethical claim to impartiality.

The central purpose of the remainder of this chapter is to defend discourse ethics against this postmodernist charge. This can be achieved by illustrating the extent to which moral and ethical discourses, particularly religious discourses are interwoven in normative disputes both within the particular contexts of political communities and across diverging cultural boundaries in such a way that they cannot possibly be separated. The consequence of adopting such a position however, is the need to develop and spell out more explicitly than Habermas has done the relationship between a postconventional morality which enshrines a commitment to *substantive* norms such as critical rationality and universal moral respect and those which

uphold conventional forms of life which regard such ideals as an illegitimate imposition of a comprehensive form of liberalism. For it will be argued that while discourse ethics offers an advance on traditional versions of Kantian liberalism by refusing to banish ethical norms from public discourse, and therefore offers a much more realistic account of the dynamic interplay between conceptions of the good and norms of justice than that provided by Rawls's overlapping consensus, the price of this position is the privileging of certain ethical norms over others, namely those which can most obviously be framed in terms which render them amenable to rational debate.

Discourse Ethics and Religion

In order to assess the claim put forward by proponents of communicative ethics that it is able to develop a universalism more sensitive to cultural differences than other species of Kantian philosophy, it is necessary to examine the role which Habermas accords religious discourses in his philosophy as they can be regarded as paradigmatic instances of conventional versions of morality. If Habermas and indeed other proponents of communicative ethics are to achieve the delicate task of crafting an "historically self-conscious universalism" which can be distinguished from Kantian formalism, then they must be able to demonstrate a greater ability to incorporate firmly held religious beliefs within public political processes of communication, while still retaining the capacity to redeem a universalist and postconventional morality.

At first sight, discourse ethics with its emphasis on a productive interchange between competing ethical doctrines seems to offer a more promising basis for

accommodating religious diversity than traditional models of liberalism. The strict reifications which liberalism has traditionally encouraged between public and non-public and church and state have led to the confinement of religion (and in the case of political liberalism, the banishment of all comprehensive doctrines) to the private sphere. Nonetheless, the ambivalent and at times downright negative view with which Habermas has treated religious conviction intertwined with his powerful aversion to fundamentalism threatens to undermine the appeal and indeed relevance of discourse ethics in aiding attempts at fostering mutual reconciliation both between diverse religious traditions and between these traditions and secular humanists.

The central reason why Habermas has such difficulty identifying a place for religion within his theory can be attributed to the fact that, as Brian Shaw has shown in meticulous detail, he either regards it as a problematic form of ethical discourse or worse as a leftover relic from a premodern form of consciousness.⁴⁴ In effect, he continues to adhere to the seemingly discredited secularization thesis in which modernity implies the political marginalization of religion. The exclusion of religious sentiments from the public sphere is a requisite harbinger for the release of citizens from metaphysical prejudice. In a similar manner to other proponents of the normative ideal of secularism who argue that the modern world has progressively eroded its religious foundation with whatever valuable ethical content it once had appropriated into modern modes of thought, Habermas states that religious views once stripped of their mythic and metaphysical underpinnings can be subsumed into the normative procedures which inform communicative action. While Habermas, in contrast to his earlier work no longer asserts the meaninglessness of religious

speech conceding that postmetaphysical thought may be “able neither to replace nor to repress religion as long as religious language is the bearer of a semantic content that is inspiring and even indispensable”, the transition to doctrinally pluralist societies with the consequent redundancy of all metaphysical worldviews means that moral commands can no longer be legitimated with reference to a transcendent standpoint.⁴⁵

Habermas regards the fundamental aim of postmetaphysical theory as the rational reconstruction of the moral and ethical convictions that once animated the world's principal religious traditions. In Habermas's view, this task is the sole preserve of moral philosophy. The transition from traditional to posttraditional societies has on his account been accompanied by the autonomisation of moral consciousness. Citizens by extricating normative validity claims from the natural and sacred contexts in which they were formerly embedded come increasingly to rely on linguistically achieved communication as the basis on which to make universalizable moral claims. He states that “the socially integrative...functions that were at first fulfilled by ritual practice pass over to communicative action; the authority of the holy is gradually replaced by the authority of achieved consensus”.⁴⁶ Underpinning this view is Habermas's developmental evolutionary interpretation of modernity and more specifically, modern rationality. It is Habermas's contention that there is a progressive development from the rational structures contained in religious and metaphysical worldviews to the rational structures embodied in modernity. Thus, in Habermas's conceptual framework, there is an evolution from myth to metaphysics to modern communicative rationality.⁴⁷ Social coordination, which formerly could only be based on a religious

consensus can now be attributed to a “linguistically established intersubjectivity”.⁴⁸

As Stephen Lukes eloquently puts it:

Habermas postulates the possibility of society reaching a stage of transparent self - reflection...in the sense that mythological, cosmological, and religious modes of thought have been superseded and “rational will-formation can be achieved, free of dogmas and “ultimate grounds”, through ideal mutual self-understanding.⁴⁹

As Shaw states, the devaluation of the cognitive and rational status of religious modes of consciousness irreducible to linguistic forms of communication will appear devastating from the perspective of the devout religious believer.⁵⁰ He will regard the linguistic turn from transcendental subjectivity in order to relocate normative validity claims in grammatical structures as a serious impediment to what he regards as the non-negotiable truths of his faith and the political implications which flow from them. Ann Fortin Melkevuk states that to ground valid knowledge in fallible discursive procedures is to decide that “no statement pertaining to the individuals inner world could claim certitude” and that this inner world which constitutes the very basis of religious experience “must consequently be nothing but chaos, arbitrariness or disorder”.⁵¹ If this argument can be sustained, it makes little difference whether religious modes of thought are regarded as aesthetic-expressive discourses as Habermas used to believe or as he has argued more recently, as varieties of ethical discourse, for in either case they will be immune to critical inquiry. Indeed, their adherents will regard the claim that they should redeem their convictions discursively as the imposition of an all - encompassing comprehensive belief system. This point is brought home forcefully by Fred Dallmayr who in response to Eduardo Mendieta, points out that while it is true to say that Habermas is not an “anti- religion philosophe, this misses the point. Rather, the question is, “in

a functionalist...systems theory assigning a place or role to everything under the sun, where can there still be room for the “wholly other” and “absolutely unrepresentable” invoked by Horkheimer?”⁵² As stated by Mendieta, Habermas repeatedly acknowledges the importance of the Judeo-Christian legacy in paving the way for the Enlightenment and modernity. However, as Dallmayr points out, this merely serves to focus attention on the way in which Habermas views the philosophy of history as a developmental scheme in which religious modes of thought have been sublimated into discursive rationality which now represents the ultimate telos to which all conventional systems must bend.⁵³ It is unclear in this context to what extent religions can retain their distinctiveness. More generally, it fails to acknowledge the degree to which religion continues to function as an autonomous variable in human affairs in a way which contradicts the Enlightenment assumption that with the shift to a post-modern society, the diverse and often rivalrous cultural identities manifest throughout human history can be characterized as an ephemeral or at least a merely developmental phase in the history of the species.

In an ironic twist, political liberals such as Charles Larmore turn the tables on communicative ethicists who have been so critical of political liberalism for failing to take diversity seriously enough by arguing that communicative ethics is itself rooted in a general philosophical vision which would be rejected by many religious believers.⁵⁴ Political liberals have united with value pluralists such as John Gray to argue that despite the eschewal by Habermas of Enlightenment metaphysics implicit in his rejection of a philosophy of consciousness, he continues to endorse the philosophical anthropology of the Enlightenment in which cultural difference is

viewed as a transitory incident in human affairs.⁵⁵ In fact, some commentators have argued that religious worldviews fare better under political liberalism than in discourse theory as Habermas presents it.⁵⁶ Whereas the former merely privatizes religious belief while claiming at the same time to respect the invocation of absolute truth to which divergent religious doctrines appeal, the latter attempts to dismiss their truth claims altogether on the basis that they are a relic of a superseded past. Thus citizens who in a politically liberal republic are forced to subordinate their religious beliefs to public reason can at least reclaim the cognitive and rational content of their beliefs outside the public sphere. They are not saddled with the additional burden of having their belief system labelled as anachronistic whose valuable contents have already been sublated into more rational forms of public discourse. Nonetheless, it would be overhasty to conclude from this examination of Habermas's treatment of religion that there is an irreconcilable conflict between discourse theory and religious belief. Such a view would ignore the valuable insight asserted by many theologians and political theorists and often overlooked by both value pluralists and Habermas that the transcendental experience of God is intersubjectively mediated rather than purely monological in character. Once shorn of its rationalist underpinnings, discourse theory has the ability to welcome religious believers into the public sphere without at the same time denying the rational status of their convictions. Such a theory would discard a rationalist epistemology and develop a philosophy that is more sensitive to religious beliefs that do not conform to constraints imposed by reason. This should help to assuage critics who fear that Habermas dismisses religious claims too easily by appealing to philosophy's authority as "the guardian of rationality".⁵⁷

Fortunately, the transformations which Habermas has undertaken in his latest work, most notably in *Between Facts and Norms* where he has weakened the binary oppositions which characterised his earlier thought has helped to facilitate a more conciliatory approach towards religious perspectives. In particular, his concession that the boundaries between moral and ethical discourses may be substantially more fluid than he earlier supposed seems to pave the way for the development of a less reductive view of religion. After all, as Shaw notes, "once Habermas acknowledges the ethical character of religious belief and admits the permeability of discourses both within and among the various validity spheres, there remains no good reasons presumptively to disqualify citizens religious convictions".⁵⁸ It is important to state at the outset that the decision to abandon the purity of discourse theory in which it is rendered free from contamination by ethical-substantive commitments has a paradoxical dual effect. On the one hand, there is little doubt that admitting ethical doctrines into public discussion helps to foster a much more pluralistic vision of the political sphere. At the same time, however, it also serves to make more explicit the substantive presuppositions which inform discourse theory from the outset, in particular, a commitment to the ideals of individual autonomy and universal moral respect. These substantive commitments set limits to or at the very least problematize certain kinds of ethical convictions, namely those, which reject the priority of individual autonomy. To put the point another way, a postmetaphysical *Sittlichkeit* which by definition eschews an ethical formalism in favour of an ethical cognitivism is still going to be unwelcome to a conventional belief system which is constrained by a cognitive barrier beyond which it cannot argue. Communicative ethics, no more than political liberalism can extricate itself from this problem. As Benhabib, one of the most contextualist proponents of communicative ethics puts it,

incidentally, in a way strikingly similar to Rawls, “when there is a clash between the metanorms of communicative ethics and the specific norms of a moral way of life, the latter must be subordinated to the former”.⁵⁹ A couple of pages earlier she states even more bluntly that such belief systems, due to their need to withdraw from the process of reflexive justification are flawed in not being comprehensive and reflexive enough.⁶⁰ The upshot of this conclusion is that conventional moralities must transform themselves into a postconventional form in order to attain sufficient reflexivity which in turn requires arguments which are based on universalisable grounds. Evan Charney concludes that the implications of this are “either the end of associations in civil society or their melding into one association a la Rousseau’s general assembly”.⁶¹

Perhaps more worrying in the present context is the fact that the examples she cites of viewpoints which fail due to the inability of their adherents to distance themselves from them in order to examine them critically are nearly all religious. She cites the difficulty which a Mormon or a Muslim would face in attempting to justify to those who do not subscribe to either belief system the legitimacy of polygamy or the natural inequality between the sexes through invocation to the teachings of Joseph Smith or Mohammed. Her rejection of this way of defending one's beliefs as exclusive in dividing the moral conversation into insiders and outsiders (i.e those who accept the literal meaning of the sacred text and those who do not) may lead one to suspect that even a revised version of communicative ethics will end up embracing an epistemological scepticism which will penalize religious discourses due to their unreflexive nature in which case the concession of inviting such discourses into dialogue will prove to be of little comfort. There is no desire

for adherents of such views to participate in a dialogue if they feel the rules of the game are biased against them by denying the legitimacy of their mode of conversation. In the final part of this chapter, I want to argue briefly that this conclusion is not entirely warranted. While I agree with Benhabib and indeed Habermas that the attempt to justify one's normative commitments through appeal to the infallibility of the one true teaching serves as the ultimate conversation stopper and thus excludes certain species of fundamentalism, this mode of argumentation is hardly exhaustive of religious discourses in general. It is perfectly plausible contrary to the claims of postmodernists such as Stanley Fish and communicative ethicists such as Habermas and Benhabib to believe in the absolute truth of one's religious convictions and thus reject scepticism at the epistemic level while still retaining a commitment to the normative ideals which inform communicative ethics. This will be illustrated in the next chapter through an exploration of the fundamental tenets animating post-Vatican II Catholicism.

It is essential that discourse theorists address the charge leveled against them by their critics that the attempts to transcend Enlightenment metaphysics founders on their continuing adherence to an Enlightenment philosophical anthropology. Value pluralists such as John Gray have argued strongly that theorists such as Habermas who eschew Enlightenment foundations while still subscribing to an Enlightenment philosophy of history cannot adequately accommodate radical diversity within their conceptual framework.⁶² Underpinning this criticism is the belief, not only that the inability of many political theorists to account for the pervasiveness of cultural difference makes Enlightenment thought normatively unappealing, but more fundamentally that it renders their thesis empirically absurd. This charge has special

relevance for discourse theory as the attempt to harmonise the liberties of the ancients with the liberties of moderns which is the fundamental object of Habermas's political theory, cannot be achieved as long as the political content of the conventional moralities which inform individuals normative beliefs are neglected or regarded as a transitory phenomenon.

At times Habermas proceeds as if these conventional moralities do not exist or alternatively survive as a curious atavism from a previous age or as an unhealthy by-product of modernization.⁶³ Either way they play no legitimate role in the evolutionary development of the human species. This view fails to take sufficient heed of the stubborn persistence of particularistic forms of human identity which resist sublation into postconventional forms. As a consequence, the emphasis placed by communicative theorists on intersubjective rationality as an alternative to the philosophy of subjectivity is not sufficiently aware of the extent to which many modes of discourse fail to satisfy the rigorous requirements of communicative ethics, not least that they be critically reflexive *all the way down*. Thus, in the eyes of one acerbic critic, Habermas's philosophy of intersubjectivity operates with a monological vigour inspired by a blind faith in the consensual powers of reason.⁶⁴ In order to forestall this criticism and rescue communicative ethics from the charge that it is just one more parochial instance of a western philosophy that has no universal validity, it is necessary to understand the manner in which conventional and postconventional moralities are interwoven in the contemporary world in a way not adequately thematised by either Habermas or Benhabib.

Conclusion

As this chapter has shown, Habermas's notion of "communicative reason" is an attempt to respond to the postmodernist critique of the abstract rationalism which allegedly animates Enlightenment thought without discarding its key normative commitments. The most distinctive contribution of discourse theory is its rejection of the "subject-centred" monological view of reason associated with traditional forms of liberal individualism and its insistence that reason depends on dialogical processes of justification. Habermas believes that his "communicative Kantianism", while continuing to insist on the importance of redeeming moral norms in an impartial and universal manner, can avoid the charge of empty formalism, which he argues disables Rawls' version of Kantianism, by emphasising that rationality requires a genuine discussion amongst a plurality of participants. This position leads him to the view that liberal thinkers go wrong when they hold that the normative justification of political associations are determined by moral norms given in advance, such as the belief that individual rights set limits to the exercise of democratic self-rule. In the conditions of postmodernity, when metaphysical worldviews have lost their authority, we can only justifiably submit to political principles if we can simultaneously regard ourselves as the authors of those principles.

The key problem is whether this turn to intersubjectivism is in itself sufficient to guarantee that radical diversity is taken seriously, or even adequately conceptualised in the political sphere. The problem stems from the fact that due to his belief that metaphysical and religious views no longer have the authority to serve as means of social integration, he thinks that it is necessary to insist on the autonomy of the

political sphere. As critics have pointed out however, the more Habermas stresses the “purity” of his discourse theory, in which it is freed from contamination by substantive-ethical commitments, the more formal and empty it risks becoming. The equation of the political sphere with communicative rationality in which agreement is deemed fully rational only when it is based on the unforced force of the better argument can only be achieved according to postmodernist critics such as Gaon by presupposing the possibility of a transparent, ahistorical, culturally unencumbered rationality.⁶⁵

This suspicion that Habermas’s thought is still too reliant on the severing of the morally right from concrete conceptions of the good is given further credence by the binary oppositions which inform Habermas’s thought, most notably his very sharp and rigid distinction between morality and ethics. The “violently distortive” way in which he portrays “actually existing” ethical traditions on the one hand and moral discourses on the other illustrate the arbitrary way in which he employs distinctions such as these. As we have seen, he asserts that moral-practical discourses need to be untethered from the concrete contexts in which an individual’s identity is formed. This view is premised on his narrow view of ethics in which ethical discourses can never have a universal scope. This has led postmodernists such as Fish to claim that his theory is no less abstract and no more context-sensitive than Rawls’s.⁶⁶ Indeed, Habermas and his postmodernist critics appear to adhere to the same dichotomy. Both seem to believe that the available options are exhausted by either stressing the autonomy of the moral sphere vis-à-vis conditional, evaluative questions of the good, or by discarding the strict criterion of impartiality and accepting the reality of

concrete discussants who are not impartial, transcendental subjects but rather are partial, situated individuals.

The reason why Habermas's version of communicative ethics continues to attract doubts concerning its responsiveness to the demands of ethical diversity can be attributed to his denial of the possibility of metaphysics in the conditions of late modernity. All evaluations of totality are culturally specific rather than universally valid. Consequently, with the demise of metaphysics it is impossible to redeem the public and cognitive claims of religion. The procedures by which religious claims find redemption lack the discursive and argumentative character that would enable them to survive the shift from traditional "subject-centred" to dialogic modes of consciousness.

There are a number of problems with this construal of religious claims. In particular, by placing so much stress on the irrelevance of metaphysical worldviews in conditions of late modernity, Habermas seems wedded to a secularisation theory that assimilates ethical cognitivism with ethical rationalism. This has the result of delegitimising or at least consigning to the aesthetic-expressive sphere religious claims which cannot be recast in postmetaphysical terms. The problem with interpreting discourse ethics in this manner is that it fosters an epistemological scepticism or "methodical atheism" which compromises Habermas's own desire to render discourse theory more ethically sensitive. The recent moves that Habermas has made to enhance the role of ethical discourses in the public sphere are undermined by his continuing denial of the cognitive validity of ethical discourses that are underpinned by background convictions which are considered infallible and

thus resist value reflexivity and differentiation. Severing moral universalism from the excesses of Enlightenment rationalism as Benhabib attempts to do will not by itself solve this problem. Even a “weak” deontology in which justice is no longer placed at the centre of morality and which facilitates instead intersubjective debate over conceptions of the good will still seem to place religious worldviews at a disadvantage. After all, it could be argued that their very existence is dependent on *not* being subject to moral reflection and moral transformation along the lines that Benhabib envisages. The dilemma can be stated as follows. The principles of discourse ethics are principles of universalisation. The problem with those who adhere to conventional moralities is that their perspectives are not sufficiently universalisable from the standpoint of all involved. In order to attain sufficient reflexivity, these doctrines, of which the paradigmatic examples are religious doctrines, must transform themselves from conventional to postconventional moralities. In the process of doing so however, they in effect commit suicide. After all, their very identity is dependent on emphasising their distinctiveness, i.e. the non-universalisability at an epistemological, normative and institutional level from the wider political culture in which all normative claims to be accorded legitimacy have to be universalisable in principle. If this argument were to be accepted, Benhabib can no more respond to the concerns animating the proponents of the politics of difference than can Habermas, for the problem in discourse ethics is not primarily its rationalist epistemology. It is rather its privileging of a secular, universalist and reflexive culture which permeates all aspects of civil society and thereby suffocates difference whose distinctiveness is dependent on adherence to traditionalist values which are irreducible to the intersubjective nature of rationality.

The belief that religious worldviews are particularly ill-suited to survive the conversion from monological to dialogic modes of consciousness is a view which seems to be shared by a diverse array of thinkers. It encompasses political liberals such as Rawls and Charney, postmodernists such as Fish through to communicative ethicists such as Habermas and Benhabib.⁶⁷ All three schools of thought respond to this fact in very different ways. Political liberals argue that the problem is not with the principle of universalisation but rather with how discourse theorists administer it. They argue for a more limited conception of the public domain that insulates public reason from the diverse associations that comprise civil society. The problems concerning this approach of insulating the public sphere from comprehensive conceptions of the good have already been explored in an earlier chapter. The second more radical solution proposed by postmodernists is simply to abandon abstract ideals such as universality and impartiality altogether as Enlightenment conceits. Finally we can like Habermas welcome or at least not regret the demise of conventional moralities that belong to a pre-modern age and accept it as an inevitable consequence of the transition to exclusively secular procedures of discursive reason.

In the next chapter I want to suggest that in contrast to all of these approaches the real challenge is to enlarge the moral sphere in such a way that it can encompass the complex interweaving of conventional and post-conventional moralities. The key insight neglected by political liberals, postmodernists and communicative ethicists in the form outlined by Habermas and Benhabib is the extent to which conventional and post-conventional moralities interact with each other in the public sphere. This is particularly true of monotheistic religions such as Roman Catholicism that is

often cited as an example of a belief-system whose beliefs are in conflict with the normative claims of discourse ethics. Such a position however involves two erroneous assumptions. Firstly, that epistemological scepticism is an essential feature of discourse ethics. It is not. Secondly, and often presented as a corollary of the first assumption, that the background certainties which animate a belief system such as Catholicism preclude dialogue with discussants that are committed to conflicting belief systems. I will attempt to show in the next chapter through using Catholicism as a case study that the fact that individuals start from different epistemic starting points in no way *predetermines* the normative beliefs which they hold as a result on issues such as religious freedom and the justification and application of just war theory.

Chapter Five: Endnotes

¹ Stephen Macedo, *Diversity and Distrust*, (Harvard: Harvard University Press, 2000), Amy Gutmann, "Civic Education and Social Diversity", *Ethics*, vol.105, no.3, (April 1995), pp557-579, Charles Larmore, "The Moral Basis of Political Liberalism", *The Journal of Philosophy*, vol.96, no.12, (June 1999), pp599-625

² See for example Noel O' Sullivan, "Difference and the Concept of the Political in Contemporary Political Philosophy", *Political Studies*, vol.45, no.4, (Sep 1997), p743 at pp739-754

³ This criticism has been expressed most vociferously by postmodernist critics such as Stanley Fish whose critique of Habermas will be dissected below. See for example Stanley Fish, "An Exchange on Impartiality: Are There Reasons for Self-Revision", Review of Shane O'Neill's *Impartiality in Context, Grounding Justice in a Pluralist World*, (Albany, N.Y. State University of New York Press, 1997), in *Jurist*, vol.1, no.7, (Oct 1998), "Truth but no Consequences: Why Philosophy doesn't matter" in Elias L Kahil ed. Dewey, *Pragmatism and Economic Methodology*, (NY Press: Routledge, 2004), pp188-212

⁴ Seyla Benhabib, *Situating the Self*, (New York: Routledge, 1992).

⁵ Thomas McCarthy, "Kantian Constructivism and Reconstructivism: Rawls and Habermas in Dialogue", *Ethics*, vol 105, no.1, (October 1994), pp44-63, p45

⁶ Shane O'Neill, *Impartiality in Context*, (Albany: State: University of New York Press, 1997), p114

⁷ Jurgen Habermas, *Between Facts and Norms, Contributions to a Discourse Theory of Law and Democracy*, (Cambridge, Massachusetts: MIT Press, 1996).

⁸ Benjamin Constant, "The Liberties of the Ancients compared with that of the Moderns", *The Political Writings of Benjamin Constant*, (Cambridge: Cambridge University Press, 1988), pp307-328.

⁹ Jurgen Habermas, *Between Facts and Norms*, pp51-52

¹⁰ Jurgen Habermas, 'Three Normative Models of Democracy', in S. Benhabib (ed.), *Democracy and Difference, Contesting the boundaries of the Political*, Princeton University Press, 1996) p21-30, pp22-23

¹¹ Jurgen Habermas, *Between Facts and Norms*, p104

¹² Jurgen Habermas, "Three Normative Models of Democracy", p26

¹³ Jurgen Habermas's insistence on the autonomy of practical reason from particular cultural traditions lies at the root of his hostility not just to classical republicanism but also to species of ethnic nationalism and conservative traditionalism. A most striking indication of this is his response to the German revisionist historians who in the impassioned public debate which became known as the *Historikerstreit* attempted to give a more sanitized version of German history than post-war Germans had generally been familiar with. These historians argued that it was a mistake to treat the Nazi tyranny and the holocaust in isolation from the other horrors which took place in the twentieth century as if it was an exceptional event. Instead, it should be understood in its historical context, not least as a response to the mass murders of Stalinism. While these historians by arguing for a 'relativization' of these horrors hoped to supply Germany with a usable past', Habermas thought by contrast that the only kind of identity that is still possible for Germans after Auschwitz is a 'constitutional patriotism' in which political allegiance is not rooted in the specific historical traditions of the nation but in universal conceptions of human rights. See for example, Jurgen Habermas, *Die nachholende revolution*, (Frankfurt am Main: Sahrkamp 1996), p149

¹⁴ Jurgen Habermas, *Between Facts and Norms*, p28

¹⁵ Jurgen Habermas, "Three Normative Models of Democracy", pp28-29

¹⁶ Jurgen Habermas, *The Philosophical Discourse of Modernity*, (Cambridge. Polity Press, 1987) p316

¹⁷ Michael Pusey, *Jurgen Habermas*, (Chicester: Ellis Wood; 1987), p58

¹⁸ Jurgen Habermas, *Autonomy and Solidarity: Interviews with Jurgen Habermas*, Peter Dews (ed.), (London: Verso, 1982), p109

¹⁹ Lawrence Kohlberg cited in Jurgen Habermas, *Moral Consciousness and Communicative Action*, trans. C. Lenhardt and S. Weber Nicholson, (Cambridge: Polity Press, 1992), p124

²⁰ The six-stage sequence which informs Kohlberg's account of moral development can be summarised as follows. The first two stages are at the pre-conventional level. The moral judgement of a child at this stage is oriented towards avoiding punishment. Stages three and four are where persons are socialised into the adoption of conventional moral norms. Finally in the last two stages, individuals are able to question the validity of those norms. Kohlberg's model forms a hierarchy

which assumes the superior moral adequacy of each stage. Thus, the higher up the hierarchy one progresses, the more he should be able to take the opinions of others into account.

²¹ The difference between communicative and strategic action can be summed up as the difference between action oriented towards reaching understanding and action oriented towards achieving success. In the latter case, actors are solely interested in the success of their actions and hence will attempt to achieve their goals through external mechanisms such as manipulation or bribery of the other. The possibilities of avoiding social conflict will depend on the extent to which their divergent goals coincide. By communicative action on the other hand, actors are prepared to harmonise their objectives by internal means by specifying in advance the preconditions on which an agreement will be reached. In the case of Habermas' theory of communicative action, this will involve a commitment on behalf of all discussants to refrain from using deception when advancing arguments.

²² See for example, Charles Larmore, *The Morals of Modernity*, (Cambridge: Cambridge University Press, 1996), pp205-221. Stanley Fish, "An Exchange on Impartiality; Are There Reasons for Self-Revision", pp1-8

²³ Seyla Benhabib, *Situating The Self*, p51

²⁴ *ibid.*, p167

²⁵ Habermas, *Justification and Application*, trans. Ciaran P. Cronin, (Cambridge: MIT Press, 1993), p56

²⁶ Jürgen Habermas, *ibid.*, pp12, 15

²⁷ Jürgen Habermas, *Moral Consciousness and Communicative Action*, p159

²⁸ Shane O' Neill, *Impartiality in Context*, p131

²⁹ Jürgen Habermas, *Moral Consciousness and Communicative Action*, p138. The extent to which an individual who moves into a postconventional stage of interaction is required to disengage himself from the quasi-natural social world which he entered at the conventional stage of interaction is most evident in the in penultimate chapter of *Moral Consciousness and Communicative Action*. See in particular p161 where he states that "the process of communicative action... severs the ties between the social world and the surrounding lifeworld, and it jolts the intuitive certainties that flow from the lifeworld into the social world.

³⁰ Shane O' Neill, *Impartiality in Context*, p192

³¹ Seyla Benhabib, *Situating The Self*, p164-170

³² Jürgen Habermas, *Autonomy and Solidarity*, p171.

³³ Stanley Fish, "An Exchange on Impartiality: Are There Reasons For Self-Revision", pp14-15

³⁴ Seyla Benhabib, *Situating the Self*, p64

³⁵ Seyla Benhabib, *Situating the Self*, pp74-75

³⁶ *ibid.*, p74

³⁷ Jürgen Habermas, *Moral Consciousness and Communicative Action*, p199

³⁸ Maeve Cooke, "Authenticity and Autonomy", *Political Theory*, vol 25, no.2 (April 1997), pp258-88, p275

³⁹ Jürgen Habermas, *Justification and Application*, pp100-18

⁴⁰ *ibid.*, p123. It is important to acknowledge that there remains much controversy over just how significant a concession this is both in theory and practice. It is important to acknowledge, for example, that in contrast to Benhabib, Habermas continues to give priority to moral discourse. Moral discourse, on Habermas's account provides the parameters for ethical discourse and thus ethical discourse remains subordinated to moral discourse. As recently as 1996, Habermas asserted that objections to abortion and euthanasia should be construed as ethical rather than moral. See Jürgen Habermas, "A Reply to symposium participants", *Cardoza Law Review*, vol. 17, nos4/5, (March 1996). In a stinging attack on what he describes as a miscategorisation of unrefuted moral arguments as ethical, the Catholic conservative John Finnis asserts that Habermas makes the same sort of strategic error as Rawls, who initially consigned arguments against abortion to the non-public sphere. See Natural Law and the Ethics of Discourse, *Ratio Juris*, vol 12, no. 4, (December 1999), p354-373, p369.

⁴¹ Jürgen Habermas, *Between Facts and Norms*, p124

⁴² Maeve Cooke, "Authenticity and Autonomy", p275

⁴³ Stella Gaon, "Pluralizing Universal "Man": The legacy of transcendentalism and teleology in Habermas's Discourse Ethics", *The Review of Politics*, vol.60, no.4, (Notre Dame Fall, 1998), pp688-718

⁴⁴ Brian Shaw, "Habermas and Religious Inclusion". *Political Theory*, vol 27, no.5, (October 1999), pp634-666. The question of how one defines religion is of course deeply problematic. However, for the purposes of this chapter, I will draw upon Clifford Geertz's famous definition of religion. Geertz

argues that religion not only establishes "long lasting moods and motivations" but does so by "formulating conceptions of a general order of existence". Every religion, Geertz insists, must affirm something "about the general order of existence". Clifford Geertz, *The Interpretation of Culture*, (New York: Basic Books, 1973), p90. Schubert Ogden similarly states "a religion... involves conceptualising and symbolizing a comprehensive order of human existence that claims to be true". Schubert Ogden, *On Theology*, (San Francisco: Harper & Rowe, 1986), p110. These definitions point to the metaphysical aspect of religion and thus emphasise the cognitive dimension of religion which Habermas has largely denied. Religion by definition makes claims about the nature of ultimate reality. It is thus impossible, as Habermas attempts to do by placing religion in the aesthetic sphere to sever the *existential* question, what ultimate reality means for us from the *metaphysical question*, which asks about the nature of ultimate reality in itself presupposing in turn comprehensive teachings about the nature of self and society.

⁴⁵ Jurgen Habermas, *Postmetaphysical Thinking*, trans. William Mark Hohengarten, (Cambridge: MIT press, 1992), p51

⁴⁶ Jurgen Habermas, *The Theory of Communicative Action*, vol.II, trans. Thomas McCarthy (Boston, Beacon Press, 1987), p77

⁴⁷ See Donald Jay Rothberg, "Rationality and Religion in Habermas' Recent Work: Some Remarks on the relation between Critical Theory and the Phenomenology of Religion", *Philosophy and Social Criticism*, vol.3, no.3 (Summer 1986), pp222-23. In the same way that individuals attain a higher level of cognitive development as they mature, (ontogenesis), logical structures also evince a similar pattern of cognitive advancement (phylogenesis).

⁴⁸ Jurgen Habermas, *Communication and the Evolution of Society*, trans. and introduction by Thomas McCarthy, (Boston: Beacon Press, 1979), pp103-104

⁴⁹ Stephen Lukes, "Of Gods and Demons: Habermas and Practical Reason", in *Habermas: Critical Debates*, ed. John B. Thompson and David Held (Cambridge, Mass: MIT Press, 1982), p134

⁵⁰ Brian Shaw, "Habermas and Religious Inclusion", p642

⁵¹ Ann Fortin Melkuvik, "The status of religion in modernity according to David Tracy and Jurgen Habermas", *Studies in Religion* vol.22, no.3, (Aug 1993), p424. See also Donald Jay Rothberg, *Rationality and religion in Habermas' Recent Work*.

⁵² Fred Dallmayr, *Notre Dame Philosophical Review*, *Jurgen Habermas*, ed. Eduardo Mendieta, (MIT Press, 2002), accessed at www.ndpr.nd.edu/review.cfm

⁵³ *ibid.*,

⁵⁴ Charles Larmore, "The Moral Basis of Political Liberalism", p113

⁵⁵ John Gray, *Enlightenment's Wake*, p124

⁵⁶ Even Brian Shaw who is largely sympathetic to discourse theory admits that religious believers may notice little difference in effect between Rawlsian liberalism which demotes the status of religious beliefs in order to secure the success of his "method of avoidance" and Habermas' disqualification of the validity claims raised in religious speech, *Habermas and Religious Inclusion*, p645.

⁵⁷ Jurgen Habermas, *Moral Consciousness and Communicative Action*, p20

⁵⁸ Brian Shaw, "Habermas and Religious Inclusion", p653

⁵⁹ Seyla Benhabib, *Situating The Self*, p45

⁶⁰ *ibid.*, pp43-44

⁶¹ Evan Charney, "Political Liberalism, Deliberative Democracy and the Public Sphere", *American Political Science Review*, vol.92, no.1, (March 1998), pp97-110, p104.

⁶² John Gray, *Enlightenment's Wake*, p124

⁶³ See for example his disparaging remarks about religious fundamentalism in "Struggles For Recognition in the Democratic state" in *Multiculturalism and "the Politics of Recognition"*, ed. Amy Gutmann, (Princeton, NJ, Princeton University Press, 1994). He asserts that "as a reaction to the overwhelming push for modernisation fundamentalism is a thoroughly modern movement of renewal", p123. He attacks religious worldviews on the basis that their historico-philosophical interpretations of the world claim exclusiveness for their privileged ways of life. "Such conceptions lack an awareness of the fallibility of their claims, as well as a respect for the burdens of reason". There are two key points that should be noted here. Firstly, the reference to the burdens of reason is instructive in that it illustrates the extent to which Habermas, like Rawls places *substantive* limits on the kinds of normative claims that can be included in public discourse. Secondly, Habermas's ahistorical depiction of fundamentalism misrepresents the way in which many religious views function politically. The manner in which they intersect with other ethical discourses means they

cannot be dismissed as easily as Habermas wishes. This point will be discussed in more detail in the next chapter.

⁶⁴ William Rasch, "A Just War or Just a War? Schmitt, Habermas and the Cosmopolitan Orthodoxy", *Cardozo Law Review*, vol 21, nos5-6, (May 2000), pp1665-1684 at p1676.

⁶⁵ Stella Gaon, "Pluralizing Universal Man", p791

⁶⁶ Stanley Fish, "An Exchange on Impartiality: Are There Reasons for Self-Revision", p8

⁶⁷ John Rawls, *Political Liberalism*, p10, Evan Charney, "Political Liberalism, Deliberative Democracy and the Public Sphere", pp103-104, Stanley Fish, "Why We can't all Just Get Along", *First Things*, vol.60, no.2, (Feb 1996), pp18-26, Jurgen Habermas, "Transcendence from Within, Transcendence in this World", in *Habermas and Public Theology*, eds. Don S Brown and Francis Schuessler Fiorenza, (New York: Crossroad, 19920, pp234-235

CHAPTER SIX: SITUATING CATHOLICISM IN THE MODERN WORLD

Introduction

The last chapter illustrated how Habermas's belief in the importance of critical rationality as the basis for normative validity claims rather than cultural tradition or sentiment resulted in him viewing with scepticism religious belief systems which from his perspective are anathema to reasoned discourse due to their intrinsic inability to engage in critically reflexive reasoning in regard to the key tenets of their faith. As a consequence, Habermas treated religion as a monological and subjective form of consciousness which, in an ironic echo of the position of Habermas's bete noire Stanley Fish, could only be sublimated into discourse ethics by shedding its religious component.¹ Thus, Habermas seems to agree with Fish that the conflicting epistemological premises which underpin discourse ethics and religious belief systems with proponents of the latter resisting the redemptive force of discourse as inimical to their absolutist convictions, renders impossible any reconciliation between the two systems of thought.² If this argument were to be accepted then it would have serious implications not only for the ability of discourse ethics to fulfil its claim of being inclusive of ideological diversity but more generally would seem to presuppose the inevitability of intractable conflict between the liberal tradition as a whole and comprehensive religions who place no value on the key liberal tenets of tolerance and reciprocity in their desire to colonise the public sphere.

This conclusion would be particularly problematic for as Roxanne Euben has perceptively noted, while liberal theorists such as Rawls and Habermas have embraced

the anti-foundationalist turn in political theory and presented their theories as justifiable without recourse to metaphysical truths, political practice is being increasingly influenced by those who take such truths as given.³ As has been argued in this thesis, the divide between political theory and political practice has not been sufficiently grasped by either Rawls or Habermas who have mistakenly assumed that a social evolutionary process of modernisation will simultaneously result in the rationalisation of the public sphere although Rawls argues that this will be confined to Western democracies whereas Habermas argues that the process is universal. While this thesis has taken issue with this claim, and argued that the attempt by Rawls and Habermas to salvage Enlightenment values by virtue of an anti-Enlightenment methodology is incoherent, it is not my contention that liberals are thereby forced to choose between two dichotomous alternatives; Either to endorse a comprehensive liberalism whose commitment to rational enquiry leads it to regard with hostility all religious truth claims or to perceive liberal beliefs as the contingent product of particular types of society. In contrast to both these positions, I wish to argue through an examination of the doctrinal development of orthodox Catholicism, that while both comprehensive liberals including on my analysis Habermas, and postmodernists such as Fish, are correct to stipulate that liberalism is reflexively closed in relation to truth claims which challenge its commitment to tolerance and egalitarian reciprocity, both schools of thought seriously underestimate the extent to which traditional belief systems such as Catholicism do themselves engage in doctrinal reflexivity. Furthermore, in the case of traditional Catholicism, this has resulted in an evolution towards an embrace of Enlightenment ideals while rejecting the Enlightenment's rationalist epistemology.

The relationship between Catholicism and liberalism in the Western world is one that historically has been characterised by mutual suspicion and hostility. Liberal criticism to Catholicism has, as John Langan notes, usually taken one of two forms.⁴ The most common approach, which is prevalent amongst liberal and progressive secularists, is to categorise Catholicism in terms of its institutional architecture and its philosophical worldview as centralised, authoritarian, traditionalist, spiritual, abstract and theoretical. This conceptualisation of Catholicism is then pejoratively juxtaposed with a modern world, which is predominantly polycentric, democratic, innovative, material, concrete and practical. In this understanding, Catholicism is perceived as the paradigm of a premodern religious faith, which is ultimately rendered redundant or at least politically insignificant in a world characterised by secularisation. This is a view which can perhaps be most prominently associated with Kantian liberals including Habermas who, as we saw in the last chapter, subscribes to a version of the secularisation thesis in which Christianity can no longer serve as a unifying metanarrative for a world fractured by a multiplicity of conceptions of the good.

The depiction of Catholicism as a premodern mode of consciousness, an archaic element of a pre-Enlightenment worldview incapable of moral reflexivity competes, however, with a second approach, which is equally dubious, concerning the possibilities of forging a rapprochement between Catholicism and the modern world. This approach which is prominent amongst Marxists, Feminists and other proponents

of multiculturalism differs from the first view in regarding Catholicism not as an otherworldly phenomenon, but as an overtly political pressure group disseminating traditionalist values. These values serve to buttress the interests of conservative political elites who wish to roll back the gains made by traditionally oppressed groups such as women and homosexuals. Thus, irrespective of whether one is considering its views relating to abortion, euthanasia or contraception advanced in the public sphere or its allegedly oppressive doctrinal practices such as its refusal to allow either the ordination of women or married priests, Catholicism is portrayed as an overtly political actor legitimising the interests of a conservative status quo. This negative construal of the Catholic Church is informed by the view that the Vatican has hardened its opposition to progressive policies such as abortion, women's equality, academic freedom and gay rights. Furthermore, this critique of contemporary Catholicism does not confine itself to evaluating the role of the current Pope in opposing the perceived liberalising trends of late modernity. Rather, it attempts to locate the alleged anti-modernism of the current Pontificate within a much broader historical narrative, which emphasises the church's culpability in bolstering reactionary positions throughout Western history.

Although Langan presents these two negative approaches to Catholicism's relationship with the modern world as separate, they are in my judgement complementary in that many critics of Catholicism avail themselves of both approaches and more importantly, because they both presuppose the same underlying premise. Namely, that there is an inherent opposition between Catholicism and liberalism, which as a hierarchical and

authoritarian institution is incapable of recognising the importance of human autonomy. As the last chapter showed, all strands of liberalism, including those which claim to eschew Enlightenment metaphysics, presuppose a certain conception of individual autonomy as it is intrinsic to their belief in the importance of adopting a postconventional approach to all spheres of human relations. This chapter will argue that both the theoretical approaches outlined above marginalise the significance of the Second Vatican Council in reorienting the Church's relationship to the modern world.

It would be a serious mistake to conclude too quickly that Catholicism is conceptually unsuited to a culture of modernity defined by its capacity for comprehensive moral reflexivity. The basic reason for this is that it fails to capture the heterogeneous and contextualist dimensions of Catholic thought. The abstract, ahistorical rationality, which is attributed to Catholicism is symptomatic of a methodology which is too narrow in its focus. As Alan Wolfe has stated, "postwar liberal intellectuals often wrote as if there was no such thing as a Catholic left wing - or even a Catholic centre. They knew the church from its spokesmen and that was all that they needed to know".⁵ Rather than focusing on the hierarchical, corporatist aspects of Church doctrine, it is more productive (and accurate) to explore the dialectical encounter between Catholicism as a believing community governed by a hierarchical structure with a variety of other systems of belief and social theory. There has developed within the main body of Catholic social thought a growing ambiguity over the basis of justification for the normative proposals which the Church advances. There are three principal bases. The first is natural law, which has played a pivotal role in Catholic

thought since the time of Aquinas. The second is scripture, which the Church has given greater prominence to since Vatican II. The third is the formation of contingent judgements mediated by context in response to historical developments.

While many of the Encyclicals, which the current Pope has formulated, have been interspersed with appeals to scripture and natural law, increasingly documents such as *Centesimus Annus* have been suffused with empirical judgements. In this context, the shift away from either a purely scriptural or natural law approach to one which allows room for considerations of culture and history enables a much greater level of philosophical pluralism than is often appreciated by conservative Catholics and their critics. In order to demonstrate this claim, the chapter is divided into three sections. The first section aims to show that the concerns of discourse theorists outlined in the last chapter over the potential for comprehensive religious traditions such as Catholicism to colonise the public sphere are well justified. It will be argued in contrast to theological conservatives such as Neuhaus that the Judeo-Christian tradition cannot in any useful fashion serve as a unifying moral discourse in which ethical disagreements are adjudicated without doing violence to the diversity of ethical discourses which comprise the public sphere. The second section aims to show how a more pluralistic reading of Catholicism than that offered by both conservative Catholics and their secular critics show how, in the light of the reforms inaugurated by Vatican II, the Church, by detaching itself from its prior entanglement with the state, has come to embrace a liberal, Kantian cosmopolitanism in which the rights of states are subordinated to a universal common good. In the final section, this claim will be

illustrated through an exploration of how, many Catholics, have reformulated just war theory so that it serves as a means for critiquing the actions of the U.S government in their war against terrorism.

Taken together, the three sections which constitute this chapter show that the diversity of views which informs Catholics situated within a plurality of different historical contexts repudiates the perception of Catholic teaching as one deductively derived from scripture or natural law. Instead, it paves the way for a more nuanced, pluralistic understanding of the Catholic community which is properly understood not as a monological entity in which reason is conceived in a transcendental manner. Rather, it is one mediated by culture and historical context in which reason is the contingent achievement of linguistically socialised, finite, embodied creatures in a way which makes Catholicism potentially compatible with a dialogical conception of morality.

The Tension between Discourse Ethics and Religion: The Case of a Christianised America

The last chapter examined the difficulties involved in reconciling discourse theory with its insistence on adopting a post-conventional mode of moral reasoning with conventional moralities, which almost by definition are resistant to the secular, universalist, reflexive culture presupposed by communicative ethics. The latter regards debate and contention over both conceptions of justice and the good as a cognitive virtue. On the other hand, conventional moralities of which religious traditions can be regarded as a paradigmatic example, fear that exposing their belief systems to the

open marketplace of ideas in which their convictions are subject to reasoned critique, is neither possible nor desirable. Religious beliefs are incorrigible in the sense that their absolutist nature makes them resistant to compromise. They thus cannot possess the openness requisite for democratic deliberation. As this chapter will show, the conviction that religious beliefs are incorrigible is embraced by a wide diversity of theorists including many religious believers themselves. Religious apologists who subscribe to this view tend to adopt one of two strategies pertaining to religion's relationship to the public domain. The first is to adopt a sectarian strategy in which religion is accorded an independent or autonomous sphere insulated from external critique. The second is to deny the autonomy of the political realm and instead attempt to colonise the public sphere with a comprehensive religious vision of the good. Whereas the first strategy appears to condemn religion to political irrelevance, the second presupposes a homogenous public sphere in which a particular religious perspective is advocated as the basis for confronting public disagreements over moral questions. Understandably, discourse theorists regard this latter strategy with suspicion, as they do not believe that under conditions of modernity it is possible to formulate an overarching vision of the human good. It will be argued below with reference to Richard Neuhaus's attempt to invoke the Christian tradition for just such an objective within the context of the American political culture, that this fear is well founded. However, this should not be taken as an argument for precluding religious beliefs from the public sphere. Rather, it is an indication that contrary to religious conservatives and their critics, religious beliefs are not as incorrigible as is often supposed, at least when determining their normative political content.

This section aims to show more clearly the limitations to the fashioning of a pluralistic public discourse occasioned by the appropriating of liberal ideals to an exclusivist Christian standpoint based on the premise that only a freedom oriented to absolute truth can sustain a liberal society. In order to do this, it is instructive to consider briefly the work of the influential neoconservative Richard John Neuhaus. Neuhaus is of course most famous for his lamenting of the naked public square, which he believes is the product of late modern societies.⁶ Unlike many contemporary communitarians, however, who are somewhat ambivalent about the role which religion can play in restoring a secure moral foundation, Neuhaus is adamant that in the context of the United States, which serves as the frame of reference for his writing, only the Judeo-Christian tradition can serve as that foundation.⁷ It should be noted immediately that Neuhaus does not wish to erode the boundaries between church and state. He acquiesces with the oft quoted remark from the recent papal encyclical *Redemptoris Missio*, “the church does not impose, she only proposes”.⁸ At the same time, however, he insists on the importance of religion in clothing the public culture in transcendent values. More specifically, this role is allocated to Judeo-Christian values whose tradition furnishes the American polity with a common moral vocabulary and ready-made public philosophy. Of course, the argument that religion should not be excluded from the public domain is hardly the preserve of neoconservatives such as Neuhaus. It is shared by both liberal theologians such as David Tracy and Christian left thinkers such as Jim Wallis.⁹ What does distinguish Neuhaus from Tracy and Wallis is the inherently conservative function which he envisions for religion in public discourses.

On the one hand, Tracy aims to confront the scepticism of Habermas by illustrating the symbolic resources which religion can exploit in order to advance the emancipatory project of modernity, a project which he shares with Habermas. More radical Christian thinkers such as Wallis and Ronald Thiemann emphasise the role of religion in providing a moral critique of the polity's fundamental assumptions.¹⁰ In contrast, Neuhaus attaches to religion a sociological function, one in which it serves a unifying role for culture and polity, a role he claims it is well-placed to play due to the proliferation of religious belief in America.

Neuhaus's argument can be seen as a frontal challenge to liberal deontological ethics as embodied in the work of Rawls and Habermas. For all their differences, the latter thinkers are united in regarding reasonable pluralism as a sociological/empirical given requiring the foregoing of any attempt to base civic harmony on the establishment of any one comprehensive worldview. In contrast to this position, Neuhaus stresses that the stability of a political community or indeed individual dignity cannot be guaranteed through abstractions such as a well-functioning constitutional state (Rawls) or an ideal communication community (Habermas), but rather by grounding individual dignity in a public consensus on philosophical or religious truths. There can be no doubt that Neuhaus's belief that such a consensus is possible will strike many as excessively optimistic. It should be emphasised that Neuhaus does not seek a "sacralization" of the polity. He is not a theocrat who advocates a fusion between the church and the state. Nonetheless, the fact that politics is a function of culture means that if that culture is conceptualized in a hegemonic fashion, in which many public discourses are excluded,

it will also lead to a restriction of the amount of moral diversity which will be allowed. Neuhaus shares with deontological ethicists a belief in the importance of commonality and a singular public language, which serves as the basis for adjudicating moral differences. Whereas, in the case of Rawls and Habermas, this language is one which constrains the input of divergent ethical discourses through the critical leavening of Kantian rationality, for Neuhaus it involves the equation of moral discourse with the adoption of an exclusive ethical belief system.

The idea that the moral legitimation of a polity can be grounded in one particular ethical-religious tradition is both sociologically implausible and normatively undesirable. Furthermore, it actually constrains the role which religious beliefs as well as non-religious discourses can play in critiquing rather than simply legitimating the prevailing consensus. It would of course be wrong to ignore the distinctive role, which Christianity has played in providing the common symbols for American political culture throughout the nation's history. The function which religion has performed in America bears a much closer resemblance to the way Rousseau perceived it in *The Social Contract* than it does to other eighteenth century philosophers, most famously Locke who envisaged the complete removal of religion from the public sphere. While Rousseau shared with these philosophers the view that sectarian religion in which truth was defined through the revealed dogmas of a particular faith inevitably bred factionalism, he nonetheless believed that the emergence of a nonsectarian civic piety was crucial to the existence of a peaceful social contract. As Thiemann notes, for Rousseau, civil religion would express the general will of the people and serve to

legitimate the beliefs and actions of civil society while still retaining its independence from the state.¹¹ The particular species of civil religion that was nurtured in America, which can be described as nonchristological theism performed a similar role. It provided the common rhetorical and ideological framework in which differences could be adjudicated, while, as the very term implies, being broad and inclusive enough to encompass a religiously diverse populace. To give just one example, while American schoolchildren are requested to recite the words “one nation under God”, it is agreed that it would be unnecessarily divisive to recite the words “one nation under God, the Father, the Son and the Holy Spirit”.¹²

Shortly after The Second World War, Will Herberg wrote an influential book *Protestant, Catholic, Jew*. in which he praised the unique ability of America’s civic faith to incorporate newly influential religious communities, a faith which transcended the doctrinal divisions which traditionally separated these communities.¹³ The key difference between Neuhaus and more liberal theologians is that while Neuhaus continues to believe that the America described in Herberg’s book remains valid, more liberal theologians such as Thiemann disagree, and are surely right to do so.¹⁴ While initially, America’s civic religion seemed able to incorporate emergent Catholic and Jewish minorities, the divisive political debates that began in the 1960s and have continued ever since under the rubric of the term culture wars would appear to dispel the misplaced optimism of the 1950s in which Herberg’s thesis was written. For example, in the African-American community, black theologies were spawned that repudiated the Anglo-Saxon tradition and sought to articulate the uniqueness of their

own particular traditions. Feminism in both its secular and religious guises equated the Judeo-Christian tradition with a white, patriarchal heritage, which had subjugated women for centuries. In general, the upheavals of the 1960s and 1970s ruptured the notion of a common religious and political unity which could manage substantive disputes permeating American public life as was evident by the spread of the “hermeneutic of suspicion” to issues such as affirmative action and abortion.¹⁵

It could of course still be objected that America remains a largely religious and indeed Christian society and certainly it would be a grave error to ignore the influence of religion in shaping many of the disputes which constitute American society such as whether God should be left out of the Pledge of Allegiance altogether. It is also true as the events subsequent to September 11th illustrate, that religion plays a much greater unifying role in America than in other Western societies.¹⁶ This shows the wisdom of the revisions in Habermas’ latest work where he stresses that all constitutional states are ethically patterned.¹⁷ The fact that the citizens that compose a nation are embedded in a network of shared traditions constitutive of their identity means that the legal system will be partly reflective of a particular life form and not just an articulation of universal rights. Nonetheless, two important features separate Neuhaus’s vision from that of Habermas’s. Firstly, as Maeve Cook stresses, Habermas’ argument is empirical rather than normative. Habermas does not argue that the constitutional state *should* be ethically patterned, simply that it unavoidably is.¹⁸ In contrast, Neuhaus openly embraces the Judeo-Christian tradition from a normative standpoint. Secondly, Habermas still insists on the importance of decoupling the majority culture from the

wider political culture whereas Neuhaus invokes the majority status of the Christian religion as a key reason why it should function as the principle moral discourse.

These differences have important implications for the role of religion in a pluralistic culture. From the perspective of communicative ethics, all substantive principles are open to thematization in public processes of deliberation provided that these processes reflect the ethical commitments of all citizens and do not privilege any particular subculture. From Neuhaus's viewpoint in contrast, Christianity or the Judeo-Christian tradition, (Neuhaus prevaricates between the two in a way which will be problematic for many Jews who insist on the distinct nature of their particular identity) has a privileged place in the American polity. Neuhaus' position is a non-starter, for the Judeo-Christian tradition will be burdened with so much substantive weight that it will inevitably drown out public discourses which do not accept its key assumptions (such as for example, those which assert America is too closely connected to Israel due to the influence of the Jewish lobby aided by Christian evangelicals). Alternatively, it will be conceived in such a weak way that it cannot possibly be used as a mechanism to resolve the normative disputes which engulf the polity.

If the above argument can be sustained, then it appears to show that Habermas and Benhabib in accordance with the demands of a weak deontological theory are right in their refusal to assimilate moral discourse to the insights of any one particular mode of ethical self-understanding. There remains the problem, however, in whether religious worldviews whose identity is predicated on a belief in absolute truth can be admitted

into a public discourse on equal terms with other worldviews when their primary allegiance is not to the procedures which make that discourse possible, but to the truths they work to establish. Fish is quite clear that he does not believe that this is possible. He states bluntly, “the religious person should not seek an accommodation with liberalism; he should seek to rout it from the field, to extirpate it root and branch”.¹⁹

Underpinning this view which Fish develops at length in an invaluable article 'Why We All Just Can't Get Along' is the belief that any accommodation with liberalism will lead to religion being co-opted or neutralized.²⁰ There is an epistemic divide between the devout religious believer and the secular rationalist, which makes any attempt at even understanding each other, let alone coming to a consensus impossible. Fish states that the problem is not, as is commonly portrayed, that one side reasons while the other does not. Rather, the key point is that both the secular rationalist and the devout believer reason from a prior premise, which is literally incomprehensible to the other. Thus, for Augustine, a reasonable mind is a mind closed to the possibility that certain basic claims, in Augustine's case “Christ has risen” could be questioned. A reasonable mind is a narrow mind. For secular liberals, of whom Fish takes Mill as an example, open-mindedness is the key virtue which defines a reasonable person. All cherished convictions should be subject to critique and discarded if they are found wanting. According to Fish, the attempts made by scholars such as Stephen Carter, Michael McConnell and George Marsden amongst others to resist procedural liberalism's marginalization of religion by pointing out that its appeal to inclusivity excludes believers who claim to be in possession of the absolute truth, is besides the point.²¹

These scholars wish to revise liberalism, by making it more open to religious viewpoints and thus more faithful to its underlying principles of liberality and open-mindedness. However, to invite religion to the public table as McConnell advocates would be disastrous for it would still be *liberalism's* table in which religious expression would be considered as just one more voice in a dialogue which refuses to privilege any particular voice. Thus, the attempts to sanitize religion by ensuring that the religious impulse is checked by the imperatives of civility and free inquiry as Marsden advocates, will inevitably result in civility becoming the new religion.²²

If this argument were to be sustained, the conclusions resulting from it would be very unsettling not just for liberalism but for religion. In effect, Fish is saying that the only authentic religion is fundamentalist religion. Any accommodation with liberalism would mean the death of religion. The fate of religion in Habermas's work does seem to bear out this contention. On the one hand, he condemns fundamentalism for its lack of reflexivity, on the other, even moderate religion is denied any cognitive status unless it is shorn of its metaphysical and soteriological warrants. There are, however, serious problems with Fish's position which result ironically from the fact that although he is a contextualist, his understanding of religion is ahistorical and decontextualised. He fails to examine the way in which culture shapes not just the evolution of doctrine but also how religious believers conceptualise the relationship between their faith and their understanding of the world. In Fish's abstract depiction, once a person is in possession of the conviction that there is a god, then he will determine his views of right and wrong from that premise. It is his belief in that premise that enables cognitive activity

to proceed. It does not seem that external factors such as culture will mediate these views in any way. His normative views will naturally *follow* from his religious convictions and because these religious convictions are not subject to rational critique nor are the views which he then reasons from them. Thus, Fish like Habermas, is arguing that religion retains its foundation in a philosophy of consciousness and by its inherent nature is monological rather than historically situated in the communicative practice of everyday life.

Towards a Dialogical Faith: Fighting For the Soul of Vatican Two

The weakness in this chain of reasoning is the assumption that one can deduce a believer's substantive views from the answer to the question of whether they believe in God. While the weak thesis which Fish proclaims, that a devout believer cannot sever his normative beliefs from the motivational sources which underpin them is true, he then proceeds to conflate this assumption with an erroneous stronger thesis, in which he asserts that the initial premise from which individuals begin to reason *predetermines* their normative beliefs. It is this that leads him to the view that these normative beliefs cannot be intersubjectively mediated. In order to show why this monological view of religion is wrong, it is instructive to consider the reforms within the Catholic Church that have followed Vatican II. Here two developments are of particular interest: (a) the relationship between the state and the church and (b) the role of dissent within the Contemporary Catholic Church.

The Relationship between State and Church

Through the affirmation of the importance of universal human rights, and in particular the right to religious liberty, the current papacy can plausibly be regarded as a continuation of Vatican II. In particular, the current papacy has been anxious to uphold *Dignitatis Humane* (the most famous document produced by that Council), in which the Catholic commitment to religious liberty was advocated on theological rather than purely prudential grounds.²³ The enshrining of religious freedom at the heart of Catholic doctrine marked a decisive rupture with the tradition's past. Previously, it had been wedded to a Constantinian legacy, in which the purpose of the state was to uphold Catholicism as the one true faith, thus rejecting any notion of granting religious liberty as heresy.

In contrast, *Dignitatis Humanae* espoused the Enlightenment view that there should be a separation between church and state and renounced the use of state power as a means of advocating its mission. Freedom of belief is grounded in divine revelation in which humans voluntarily seek out the truth and act upon it. As the current Pope said at the time, human dignity involves a "moral obligation to seek the truth, especially religious truth". This obligation cannot be fulfilled unless people "enjoy both psychological freedom and immunity from external coercion".²⁴ Thus, the Christian humanism embodied in Vatican II and asserted in the current papacy maintained that a genuine commitment to human dignity required a deep respect for each human's right to worship as they choose and a commitment to persuasion rather than coercion in preaching the gospel. Weigel, claims that underpinning these twin commitments is a

universal empathy with others which requires an engagement with rather than bracketing of one's particular convictions. One way of measuring the truth of particular convictions is their ability to respond empathetically to the "other" in a manner that enriches the whole of humanity. Thus, for example, in the papal encyclical, *Redemptoris Missio*, the Pope stated that tolerance is not a question of avoiding differences but of engaging differences respectfully, in the conviction "that our deepest differences make all the difference in this world and the next".²⁵ The importance of engaging differences respectfully was seen as the most effective antidote for a post cold-war world, which was becoming increasingly polarised between global capitalism on the one hand and ethnoracial tribalism on the other. In this perspective, it was necessary to avoid the pathological manifestations apparent in the assertion of certain forms of cultural identity, which spawned racism and xenophobia. This was perceived by the Pope as especially important in the context of recent history in which the fear of difference had led to the denial of the very humanity of the other.²⁶

Thus, the recent evolution of Catholic doctrine appears to belie the pessimism of both postmodernists and Habermas himself who despair of the possibility of incorporating orthodox religious belief systems in public moral discourses where participants are obligated to present their validity claims in ways which are reflexive and universalizable. Catholic doctrine with its commitment to religious freedom and interreligious dialogue now appears to share with communicative ethics a belief in the primacy of substantive principles such as universal moral respect and egalitarian reciprocity. Furthermore, Catholicism also seems to share with critical theory a belief

in post-conventional morality as it too distinguishes between cultures that are socially conformist, and those, which are comprehensively reflexive. Thus, orthodox Catholicism shares the view affirmed by critical theorists that moral persons develop within a network of dependencies. At the same time, it is also important to recognise that every human culture as a historically conditioned reality has its limitations. In order to prevent the perfectly desirable goal of cultural belonging from degenerating into xenophobia, each culture has an obligation to show receptive openness to others and be prepared to subject its normative practices to discursive justification. The affinities between Catholicism and communicative ethics are particularly evident in one papal document where the Pope asserts that:

The authenticity of each human culture, the soundness of its underlying ethos, and hence the validity of its moral bearings, can be measured... by its commitment to *the human cause* and *by its capacity to promote human dignity* at every level and in every circumstance.²⁷

The convergence between Catholicism and discourse ethics is most apparent at a substantive political level in which both worldviews, due to the cosmopolitanism inherent in both their positions, have been amongst the most enthusiastic supporters of international institutions. Indeed, it is no exaggeration to say that the Catholic Church has since 1945 advocated the internationalisation of the values and practices of liberal democracy. This marks a major rupture with the Catholic Church of the past in two significant ways. Firstly, it is a reflection of the fact that the intimate relationship between religion and political power that marked Catholicism in the West from Constantine to Napoleon and which explains part of the antipathy towards liberalism which Church leaders expressed in the Nineteenth Century was no longer considered

desirable. Secondly, the endorsement by contemporary Catholicism of the democratisation of social and political life is a repudiation of the traditional Aristotelian and scholastic view affirmed, for example, by St Thomas Aquinas, that believed that no constitution was superior in the natural order of things. What can be justly called the new 'Kantian' turn in Catholic political thought received its first most explicit articulation in Pope John XII's encyclical, *Pacem in Terris*. This document provided the conceptual basis for the Catholic contribution to post-conciliar peacemaking, namely that human rights were the essential underpinning for any durable peace.²⁸

In accordance with this shift in worldview, the excoriation of regimes, which violate human rights has been a constant theme uniting all the Popes since the Second World War irrespective of their theological outlook. Thus, dictators which purported to be defenders of Catholic values such as General Pinochet in Chile and Ferdinand Marcos in the Philippines have been scrutinised in a much sharper way than were previous Catholic regimes such as, for example Francisco Franco in Spain and Antonio Salazar in Portugal. Furthermore, on many current issues the thinking of the Vatican dovetails with cosmopolitan liberals. The political universalism which Catholicism now views as the corollary to its theological universalism has seen the Vatican adopt positions which are at variance with those who, following Carl Schmidt, adopt an ethnic conception of nationality and also the particularist universalisms subscribed to by militant fundamentalisms in which human rights are regarded as the exclusive preserve of one particular cultural tradition.²⁹

Perhaps, most importantly, the Vatican's 'post-Constantinian' reading of the world has led it into increasing tension with American neo-conservatives, both Catholic and secular. Neoconservative ideology is informed either by secular sources such as Hobbes, Machiavelli and Leo Strauss or (particularly amongst Catholic neo-conservatives such as Weigel and Michael Novak), a very narrow reading of Just War theorists such as Thomas Aquinas.³⁰ Neo-conservatives derive from these eclectic sources a public philosophy which buttresses the unfettered national sovereignty of the world's leading superpower. They justify this as a necessary response to what they perceive to be in line with Samuel Huntington's thesis advocated in the *Clash of Civilisations*, a civilisational state of nature in which Islam is perceived as the chief perpetrator of Global violence.³¹ In contrast, the Vatican has reacted with great scepticism to the notion that any one hegemonic power, even one advocating liberal democratic values like the United States, can adequately sustain universalist principles.

Furthermore, if one accepts Kagan's influential thesis that American and European perspectives are diverging with the former enmeshed in an anarchic Hobbesian world, where world security depends on the deployment of military power which the latter increasingly eschews in its yearning for a 'Kantian' post-historical paradise, then it is clear that the Vatican is much closer to the latter perspective.³² Indeed, one could go further and argue that it is the exemplar of the 'Europeanist' worldview and its most principled proponent. From Pope John XXIII onwards, it has repeatedly extolled the virtues of the United Nations as the principal mechanism for promoting peace and human rights.³³ Furthermore, despite the attempts of Catholic neo-conservatives to pass

these differences off as prudential questions concerning which institutions are best suited to promote universal peace (unilateral or multilateral ones), it has become increasingly apparent that they reflect profound ideological divergences over how best to respond to the political challenges animating the post-modern world. On numerous issues such as its increasing reluctance to endorse war in any circumstances, its ecumenical overtures to Islam, its affirmation of unfettered immigration, its support for European institutions, and its endorsement of the International Criminal Court, the Vatican has resisted the American tendency towards unilateralism. The Vatican's positions on these issues are not simply ad hoc responses motivated by strategic considerations but rather, as evident in its employment of rights discourse, the culmination of a reorientation to modernity and the Enlightenment worldview embedded within it.

To take just one example from this list, the contentious topic of immigration, the Pope has recently asserted that Catholics should work to create "societies in which the cultures of migrants...are sincerely appreciated, and in which manifestations of racism, xenophobia and exaggerated nationalism are prophetically opposed".³⁴ In order to create the sense of universal solidarity, it is necessary to inculcate the requisite cosmopolitan virtues in the citizenry. Needless to say, this position is not particularly welcomed by neo-conservatives who reject the ultimate conclusion of this logic, that there should be a world without boundaries of any kind in which each respects and honours each others particularity. Commenting on this view one neo-conservative states:

A culture can only exist as a culture among a group of people who have grown into it together and feel that among themselves they can take it for granted. Such conditions cannot exist in a group that feels obligated to be utterly and continuously open to numerous new arrivals...and called to honour them in all their otherness.³⁵

The most striking feature to note about this comment is that the argument that the Vatican is insufficiently sensitive to conventional moralities is a charge that can be levelled against any species of cosmopolitan liberalism. It explains the increasing discomfort of Catholic neo-conservatives who in seeming contradiction to their exhortations in other circumstances for Catholics to obey the Vatican, dissent from Vatican injunctions when it offends their own ideological convictions. I will attempt to argue below that these disagreements are best viewed not as an idolatrous subordination of theological doctrine to subjective ideological beliefs. Instead, they should be considered as the inevitable product of the need to make contingent judgements based on moral considerations which while possibly informed by theological doctrine (such as for example, the criteria stipulated by the Catholic theologian St Thomas Aquinas pertaining to when a war is just), cannot possibly predetermine them. Thus, as I will now argue below, it is a serious mistake to regard dissent from Papal injunctions as the product of rebellion against the Catholic Church per se. Rather, it is the inevitable corollary of the diversity of viewpoints, which encompass a global community mediated by differences in cultural perspective.³⁶

The Role of Dissent in the Catholic Church

In a recent article Richard MacCormick, who has been aptly described as the dialogical theologian par excellence, sets out to establish why dissent has occurred within the church.³⁷ One answer, proposed by James Hitchcock, is to see dissent as the result of the subversion of authority.³⁸ He juxtaposes dissent with orthodoxy, regarding the former as inevitably corrosive of the faith. Underpinning this view is the belief that the authentic teaching of the Magisterium, which distils the faith in a pure and pristine form, is being corrupted from without, by a secular culture instinctively hostile to the church's authoritative teaching. Hitchcock insists that Vatican II did not legitimize the dissent, which consumes the present church. McCormick begs to differ. He enumerates a number of factors authorised by Vatican II detailed below which he believes encouraged the emergence of a new critical awareness in the post conciliar church.

At an institutional level, the church redefined itself away from the juridical model that had prevailed for centuries, which consisted of a pyramidal structure in which truth and authority were descended from above. In this model, a small group of people in Rome had the exclusive authority to determine church doctrine on spiritual, social and political matters. Vatican II inserted in its place the notion of the church as the People of God, a 'communio'. In this concentric model, the people are the repository of wisdom. In the words of Cardinal Suenens, "the pyramid of the old manuals was reversed".³⁹ This alteration in the church's self-definition from a hierarchical to a participatory model was prompted by external cultural factors, which impacted upon the changing dynamics of the power relations within the church. Many of these changes

were largely sociological in nature. For example, one can cite the evolving role of the mass media. As McCormick notes, for centuries, the dissemination of information in the church and the world was slow and restricted. By contrast, we now live in a world of instant communication in which people are much better informed than they were previously and are exposed to many modes of thought. The consequences of this democratisation of knowledge for relations between the church and laity and indeed the wider world as a whole are dramatic. Whereas in the past, doctrines were established by a select group of people in isolation from broader social and intellectual currents, Catholics are now profoundly immersed in the social and intellectual world in which they inhabit. In the preconciliar model, ecclesial attitudes would be formed without reference to contemporary sciences and therefore, there was a lack of awareness of the moral complexity of certain issues on which the church pronounced judgement. Education is much more widely dispersed than it was previously. This entwined with the intense specialisation that has accompanied modernity, means that the clergy can no longer be assumed to have a monopoly on the distillation of church teaching. It was inevitable that with sociological changes such as these, the idea of the 'Magisterium' as the issuance of authoritative decrees would be eroded.⁴⁰

In the final section of this chapter, I wish to explore the debate that has been raging in Catholic circles over how best to respond to the War on Terrorism. The principal objective is to illustrate through a concrete example, the pervasive nature of the depth of disagreement, which exists within the Catholic Church when deliberating over normative political disputes. Most importantly, as the tensions within the Catholic

community over how best to respond to the US war on Iraq showed, these disagreements can lead Catholics with politically conservative views as well as those with a progressive liberal disposition into dispute with the Vatican. In particular, the contested nature of the Just War tradition provides a clear illustration of the extent to which the theological positions that inform Catholics do not in themselves provide an incorrigible basis for the substantive political beliefs to which they adhere.

Just War or Just Wars: Catholic Thinking on Just War in the Twenty-First Century

The just war tradition originated in early Christianity's first encounter with classical antiquity, when it became clear that as the interregnum between the Resurrection and the Second Coming was going to be much longer than was originally anticipated, it was necessary to develop a tradition of moral reasoning about politics and international affairs. The just war tradition which was formulated in this period has retained a remarkable vitality ever since. Indeed in the latter half of the twentieth century it has undergone a renaissance serving as the template for moral discussion over the validity of deterrence policy during the Cold War and the 'war on terrorism' which followed in the aftermath of the events of September 11th. However, the pervasiveness of just war thinking in debates concerning war and peace should not be interpreted as reflecting any degree of consensus over how these principles should be applied in practice. This can be seen in relation to Catholicism where the interpretation of just war thought has become increasingly contested. The purpose of this section will be to examine the nature of these divisions in order to amplify the larger claims of this chapter. Namely,

that the Catholic Church's engagement with the modern world will always be mediated by considerations of culture and history and by the divergent ideological persuasions of Catholic thinkers thus mandating a need for tolerance of philosophical pluralism within the Catholic community as a whole.

In the Christian teaching, the criteria of just war are differentiated into two categories—*ius ad bellum* and *ius in bello*. The first category delineates the reasons, which legitimate the use of force, while the second provides instruction on how a just war should be conducted. In line with the first set of criteria a just war must be *defensive*, undertaken in response to unjust aggression, must have as its objective the *right intention* of establishing a just peace and can only be pursued as *a last resort* once all other avenues to peace have been exhausted. There must be a reasonable probability of success in achieving the aims of war and perhaps most importantly of all, any use of force must be sanctioned by a legitimate public authority. The second set of criteria, *ius in bello*, can be reduced to two principal moral imperatives, *proportionality* and *discrimination*. The first mandates that the means used to prosecute the war must be proportional to the ends sought. The second pertains to 'noncombatant immunity', in which any killing of innocent civilians is prohibited. There is general agreement amongst Catholics as to the validity of this set of criteria in differentiating a just war from illegal uses of force. There is much disagreement however as to how these criteria ought to be applied, disagreements which arguably go beyond questions of prudential interpretation despite protestations to the contrary and instead involve prior moral,

ethical and strategic considerations (to invoke Habermasian terminology) which interlocutors bring to the discussion.

The contemporary Catholic discussion over the just use of force is animated by disputes between two competing schools of thought, which can be divided into those who favour a permissive use of force in order to pursue justice and those who seek to limit the scale of war by seeking to apply just war criteria in a much more restrictive fashion. The first school is largely populated by Catholic neoconservatives such as Weigel, Neuhaus and Michael Novak who contest the increasingly orthodox view amongst Catholic thinkers that the strictures of just war criteria imply a “presumption against violence”. In contrast, their starting premise is a ‘presumption for justice.’⁴¹ The second group who repudiate war in all but the most exceptional circumstances consists of a disparate group of thinkers. They range from theological conservatives including arguably the Pope and the Vatican through to those on the Catholic left who, while dissenting from the Vatican on matters of church doctrine share its much more progressive view of the political and social world.⁴² The self-declared differing starting points from which the two sides begin in their evaluation of just war criteria cannot be seen as simply differences in emphasis over how the criteria should be applied in practice. Rather, they reflect fundamentally divergent understandings of the political and moral universe, which go well beyond mere discourses of application.

In particular two key differences exist between the two contrasting schools of thought. Firstly, there is a major disagreement over which cluster of criteria should take priority

in determining the justification for war, those pertaining to the reasons for going to war (*ad bellum* questions) or those concerned with conduct in the prosecution of war (*in bello*) questions. Catholic neoconservatives in particular argue that religious commentary on just war has been hamstrung by a prioritisation of the latter set of criteria over the former, reflected for example in the great reluctance of many Catholic thinkers to sanction a war that may involve large-scale civilian casualties. Scholars such as George Weigel argue that this has the effect of turning the tradition inside-out by placing the heaviest burden of moral analysis on what are contingent judgements which cannot be accurately assessed in advance rather than on the morally prior *ad bellum* questions which determine the moral propriety of advocating war in the first place.⁴³

Neoconservatives are wrong however in implying that this is the only source of dispute between the two schools of thought. For the two sides begin from two contrasting hermeneutic starting points which in turn reflect very different perceptions of political reality. The crucial point to note here is that for a war to be considered just it must be initiated by a competent authority which is recognised as legitimate. There is no competent authority, which is recognised as legitimate by the two sides in this dispute. Neoconservatives in line with their ideology, emphasise the pivotal role of the nation-state, specifically the U.S nation-state as the principal arbiter of decisions governing war and peace. This identification of the particularist aims of America with universal Christian ideals appears to reverse the view held by much recent Catholic thought on the import of an international common good and the need for an international public

authority to promote that common good.⁴⁴ While Catholic neoconservatives such as Weigel and Novak do not deny the existence of an international common good they see no objection to that good being maintained by one country. In contrast, critics regard this view as an example of the 'Constantinianism' in which the objectives of the church are conflated with those of the state, a position that contemporary Catholicism has been attempting to repudiate since Vatican II.

The differences that have emerged within the Catholic tradition over how best to utilise Just War theory in the post-September 11 world that we now inhabit, as demonstrated in the debates over the legitimacy of the use of force in Afghanistan and Iraq, should not be regarded in isolation from the wider themes of Catholic political thought discussed in this chapter. They should rather be seen as the crystallisation of trends, which have been evident at least since Vatican II, in which Popes, from John XXIII through to John Paul II have increasingly condemned the use of force in virtually all circumstances. These trends have been viewed with alarm by Catholic neo-conservatives, particularly in the United States, who regard such beliefs as a capitulation to a secular liberal culture, a culture that especially in the wake of the Vietnam War, has viewed war with suspicion. There is an element of truth in this analysis. In the last century there has been a legalisation of the Just War tradition in which it has been forced into an intellectual framework that emphasises notions of universally applicable moral rules. This contrasts sharply with the moral reasoning prevalent in the medieval and early modern just war tradition, which was casuistical and particularist.⁴⁵ The Vatican has almost uncritically appropriated this transmutation

of just war theory from a theory of statecraft into one delimited by universal rules, with the result that it now regards international institutions such as the United Nations, rather than the nation-state, as the main forum of political legitimacy. In practice, this has led many Catholics, including the Vatican to embrace a 'functional pacifism'. Thus, Pope John Paul II denounces the "insane arms race" precipitated by the Cold War and condemns those nations that have "an unacceptably exaggerated concern for security", since they obstruct the movement to a world in which nations are "united in cooperation...for the common good of the human race".⁴⁶

The increasing articulation of the belief within contemporary Catholicism that war is abnormal and eradicable is contested by Catholic neo-conservatives such as Weigel who assert that this view is sheer utopianism. According to Weigel, classic Catholicism assumes that conflict is a constant in the world, which can only be ameliorated through the legitimate use of force. In the current context of the War against Terrorism, that duty falls to the United States as the legitimate guardian of the public good. Catholic neoconservatives have a much more expansive notion of the role of politics in the international sphere than their opponents. Whereas orthodox Catholicism wishes to replace conflict with consensus and transform the world into a pacified domestic sphere, neoconservatives, following Machiavelli, believe that conflict is a given which can be challenged but never finally resolved through the marshalling of military force. These very different ideological assumptions which animate the two Catholic schools of thought, one affirming the goals of the Enlightenment tradition, the other influenced by the pre-Enlightenment thought of Machiavelli and Hobbes, in which the nation-state

is paramount and retains full political autonomy, explains the degree of estrangement that exists between Catholics over how best to understand the just war tradition.⁴⁷

The purpose here is not to determine which side has presented the most accurate account of Catholic doctrine or the most plausible interpretation of historical reality. Rather, it is to demonstrate the extent to which political judgements cannot be based on unimpeachable theological foundations, which can be rendered self-evident to all genuine Catholics. In addition, it also serves to illustrate the extent to which secular and theological discourses are interwoven with each other. In arguing over the application of just war theory, Catholics have been divided by both incommensurable philosophical discourses, and divergent interpretations of empirical reality. Thus, whereas, for example, many Catholics have adopted a Kantian view of international relations, arguing that it represents the best means for the pacification of the world, others, drawing inspiration from Hobbes and Machiavelli, have argued for the exact opposite conclusion. Responding to the Pope's assertion that war always "makes it more difficult to find a just solution of the very problems which provoked the war, one neoconservative quips, "history and above all the history of the twentieth century proves otherwise".⁴⁸ Sometimes, war is a necessary instrument for the pursuit of justice, and can thus be undertaken in a manner which is sinless. The contrasting conceptions of human nature and understandings of history underpinning these two schools of thought are irreconcilable and can thus not be adjudicated through appeal to an overarching theological standard.

The disagreements over the application of the just war tradition engaged in by Catholics serves to highlight the wider aims of the chapter. As noted by John Langan, Catholic social teaching should not be regarded as a teaching derived *deductively* from scripture or traditional formulations of natural law which are the classical sources of Catholic teaching.⁴⁹ Rather, it should be perceived as an evolving body of ideas, which will be transformed and mediated through its engagement with empirical reality and competing traditions of thought. One key point which, protagonists on both sides of the debate need to be cognisant of is that there is no pristine, pure Catholic position unmediated by social context and the ideological presuppositions of individual Catholics. To put the point in the language of communicative ethics, the universality of moral discourses will inevitably be interwoven with ethical and strategic discourses especially when the flexibility of just war criteria can be used to buttress many divergent theoretical positions. This is true not only of Catholicism but of all secular and religious traditions that employ just war criteria.

Conclusion

A fundamental methodological problem, which often goes unacknowledged, in attempting to assess the possibility for an accommodation between Catholicism and the modern world is the extent to which it makes sense to conceptualise Catholicism as a monolithic entity, what Rawls would call a "comprehensive moral doctrine". One factor, which makes it tempting, even sensible to portray Catholicism in this way can be adduced to the fact that unlike Islam, for example, Catholicism contains a central, authoritative religious structure led from the Vatican which unifies and guides the

community of believers. Indeed, it is no exaggeration to say that the Roman Catholic Church is the most visible religious institution in the history of the world. Thus, in certain respects, it is perfectly natural for academic and journalistic interpreters of Catholicism to focus on the centre - the papacy and the hierarchy. The papacy as the embodiment of an authoritative set of teachings serves as the frame of reference for normative disagreements, whether they are theological, moral or ecclesiastical. Thus, regardless of the issue at stake, whether it is child sex abuse, just war theory or abortion, both Catholics and non-Catholics attach a major significance to the comments uttered by the Vatican. Thus, irrespective of whether one agrees with the Church's stance on a particular issue, it will inevitably form the parameters in which the debate takes place.

However, this concentration of attention on the Vatican and the Pope in particular is also problematic. By focusing exclusively on pronouncements by the hierarchy, it invites the impression that there is one 'Catholic position' on all substantive disputes which can be logically deduced from the theological bases which have traditionally informed Catholic thought, in particular natural law. Underpinning this view is the assumption that Catholic thinking on any particular issue can be conducted in a way detached from the multiplicity of intellectual currents, many of which are secular, that impinge upon the church at any one time. Thus, by failing to comprehend the way in which the Church is forced to act as a concrete actor rather than a purely abstract one, it is easy to see how the Church ends up being viewed as a collective subject whose

thinking is conducted in a rigid, monological manner rather than through a dialogical and reflexive encounter with competing traditions of thought.

Of course, it serves the interests both of apologists for the Vatican and its most redoubtable opponents to portray the Church in this way. By doing so, however, they obscure the extent to which the Church performs as a *situated* actor. The theology and metaphysics which might on their own render its philosophy dogmatic and even absolutist is forced into a dialectical interplay with a globalised world whose complexity and contingency negate the moral certainties that natural law provided in a previous age. The difficulties which the Vatican faces in reconciling theological absolutes with a global society, constituted by reasonable pluralism both in terms of value differentiation and cultural diversity, is evident in the contradictions that have characterised the reign of the current Pope and the Roman Curia more generally. These contradictions are displayed in the conflict between the official theology of the Church, which teaches that membership of the Catholic faith is a prerequisite of salvation and the Pope's own encounters with other faiths. These encounters are notable for their attempts to strive for a common language which transcend doctrinal divisions. Even more graphically, the paradoxes are revealed in the disjunction between his sincere employment of human rights discourse, and the authoritarian, command and control structure, which permeates the current structure of the Vatican.

To the extent that the perception is formed that the Vatican exists to preserve its own power, the ability of the Church to influence not only fellow Catholics but also the

outside world in general, is diminished. This is a pity for it obscures the importance of intellectual trends, which were set in motion by Vatican II. Far from being reversed, these trends have actually accelerated under the current Pope. In particular, the political universalism, which animates Catholic thought, furnishes secular liberals with symbolic resources that can enhance the emancipatory project of modernity. On numerous issues ranging from immigration to the war on terrorism, Catholic neoconservatives, who like to portray themselves as the defenders of orthodoxy have found that the ideological views which they adhere to are in conflict with the accepted wisdom of the hierarchy. The reason for this, as discussed earlier in the chapter, is that the church learning from the mistakes of its history has been greatly sensitised to the dangers which subsist in any form of alliance between church and state. As the ever-perceptive John Langan notes, "both Catholicism as an institution and Catholicism as a community are likely to resist recruitment into the task of defending western primacy or American hegemony. No Pope is likely to take up the post of chaplain blessing American arms or International Monetary Fund conditions on loans to stricken third world countries".⁵⁰ In relation to notorious historical events of the past in which the Church has been implicated, the current papacy has shown an unprecedented degree of humility in re-evaluating its role in episodes such as the Crusades, the Spanish and other empires, the Inquisition etc. In this context, it seems inevitable that the Church will keep a distance between itself and the primary centres of political and military power in the twenty-first century. This trend will almost certainly be accentuated by the truly global nature of the Church with its highest levels of recruitment now occurring in the Third World. As a consequence, the institutional and intellectual leadership of the

church will increasingly shift from its traditional Western base and its perceived ethnocentric bias. This again illustrates the extent to which contemporary cultural dynamics impact upon the way the Church understands its mission in the world.

The disaggregation of the Church from its previous entwinement with the machinations of empires should not be taken to mean that the Church no longer perceives itself as a political actor. On the contrary, Catholicism has attempted to accommodate itself to liberal democracy and as this chapter has shown has often used Kantian modes of political discourse in order to defend its positions. This is most obviously the case in relation to its new found support for the United Nations, a position greeted with much bemusement by neoconservatives who cannot understand why the Church has so uncritically adopted the stance that the United Nations is the exclusive locus of moral authority in international affairs at least pertaining to matters of war and peace. The explanation is quite simply that in the same way that Catholics have accommodated themselves to and indeed, enthusiastically embraced the International Human Rights regime, they have also uncritically accepted one of its consequent results, the legalisation of the just war tradition. Neoconservatives, on the other hand, still wish to exploit the classical understanding of just war as a tradition of practical reasoning cast in a particularist and 'casuistical' mould, to be deployed in particular contexts when appropriate.

By contrast, many Catholics have adopted the view that the dominance in the modern world of notions delimiting universal rules has consigned casuistry to secondary

importance. Many Catholic neoconservatives regard this as a pulverisation of a tradition, which depended on the traditional understanding of state sovereignty for its vitality. The import of this debate is not to determine who is right or wrong but rather to illustrate that both sides are informed by ideological presuppositions that militate against the establishment of any one true Catholic position divorced from any historical context. The debate over the meaning of just war and the role of international institutions in the world generally is a classic example of how Catholic positions are animated by secular discourses, whether it is Kantian cosmopolitanism in the case of one or unfettered state sovereignty in the case of the other. Thus, the argument of post-modern theorists such as Stanley Fish who assert that Catholicism and liberalism are incommensurable moral discourses divided by competing epistemic premises, is misleading in that it ignores the extent to which divergent moral discourses are encapsulated within broad religious traditions such as Catholicism. As a consequence, the attempt by theological conservatives such as Neuhaus to invoke Catholicism as a moral framework in which to establish commonality and consensus in the public sphere is bound to falter due to the ideological diversity embodied within the Catholic tradition itself.

Catholicism's relationship to the modern world has with some justification, been seen to be adversarial which can be attributed to its metaphysically encumbered ethical doctrines. This leads Catholic Conservatives to argue on occasions that the legitimacy of democratic procedures is conditional on their conformity with divine law, a position problematic to discourse theorists who wish to emphasise the co-originality of law and

democracy. However, Catholicism is not a closed body of ideas, but one, which has been enriched by contact with diverse cultures and philosophical movements. The processes of globalisation which currently predominate seem likely to further facilitate this mutual contact harnessing in turn the intentions of many Vatican II reformers who wish to shift the church away from a hierarchical to a concentric model of governance. If they are successful in this project, they will not only foster a more pluralistic and reflexive church, but also leave Catholicism both as an institution and as a world community better equipped to face the challenges posed by the modern world.

The objective of this chapter has been to demonstrate that the depiction of religious traditions adhered to by both comprehensive liberals such as Habermas and post-modernists such as Fish is defective in that it perceives religion as a monolithic and reified phenomena thereby ignoring their capacity for critical reflection on many of their most cherished beliefs, a reflection which is in fact necessitated by religious traditions encounter with complex social evolutionary and cultural processes such as globalisation and divergent philosophical schools of thought. Thus, in the case of Catholicism, which has been the main focus of this chapter, Vatican II inaugurated a whole swathe of revolutionary doctrinal and institutional changes, the most important of these being its affirmation of the role of the laity in shaping church doctrine rather than having it solely determined by the official hierarchical structure. Thus Vatican II served to demonstrate the church's desire to engage in reasoned critique of its teachings and practices. In fact, far from being severed from practical reason, religious traditions such as Catholicism are comprised of a multiplicity of discourses. This has been a

feature of their development from their very inception and is not simply a defensive reaction to the uncoupling of secular from sacred knowledge which governs the transition to a post-modern era. The formulation and refinement of just war theory, a theory which despite its origins in Catholic political thought permeates secular discourses about war and peace is just one example of this. Indeed, as this chapter has shown, both discourse ethics and Catholic International Relations theory have converged on the adoption of a Kantian historical trajectory which is an integral component of the Enlightenment strand of liberal thought. In the process, Catholic doctrine has shown its reflexive ability to relativise itself in relation to other religions without relativising itself in relation to its own core doctrines.

At the same time, however, it is also true that it remains the case that the continuing reluctance of orthodox Catholicism to reflect critically on its stance towards disadvantaged groups such as homosexuals means that important disagreements continue to persist between Enlightenment strains of liberal thought such as Habermas's discourse ethics and orthodox belief systems such as Catholicism in relation to cultural issues such as abortion and homosexuality. As was noted in chapter two, in relation to conservative Catholic attitudes towards homosexuality, any attempt to foster a normative consensus which encompasses both progressive liberals and conservative Catholics will simply obfuscate the competing substantive premises which underpin the two traditions of thought. It is important to note that even the Catholic Church's new enthusiasm for democracy does not mitigate these problems for as Habermas has recently made clear, majority rule is repressive if it enables citizens {and

policymakers} to deploy religious arguments in a way which violates the idealising presuppositions underpinning the Enlightenment conception of autonomy, in particular, that all policy proposals should require publicly accessible justifications. Even if religious traditionalists are capable of *formulating* arguments in publicly accessible terms, it is less clear that they can *justify* them in those terms as well. At the same time, however, it needs to be recalled that these competing discourses animate debates over the legitimacy of church doctrine and institutional practices within the Church itself. Progressive Catholics, by exploiting the emancipatory potential implicit in Habermas's discourse ethics to argue for participative equality within the church's institutional practices demonstrate that it is a mistake to perceive religion in monolithic and reified terms.

Chapter Six: Endnotes

¹ It is important to note that Habermas's views pertaining to religion have undergone a significant mutation over the years in a way which parallel Rawls's. In fact, I would argue that Habermas's interpretation of religion can be divided into three stages. In the first stage, Habermas concluded that religion had become superfluous in modern life with the collapse of religious and metaphysical worldviews. In the second stage, he moved from regarding religion as a defective ethical discourse to a position where he argued for its positive role as an aesthetic discourse providing existential comfort in the face of life's tribulations. For an instructive discussion of Habermas's transition from the first to the second stages, see William J Meyer, Private Faith or Public Religion? An Assessment of Habermas's Changing View of Religion, *The Journal of Religion*, vol.75, no.3, (July 1995), pp371-39. I would argue that Habermas's conception of religion has now entered a third more complex stage which can be traced roughly to the period after September 11, 2001. In one of his latest writings he now argues that while "post-metaphysical thought draws... a strict line between faith and knowledge...it rejects a narrow scientific concept of reason and the exclusion of religious doctrines from the genealogy of reason". Jurgen Habermas, Religion in the Public Sphere, *European Journal of Philosophy*, vol.14, no.1, (April 2006), pp1-25, p16. It can be argued however that Habermas's seemingly more indulgent view of religious discourses is more rhetorical than substantive. In the same paper he states that religious adherents are confronted by cognitive dissonances that are spared secular citizens such as an epistemic stance toward the priority that secular reasons enjoy in the political arena, *ibid*, p14. He also states that the use of public reason requires cognitive pre-conditions that are *pre-political* in origin, pre-conditions which ensure that political decisions are both formulated and justified in a language equally accessible to all citizens. That the religious use of reasons must be subject to these epistemic constraints seems unavoidable from a Habermasian perspective. However, the very use of the word pre-political to describe these constraints seems a Freudian slip in that it appears to support Charles Larmore's claim that discourse ethics is informed by substantive presuppositions which are extrinsic to the political process itself. See Charles Larmore, The Moral Basis of Political Liberalism, *The Journal of Philosophy*, vol.96, no.12, (June 1999), pp599-625.

² Compare for example Habermas's view that because all faith traditions are underpinned by absolute truth claims religious discourse is "limited in its freedom of communication", with Fish's claim that "a firm adherent of a comprehensive religion doesn't want dialogue about his beliefs; he wants those beliefs to prevail. Dialogue is not a tenet in his creed". Stanley Fish, Our Faith in Letting It all Hang Out, *New York Times*, Feb 12 2006. While Habermas is primarily making an epistemological claim and Fish a normative one, both thinkers converge in regarding the normative tenets of a faith as being pre-determined by its underlying epistemological premises.

³ Roxanne L Euben, *Enemy in the Mirror: Islamic Fundamentalism and the Limits of Modern Rationalism*, (Princeton: Princeton University Press, 1999), p3. It is interesting to note that Habermas himself now acknowledges the salience of objections to the claim that Max Weber's 'Occidental Rationalism' far from being the universal paradigm on which world-historical development will converge is in fact confined to Europe. As he himself states, "the Occident's own image of modernity seems, as in a psychological experiment, to undergo a switchover: the normal model for the future of all other cultures suddenly becomes a special case scenario". Jurgen Habermas, Religion in the Public Sphere, p2. At the same time, however, Habermas does not regard the emergence of militant fundamentalism as an intellectual challenger to the Enlightenment project, perceiving it instead as effect of the colonisation of the lifeworld by the systemic imperatives of instrumental rationality which is of course for Habermas a symptom of modernisation which can only be remedied by communicative rationality. See for example, Giovanna Borradori, *Philosophy in a Time of Terror, Dialogues with Jurgen Habermas and Jacques Derrida*, (Chicago: University of Chicago Press, 2003), p32.

⁴ John Langan, *The Catholic Vision of World Affairs*, *Orbis*, vol.42, no.2, (Spring 1998), pp241-261, pp 241-242

⁵ Alan Wolfe, Liberalism and Catholicism, *The American Prospect*, vol. 11, no. 6. January 31, 2000, p5

⁶ Richard John Neuhaus, *The Naked Public Square*, (Grand Rapids, MI: William B Eerdsman Publishing Council, 1984), pp 79-93.

⁷ See for example, Richard John Neuhaus, The Liberalism of John Paul II, *First Things*, vol. 73, no.5 (May 1997), pp16-21

⁸ Pope John Paul II, *Redemptoris Missio*, March 25, 1987 accessed at www.vatican.va/.

⁹ See for example, David Tracy, Defending The Public Character of Theology, *Christian Century*, (April 1 1981), pp350-351

¹⁰ Jim Wallis, *God's Politics, why the Right gets it Wrong and the Left Doesn't Get it*, (New York: HarperCollins, 2005). Ronald Thiemann, *Religion in Public Life, A Dilemma For Democracy* (Washington D.C: Georgetown University Press, 1996), pp138-140

¹¹ *ibid.*, pp28-30

¹² *ibid.*, pp28-30

¹³ Will Herberg, *Protestant-Catholic-Jew* (New York: Doubleday, 1955).

¹⁴ Ronald Thiemann, *Religion in Public Life*, p35

¹⁵ *ibid.* p35

¹⁶ Thus, for example, it is salutary that following the events of September 11, the first assembling of the nation's leaders and the first detailed address by the President was in a cathedral. Similarly, that Irving Berlin's God Bless America became the country's unofficial national anthem.

¹⁷ Jurgen Habermas, *Between Facts and Norms*, (Cambridge: MIT Press, 1996).

¹⁸ Maeve Cook, Authenticity and Autonomy: Taylor, Habermas and the Politics of Recognition, *Political Theory*, vol.25, no.2, (April 1997), pp255-288, p277

¹⁹ Stanley Fish, Why We Can't All Just get Along, *First Things*, vol.60, no.2, (February 1996), pp27-34, p27.

²⁰ *ibid.*

²¹ *ibid.*

²² Michael McConnell has provided interesting responses to Fish's criticisms. McConnell, for example, argues that Fish makes the mistake of regarding liberalism as a comprehensive philosophy of life rather than a prescription for government. In a typical Rawlsian move, McConnell argues that constitutional liberalism is not based on denying the possibility of truth, (including religious truths), but rather on abstaining from the use of force to adjudicate between conflicting claims to truth. He makes the familiar claim that far from being incompatible with Christianity; this argument for liberalism was originally developed by Protestant Christians who argued that coerced faith is a contradiction in terms. Thus, far from wishing to "extirpate" liberalism "root and branch", as Fish claims, Christians believe that it is only under conditions of freedom that genuine belief can occur. See Michael McConnell, Getting Along, *First Things*, vol. 64, no.6, (June/July 1996), p2. See also in the same volume George Marsden's reply to Stanley Fish, pp3-4.

²³ As George Weigel reports, the question of religious freedom was the most controversial topic to occupy Vatican II. Some Council Fathers adopted the traditional philosophical position that Error had no rights. This Constantinian stance is most commonly associated with the notorious *Syllabus of Errors* issued by Pope Pius IX in 1864, which argued in favour of Catholicism as the one true religion. As a consequence, the syllabus opposed the separation of church and state and denounced freedom of worship as heretical. As Weigel documents, the present pope who, at that time was the archbishop of Krakow, argued strongly for "*The Declaration of Religious Freedom (Dignitatis Humanae)*" basing its justification not on the autonomy of human reason but rather as a matter of revealed truth. See Pope VI, '*Dignitatis Humanae*', December 7, 1965, accessed at www.vatican.va/.

²⁴ *Dignitatis Humanae*, accessed at www.vatican.va/.

²⁵ Richard John Neuhaus, Christian Mission and the Third Millennium, *First Things*, vol. 13, no.5, (May 1991), p8

²⁶ George Weigel, John Paul II and The Crisis of Humanism, *First Things*, vol. 98, no.12, (December 1999) pp31-36, p31.

²⁷ Pope John Paul II, Dialogue Between Cultures for a Civilisation of Love and Peace, 1 January 2001

²⁸ Pope John XII, *Pacem in Terris*, April 11 1963. What is most significant about this document is the extent to which it is peppered with the language of human rights. The perpetual employment of human rights discourse throughout papal documents and the normative commitment of Catholicism to liberal democratic practices has been criticised in a provocative work by Robert P Kraynak, *Christian Faith and*

Modern Democracy: God and Politics in the Modern World (Notre Dame: Notre Dame Press, 2001). In it, he argues that Christians are wrong to synthesise liberal democratic and Christian principles. While I cannot explore his philosophical argument in any detail here, one key point should be noted. Firstly, he points out that prior to the twentieth Century, it was generally accepted that there was "something inherently hierarchical in the Christian religion". He finds evidence for such a hierarchy in the notion of the Apostolic Succession, and also in the Platonic-Aristotelian conception of a hierarchy of being and substance. These hierarchical principles contrast with the emphasis on the notion of absolute human dignity, which can also be found in scripture. Tension between these two notions partly explains why Christianity has traditionally refused to sanction any one particular form of government. It also serves to highlight the revolutionary shift, which Catholicism has undergone in the modern era.

²⁹ Carl Schmitt, *The Concept of the Political*, (Chicago: University of Chicago Press, 1996).

³⁰ The most important intellectual in the neoconservative movement is Michael Ledeen whose vision of world leadership is shaped by Machiavelli. See for example, *Machiavelli: On Modern Leadership*, (St Martin's Press, 1999).

³¹ Samuel Huntington, *The Clash of Civilisations and the Remaking of World Order* (Simon and Schuster, 1997).

³² Robert Kagan, *Paradise and Power: America and Europe in the new world*, (New York: Alfred A. Knopf, 2003).

³³ See for example, *Pacem in Terris*, where Pope John XXIII applauds the creation of the United Nations expressing hope that this organisation along with the Universal Declaration of Human Rights passed by the U.N General Assembly would presage a new era in which everyone's basic human rights would be recognised.

³⁴ Pope John Paul II, Pope's Message For the World Day of Migrants and Refugees, 2003 accessed at www.vatican.va/.

³⁵ Jim Kalb, The Pope's Left turn on Immigration, *FrontPage Magazine*, 10 December 2002 accessed at www.frontpagemag.com.

³⁶ See Craig Bartholomew's piece, *The Importance of Worldview*, Geographa International Conference, Chicester, England Aug 19-22, 1999 located at www.gegrapha.com for an interesting discussion of the extent to which one's understanding of what the Gospel demands is distorted if one is not able to apply the Christian story to the particular culture one inhabits and ask the question, "What time is it in our culture?". He points out that White male South Africans were able to internalise the Christian message without realising that it was a time of racism and subjugation in the context which they were situated.

³⁷ Richard McCormick, The Church and Dissent, How the Vatican ushered in a new way of thinking?, *Commonweal*, Feb 27 1998, located at www.highbeam.com.

³⁸ See for example, James Hitchcock, Was Vatican II "Pre-Conciliar"? *Catholic Dossier*, (Nov/Dec 2000). Located at <http://www.catholic.net>

³⁹ Cardinal Suenens cited in Richard McCormick, The Church and Dissent located at www.highbeam.com.

⁴⁰ *ibid.*,

⁴¹ See for example, George Weigel, Moral Clarity in a Time of War, *First Things*, vol. 128, no.1, (January 2003), pp20-27. This is arguably the most incisive account of the Catholic neoconservative position in relation to just war theory and how it can be mobilised to support the pre-emptive use of force by the United States in relation to the war on terrorism. Richard John Neuhaus, *The Sounds of Religion in A Time of War*, *First Things*, vol. 133, no.5 (May 2003), pp76-92. Michael Novak, *Asymmetrical Warfare and Just War*, *National Review*, February 10, 2003 accessed at www.nationalreview.com.

⁴² This second school of thought defies theological and political boundaries. The belief that the just war tradition starts from a presumption against the use of force except as a last resort is a view held throughout the Catholic theological and political spectrum and has exercised a huge influence on Catholic discussions relating to how just war theory should be applied in the current context. See for example, *U.S. Conference of Catholic Bishops, Living with Faith and Hope after September 11*, 14 November 2001, which can be found at <http://www.usccb.org>

⁴³ George Weigel, *Moral Clarity in a Time of War*, pp20-27.

⁴⁴ From Pope John XXIII through to Pope John Paul II, it has been consistently argued that the body considered most appropriate to fulfil that role is the United Nations.

⁴⁵ See Nicholas Rengger for a very perceptive account of the transformation of the Just War tradition over the last few centuries. On the just war tradition in the twenty-first century, *International Affairs*, vol.78, no.2. (April 2002), pp353-63

⁴⁶ Pope John Paul II, *Centesimus Annus*, Section 18, 1 May 1991 accessed at www.vatican.va/.

⁴⁷ It should be noted that these ideological differences in relation to the political dimension are accentuated by theological disagreements between the two schools of thought which it is beyond the scope of this chapter to discuss in any detail here. Much Catholic thought subsequent to Vatican II, has seen what one classic just war theorist describes as an “eclipse of moral reasoning” which has seen the displacement of traditional authorities such as Thomas Aquinas, and the natural law philosophy to which he subscribed and a renewed focus on the literal meaning of scripture. As a consequence, many Catholics, in the same manner as the “historic peace churches”, (Mennonite, Brethren Quakers), attempt to apply Jesus’ words in the Sermon on the Mount *directly* to foreign policy. This position is regarded with contempt by Catholic neoconservatives, who argue that the fundamental question is not ‘What would Jesus do?’, but rather ‘What would Jesus have *us* do? Thus, ironically, in their attempt to salvage classic just war reasoning from what amounts to the functional pacifism of much Catholic thought, neoconservatives are much more forceful than their liberal critics in arguing that one should not extrapolate from the Bible, an unimpeachable basis for political practice. In this case, pace Stanley Fish, they are anything *but* fundamentalists. For an illuminating account of these theological differences, see Dr. Blosser, “War and the Eclipse of Moral Reasoning” at <http://www.ratzingerfanclub.com/>

⁴⁸ Damon Linker, “John Paul II”, *Policy Review*, No.103, Oct 2000 located at www.policyreview.org. This is a very rare example of a Catholic neoconservative taking issue with the Pope’s understanding of recent history and illustrates that the gulf between the Catholic hierarchy and neoconservatives in their perceptions of empirical reality are rooted at least as far back as the Cold War. A clear example of this gulf is illustrated by Weigel’s criticisms of the 1983 U.S Bishops pastoral letter, “*The Challenge of Peace*” (TCOP). TCOP, by emphasising questions of *in bello* proportionality and discrimination, came to the conclusion that the most serious threat to peace was not Communism but the possession of nuclear weapons whether in the hands of the U.S or the Soviet Union. Weigel argues that this position represents a distorted reading of world politics induced by starting from the premise that the “presumption against violence”, is at the root of the just war tradition. The principal threat to peace was not nuclear weapons but Communism. See George Weigel, “Moral Clarity in A Time of War”, p27.

⁴⁹ John Langan, “The Catholic Vision”, p243

⁵⁰ John Langan, “The Catholic Vision”, p253

CONCLUSION

It has increasingly become conventional wisdom amongst political theorists that the perceived dispute between the liberal and communitarian traditions has exhausted its ability to yield any useful insights. The fundamental contention that has been argued for in this thesis is that the debate was always misconceived in the first place. The terms 'liberal' and 'communitarian' are too broad and indeterminate to account for the complexity of positions, epistemological, ontological and normative, that are subsumed under these labels. The principal reason why it has often been argued that a normative consensus between liberals and communitarians has been achieved - or at least that there are no great metaphysical differences between these two groups of political theorists to adjudicate between - can be adduced to the fact that the focus of the debate has centred around how best to understand Rawlsian liberalism. In particular, both the scope and substance of the changes that Rawls has undertaken since the publication of *A Theory of Justice*, the work which inspired the communitarian critique of contemporary liberalism in the first place, have been subjected to exhaustive (some would say obsessive) analysis. Rawls's much discussed distinction between political and comprehensive liberalism and his rejection of the latter in favour of the former has often been hailed by liberal commentators as an audacious attempt to integrate the key insights of communitarianism; namely, that political theory including liberal political theory can only be understood with reference to the shared historical contexts and experiences which constitute our personal identities, while at the same time retaining the Kantian normative vision which communitarians, most notably of course Sandel,

had argued could only be sustained by embracing an untenable metaphysics. In short, Rawls's theory was Hegelian in form but Kantian in substance.

The main tenor of Sandel's *Liberalism and the Limits of Justice*, which offered the most thoroughgoing critique of Rawls's project from a communitarian perspective, was that the Kantian methodology, which comprised the basis for the conceptual equipment deployed in *A Theory of Justice*, most notably the veil of ignorance and the original position, resulted in an abstract and ahistorical conception of the self unencumbered by prior moral commitments.¹ Theorists such as Sandel argued that this impoverished conception of Kantian personhood ignored the extent to which individuals are formed by unchosen social attachments which cannot be reflected upon from an impartial perspective. Thus, any political theory which failed to capture these ontological truths was seriously defective. While Rawls has always denied that the revisions which he undertook subsequent to the publication of *A Theory of Justice* were influenced by the communitarian critique of his theory, it is reasonable to interpret these changes in the context of the critical response prompted by the formulation of his theory of justice. In particular, Rawls seemed to implicitly agree with Sandel that *A Theory of Justice* had been underpinned by a Kantian conception of human nature which could not be sustained in the pluralistic conditions of late modernity. Thus, rather than try to defend the unencumbered self against the communitarian critique, or argue that his project did not entail any commitment to an unencumbered self, strategies which Rawls could have adopted, he chose instead to defend a metaphilosophical thesis concerning the scope and nature of liberal political theory.

This manoeuvre enabled Rawls to retain the substantive principles of justice articulated in *A Theory of Justice* while eschewing the theoretical foundations, which had previously underpinned them. Whereas traditional varieties of liberal theory, which Rawls coined 'comprehensive liberalism', had sought to legitimise liberal principles by reference to metaphysical philosophical conceptions such as God, natural rights or substantive accounts of human nature, the novelty of 'political liberalism' lay in abstaining from these philosophical controversies and thus staying 'on the surface' of philosophy.² The 'fact of reasonable pluralism' mandated this, because the plethora of irreconcilable comprehensive doctrines which pertain to liberal democracies and the fact that these doctrines are reasonable in the sense that they are fully consistent with the exercise of human reason means that, as Talisse explains, the attempt by comprehensive liberals to legitimate liberal values by reference to substantive philosophical premises is self-refuting.³ As Rawls states, "the question the dominant tradition tried to answer has no answer".⁴ The fact of reasonable pluralism precludes the possibility of establishing the truth of any one comprehensive doctrine. Thus, in order for liberalism to be liberal all the way down, it must not only be liberal in its conception of *justice* but also in its conception of *political justification*.⁵

As this thesis has shown, Rawls's attempt to purge liberalism of controversial moral and metaphysical claims by defending a neutral framework which avoids appeal to any particular comprehensive moral and metaphysical theory, while audacious, ultimately fails. As chapter four showed, Rawls, in order to affirm his distinction between political

and comprehensive liberalism, must insist on the autonomy of the political sphere, an autonomy which will be resisted by proponents of illiberal comprehensive doctrines such as religious fundamentalists, who wish to utilise state power in order to promote their conception of the good. Now, of course, Rawls can respond that comprehensive doctrines such as these are unreasonable in that they fail to take into consideration the reality of reasonable pluralism. However, the argument that disagreement between comprehensive doctrines is both reasonable and permanent is in itself a claim requiring philosophical justification. In order to justify this claim, Rawls in effect assumes a pluralistic theory of moral epistemology that will be resisted by at least some exponents of comprehensive moral doctrines who will dispute the notion that the truth of their philosophical worldviews can be doubted.

This is problematic because an acknowledgement of reasonable pluralism and the sharp public/private dichotomy which such a position entails would appear to exclude not only the intolerant religious fundamentalist, but also many other comprehensive doctrines such as utilitarianism and Marxism, all of which may be reluctant to confine their conceptions of justice to the private sphere. Furthermore, it also pays insufficient attention to the views of value pluralists, both liberal and otherwise, who do accept the existence of reasonable pluralism, but who do not accept that the embrace of such an epistemological position necessitates convergence on the principles of political liberalism. In other words, reasonable pluralism, which is the starting premise for political liberalism, is not a value neutral axiom external to philosophy, but is in itself a controversial philosophical argument. In addition, even if one accepts the premise of

reasonable pluralism and the importance which such an acceptance has for normative political theory, one is not thereby required to accept the substance of political liberalism as Rawls defines it.

Of course, as chapter four argued, it is necessary to disentangle two different meanings of stability, which Rawls employs in *Political Liberalism*. First of all there is theoretical stability which concerns the notion that liberalism is not coherent if it relies on a particular comprehensive doctrine. This is the form of stability discussed above. The second form, which has received much more press and is often wrongly conflated with the first, is that in order for a political theory to be stable, it must be located within the shared understandings of liberal democracies. This is what might be described as empirical stability. It might be thought that Rawls can extricate himself from the suspicion of epistemological scepticism produced by his attempt to render political liberalism theoretically stable by construing reasonable pluralism not as a philosophical axiom, but rather as an empirical fact of modern liberal democracies. Indeed, it was the belief that Rawls's later writings should be interpreted in this way which fuelled talk of the 'hermeneutic' turn in Rawls's project. Rawls's principles of justice could be legitimated not by appeal to Kantian metaphysics, but simply by excavating the shared conventions embedded within liberal societies. This would blunt the force of the communitarian critique in the process, for it would show that the exercise of immanent social criticism, which communitarians such as Sandel and Walzer regarded as an alternative to liberal individualism, could be deployed instead as a contextual support for liberal theorizing.⁶ Unfortunately, this attempt at relativising Kantianism is

oxymoronic. In order for it to succeed it would need to be shown that liberalism constituted a dominant public culture rather than simply one ideological strand of thought in competition with illiberal doctrines. Rawls cannot show this because he underestimates the extent to which reasonable pluralism informs not only the private sphere but the public sphere as well. Thus, if reasonable pluralism is understood in an empirical sense, there seems no reason why it cannot pertain to questions of justice as well as questions of the good life.

Rawls's reluctance to accept the existence of pluralism in the political sphere can be adduced to the fact that, while he wishes to extricate political theory from philosophical controversies, he wishes to preserve the lexical priority of his principles of justice. In the process, however, he circumscribes cultural pluralism in a way that renders political liberalism indistinguishable in practice from Millian and Kantian conceptions of comprehensive liberalism. Furthermore, his theory is actually much less able to accommodate cultural diversity than, for example, theories such as Galston's, which attempt to predicate liberal political theory on the basis of comprehensive value pluralism.⁷ The reason for this is that a red thread running through Rawls's project right from its inception through to his final revisions is an assumption of the architectonic nature of the political community. Rawls does not simply insist on the autonomy of the political sphere but also on its sovereignty. This is most evident in the emphasis which political liberalism places on civic education, which requires children reared in illiberal communities to be inculcated in the virtues of political liberalism.⁸ This is particularly troubling bearing in mind Rawls's neo-republican conception of citizenship, which

includes a commitment to autonomy at least in the context of the political sphere. The real issue pertaining to Rawls's political liberalism, therefore, is not the supposed 'communitarian' or 'relativist' turn in his theory. Rather, it is the consistently collectivist nature of his project in which the political community is accorded ultimate normative value, an aspect of his theory which is much more pronounced in *Political Liberalism* than in *A Theory of Justice*. Rawls's attempt to increase the appeal of his theory by freeing it from any comprehensive worldview is unsuccessful. On Rawls's own terms his metaphilosophical thesis fails. The assumption of reasonable pluralism requires appeal to a prior substantive philosophical premise to support it, one, which would require taking sides in theoretical controversies. Rawls's attempt to circumnavigate this obstacle by locating his theory on empirical foundations fails as reasonable pluralism resists any dichotomy between the public and private spheres and therefore would fail a priori to vindicate only his principles of justice.

Sandel's Pluralistic Communitarianism

While Rawlsian liberalism in the face of the communitarian critique attempted to develop a more context-sensitive basis on which to ground liberal values, communitarians were also trying to demonstrate how their own anti-liberal metaphysics related to the particular contexts which individuals inhabited. It became common amongst those who were in neither the liberal or communitarian camps to say that, while the liberal conception of the political sphere was too formal, the communitarian conception was formless. As Amy McCreedy has aptly demonstrated, one of the striking features of *Liberalism and the Limits of Justice* is that Sandel in outlining his

communitarian alternative to liberal individualism actually replicates the philosophical abstraction and ahistoricism which he castigates Rawls for.⁹ Sandel's own argument for the constitutive conception of community is buttressed by an empiricist realism which requires transcendence from particular contexts in order to posit independent facts which can be established a priori. This left Sandel vulnerable to the charge by value pluralists such as John Gray that both he and other communitarian thinkers have invoked a concept of community which is as abstract and unhistorical and therefore as unserviceable as the Kantian and Benthamite conceptions which they refute.¹⁰ By theorising the idea of community from a universal perspective, communitarians cannot take account of the pervasive nature of ethical conflict in late modern societies, a conflict which encompasses both relations between individuals and between communities. In short, they conduct discourse about community in the singular when it would be much more illuminating to conduct it in the plural.

The uncertainty about precisely what normative implications flow from the communitarian critique of liberalism has resulted in many liberal critics assuming that communitarian thinkers such as Sandel are unabashed cultural relativists. On this reading, the formlessness of communitarianism can be attributed to the fact that it abjures any external standard for determining what practices are just, instead affirming that the circumstances of justice and morality are decisive in determining the meaning of morality and justice. In other words, what can reasonably be described as just or moral is parasitical on the practices affirmed by any particular community. The lack of specificity in *Liberalism and the Limits of Justice* over what conceptions of community

should be privileged is largely responsible for this relativist reading of Sandel. In his recent work, as detailed in chapters one and two of this thesis, Sandel has been anxious to combat it. His attempt to clarify the content of his alternative to liberalism is reminiscent of the mutations which Rawls's project has undergone in that he too is attempting to engage in the practice of immanent social criticism and thus jettison purely abstract conceptions of human nature while simultaneously proffering a normative vision which avoids the relativism which his embrace of hermeneutics might seem to entail. It is in this context that his embrace of civic republicanism and his eagerness to illustrate the extent to which it can be shown to be embedded in American history should be understood.

As Sandel has now made clear, while he continues to believe that justice is relative to the good, rather than independent of it, this does not mean that he considers it relative to whatever values a particular community may affirm. To do this is to make justice a creature of convention and to deprive it of its critical character. Rather, principles of justice should be predicated on the inherent moral worth of the ends which they serve. This avoids the dual error of deontological liberals and cultural relativists who both try to abstain from making critical judgements over particular goods.¹¹ While Sandel is correct in this argument and shows eloquently how minimalist liberalism as advocated by Rawls and Rorty is incoherent, his project founders on its inability to elucidate clearly precisely what substantive conception of the good should be installed in place of Kantian liberalism. Under the rubric of civic republicanism, he conflates three conflicting conceptions of the good, none of which bear much relation to civic

republicanism as historically understood. In his discussion of certain issues such as abortion, he seems sympathetic to a liberal metaphysics of autonomy. In relation to other issues such as free speech jurisprudence, he affirms a more perfectionist liberalism, affirming that it is not illiberal for courts to adjudicate over the substantive content of speech acts. Finally, in other places such as for example, in relation to religious freedom, he implies the opposite argument that contemporary liberalism, by affirming substantive ideals of individual autonomy is not liberal enough in that it is blind to religious communities for which liberal ideals are of little value. Underpinning the ambiguity over the content of his substantive vision is a continuing insistence on juxtaposing the unencumbered with the encumbered self. The relativistic connotations of the latter notion, (after all, to be encumbered by communal attachments says nothing about the normative worth of these attachments) seems to fit uneasily with his understanding of the good as a categorical imperative rather than a socially prescribed goal.

It can be plausibly argued that the vagueness concerning the substantive content of Sandel's republican project can be explained by his desperation to reconcile the value pluralism implicit within American political culture with civic republicanism understood as a hegemonic public philosophy. In the same way that Rawls provided an ideal-type historical account of how liberalism became the dominant public philosophy, thereby rendering liberal ideals synonymous with the intuitive convictions held by reasonable citizens in liberal democracies, so Sandel counters in *Democracy's Discontent*, (by focusing more narrowly on the United States) with an ideal-type

historical narrative which aims to show that it is in fact civic republicanism which is the hegemonic public philosophy, with liberalism only usurping its role very recently. The problem with both these accounts is not principally that their rendering of American history is inaccurate (although it is), but rather that they ignore the extent to which the public sphere is infused with multiple ideological strands which both intersect and compete with each other. It is therefore no more accurate to conceive of American history as a Manichean contest between two competing ideologies as Sandel does, with each one predominating at various stages, than it is to portray it in teleological terms as the gradual evolution towards the instantiation of liberal political ideals as Rawls does. Sandel's civic republicanism is incoherent in that it attempts to subsume divergent ideologies within the confines of one philosophy. It is simply not possible to synthesise history and political theory in this way. The attempt by way of the contingent to transcend the contingent is doomed to failure. One can only embrace the contingent and accept that this rules out appeal to any one universal metanarrative (such as liberalism or civic republicanism) or acknowledge that defending any substantive philosophy cannot be done solely by immanent social criticism. It is not possible to square the circle.

Habermas's Discourse Ethics

Habermas's discourse ethics has often been perceived either as an attempt to move beyond the liberal-communitarian debate or as an effort to attain a plausible synthesis between the two traditions. Like Rawls, he wishes to justify a deontological ethic without invoking any metaphysical foundations. In contrast to him, however, he does

not believe that this can be achieved by abandoning universalism and thereby repudiating the Enlightenment project altogether. Habermas believes that he can salvage the Enlightenment project without embracing Kantian metaphysics and thereby avoid resort to the pre-modern notion of a normative hierarchy in which the public sphere is shaped by independent moral principles. Despite Rawls's attempt to render his theory post-metaphysical, his monological conception of reason means that he remains enmeshed in the metaphysics of human subjectivity. For example, while Rawls wishes his political conception of justice to be affirmed from within diverse comprehensive doctrines, this convergence takes place without there being any dialectical encounter between these doctrines. In its place Habermas affirms a dialogical conception of justice in which all normative validity claims must be redeemed intersubjectively.

Habermas claims that the legitimation of moral norms through discursive processes rather than monological reasoning means that his theory is better equipped to respond to the existence of reasonable pluralism in late modern societies than either civic republicanism or political liberalism. Both political liberalism and civic republicanism seek, from a Habermasian perspective, to arbitrarily constrict political discourse by subordinating it to antecedent substantive moral norms. In the case of civic republicanism, this occurs by its desire to assimilate politics to an ethical process of self-explication of a communal conception of the good. By this measure, a substantive ethical consensus can be attained in advance of actual political discourses. By contrast, political liberalism demotes political discourses to secondary status by subordinating

them to normative principles of individual rights, thus vitiating the aspiration of political liberals such as Rawls to avoid the metaphysics of comprehensive liberalism. Both civic republicanism and political liberalism share in common, an adherence to the classical notion of a normative hierarchy which has at its apex, independent moral principles to which political association must defer. The advantage of discourse ethics, so its proponents argue, is to avoid the mistakes of the republican and liberal positions, by recognising that normative principles in a post-modern age can only be redeemed by anchoring them in the autonomous will of actual citizens.

In other words, civic republicans negate value pluralism by asserting the possibility of discovering or constructing a normative consensus (the former in the case of Rousseau, the latter in the case of Sandel), rooted in a substantive ethical vision. Rawlsian liberals, by contrast, believe that while value pluralism cannot be erased, it can be transcended, thereby enabling neutral principles of justice to be formulated which can then be applied exclusively to the public sphere. Discourse theorists claim that their position is superior to both the liberal and republican approaches in that value pluralism is built into the very structure of discourse ethics thereby guaranteeing that it is neither erased nor effaced. Rather than positing a sharp dichotomy between the public and private spheres as Rawls does, or subordinating the latter to the former as civic republicans do, Habermas envisages politics as one informed by a dialectical interplay between the two spheres in which normative validity claims are assessed not behind a veil of ignorance but rather by open, inclusive procedures which do not bracket the pluralism of

comprehensive worldviews a priori but rather engages them in rational discourse amongst free and equal citizens.

At first sight, Habermas's discourse ethics seems to offer compelling advantages over both Rawlsian liberalism and Sandel's pluralistic republicanism in that it can establish universal validity claims which possess moral legitimacy without invoking substantive ideals. By arguing for the extrication of politics from the normative hierarchies which had previously constrained it, discourse ethics seems to promise a greater sensitivity for social and ideological pluralism than either Sandel or Rawls's theories. Unfortunately, however, there are good reasons to be sceptical about whether discourse ethics succeeds in its aspiration to defend Kantian universalism by engaging with rather than transcending the political, social and cultural contexts which serve as the basis for formulating impartial moral norms. In order to understand this, it can be recalled from my discussion of Rawls's political thought that Enlightenment liberalism was underpinned by three key components; its commitment to philosophical foundations, a universalist mode of justification and an aspiration to normative consensus. Habermas shares with Rawls the belief that it is no longer possible to legitimate normative validity claims with reference to substantive foundations in the way which animated comprehensive liberal theorists. At the same time, he shares with Rawls the belief that it is possible to salvage the consensus aspiration of Enlightenment thought and diverges from him in arguing that practical reasoning can and indeed must in order to be truly normative, appeal to universal moral principles. It is Habermas's commitment to two out of the three criteria which inform the Enlightenment project that has fuelled doubts

from a diversity of ideological perspectives ranging from post-modernist critics such as Stanley Fish through to political and comprehensive liberals such as Evan Charney and Charles Larmore that he has really supplied a political theory which recognises the autonomous fact of reasonable pluralism, i.e. its non-contingent nature which resists absorption into a neutral, singular form of public discourse.¹²

It is important to disentangle two different criticisms which have been levelled against Habermas concerning his reliance on the Enlightenment project as the basis for legitimating moral norms. The first concerns the claim, made by post-modernists such as Stanley Fish and Stella Gaon that discourse ethics is philosophically incoherent.¹³ As Fish points out, Habermasians such as Shane O' Neill claim that discourse ethics is better equipped to respond to cultural particularity than Rawlsian liberalism due to the fact that communicative action is historically situated rather than transpiring amongst noumenal agents in the disembodied, original position. At the same time, however, discourse ethics requires actors to relativise their principal convictions, thereby detaching themselves from the normative contexts in which their convictions and investments were formed. Fish argues that this is impossible without presupposing the metaphysics of the unencumbered self which Habermas's theory aimed to repudiate. Habermas's philosophy requires a sharp and ultimately impossible demarcation between questions of justice and questions of the good. As this divide is structurally indispensable to the theory, attempts to render it less rigid such as those of Seyla Benhabib's do not succeed.¹⁴ As a consequence, discourse ethics is impaled on the horns of a dilemma: Conceived as a procedural, formal theory, protected against

incursions from contingent goods, it is no more coherent epistemically than Rawlsian liberalism as it relies on the same untenable conception of the unencumbered self. If, on the other hand, Habermas attempts to respond to this problem by relaxing the rigid dichotomy between moral and ethical discourses which underpins discourse theory, then he can no longer maintain the rationality of the moral sphere which is central to his Kantian deontological distinction between the right and the good.

Rather than arguing that discourse ethics is philosophically incoherent, political liberals such as Rawls and Larmore argue, in contrast to Fish and Gaon, that there is no problem with a principle of universalisation per se. Rather, the key issues surround the scope of a principle of public reason and Habermas's sharp distinction between procedure and substance. As Larmore has forcefully argued, discourse ethics, despite Habermas's claims to the contrary, is informed by antecedent moral norms which include a commitment to principles of universal moral respect, egalitarian reciprocity and critical reflexivity which requires that the validity of normative practices be legitimated by reasons which are universally accessible to all individuals. This commitment to moral post-conventionalism can be contrasted with moral conventionalism which does not require individuals to provide reasons which are universally accessible, but rather is premised on the moral legitimacy of cultural practices which resist the impartial questioning of their normative procedures of justification. Habermas's claim that discourse ethics recognises the particular in intersubjective forms of communication obscures the extent to which conventional

modes of morality have to transform themselves in order to satisfy the post-conventional ideal of discourse ethics.

In this context, political liberals can argue that the fundamental problem of discourse ethics is not that it is substantively empty or trivial as postmodernists claim, but rather that it is invested with so much normative substance that it violates its own claim to be a postmetaphysical, deontological theory. In particular, it does not accept that conflicts between comprehensive moral doctrines are the legitimate product of rational activity thereby necessitating that any normative theory must not conflict with the diversity of reasonable comprehensive doctrines. Habermas tries to circumvent this objection by embedding discourse ethics within a theory of social evolution which presupposes the existence of discrete historical periods which can be delineated from each other. In this context, he employs a hermeneutic methodology similar to that of Rawls and Sandel. Thus, in a manner not unlike that of Rawls, Habermas argues that modernisation can be understood as an historical process which is convergent with a teleological progression towards Enlightenment liberalism as the normative belief system which fills the vacuum created by the displacement of metaphysical worldviews as modes of normative legitimacy.

Unfortunately, Habermas encounters the same problem which afflicts Rawls's attempt to legitimate a normative conception of public reason with reference to the historical conditions of post-modernity; namely, that the stubborn fact of value pluralism comprising incommensurable metaphysical worldviews vitiates any attempt to

segregate historical periods as discrete epochs in the manner that Habermas like Rawls's and Sandel, attempts to do. Habermas, no more than Rawls and Sandel, succeeds in marrying an historical narrative with a philosophical metanarrative. In the last analysis, Habermas fails to adequately deal with the challenges which ideological pluralism poses for his theory for similar reasons to Rawls and Sandel. Discourse ethics, like political liberalism and civic republicanism, is informed by substantive principles which impose both epistemic and normative constraints on the degree of cultural diversity permitted in the public sphere. The nature of these constraints underlies Habermas's commitment to a substantive conception of individual autonomy which is obscured by his presentation of discourse ethics as a procedural theory which is neutral in relation to competing worldviews.

The argument defended in this thesis, that neither Rawls's nor Habermas's conceptions of public reason adequately respond to the challenges posed by the irreducible existence of ideological and social pluralism, should not be interpreted as a plea for dispensing with liberalism as a political tradition altogether or even with it understood as a descendant of the Enlightenment legacy. Accordingly, this thesis rejects the arguments which have been presented by a diverse array of anti-liberal critics, who in one guise or another can be defined as anti-foundationalists, who have claimed that the difficulties embodied in Rawls's and Habermas's attempts to resuscitate liberal political ideals without presupposing philosophical foundations require the discarding of liberalism as a normative program altogether. Rather, this thesis has argued that the solution to the problems inherent in Rawls's and Habermas's theories can be located

within the intellectual resources supplied by liberalism itself. It is important to emphasise this point, because both Rawls and Habermas have attempted to respond to many of their critics, particularly radical democrats, by arguing that their respective theories are not exclusionary in the way that they are often depicted by emphasising their ability to accommodate divergent conceptions of the good within public discourses. Thus, Rawls, for example, has claimed that far from presupposing a static conception of the public sphere from which diversity is excluded that political liberalism actually allows for what I have called the pluralisation of public reason by admitting divergent comprehensive doctrines into the political sphere. Habermas, has similarly in his later work claimed that it is possible to relax the rigid dichotomy between moral and ethical discourses, a position argued for at length by Seyla Benhabib.¹⁵ Thus, both Rawls and Habermas have attempted to democratise the public sphere.

The problem with these strategies from a liberal perspective is that they ignore the fact that the logics of liberalism and democracy are different. Whereas liberalism at its heart represents a defence of the ideal of negative liberty, a defence of democracy requires either, in its civic republican variant, a commitment to collective self-government, or in its radical pluralist form a public sphere characterised by radical contingency. Thus, rather than enlarging or expanding the sphere of the political as both Rawls and Habermas have attempted to do; any genuinely liberal theory which wishes to be more attentive to cultural diversity should instead endeavour to limit the scope of the political realm. This is the insight which has been developed by the diversity strand of the liberal

tradition which emphasises the importance of limiting the power of the state. Its proponents have been suspicious of the autonomy strain which I have argued encompasses both Rawls and Habermas's political theories, in that they privilege the political over the non-political, a feature of their projects which is actually amplified in their later work. This point has often been neglected because both thinkers have presented their theories as the only ones which are equipped to deal with radical pluralism while retaining a normative liberal substance.

This thesis has argued that Rawls and Habermas are correct in defending a liberal conception of public reason in the face of criticism by anti-foundationalist critics. However, neither theorist has acknowledged the substantive presuppositions which underpin both their theories and the extent to which these presuppositions commit both theorists to a conception of the public sphere which is too expansive in scope at least from the perspective of the diversity strain of liberal thought. This is largely because both thinkers have expended their critical energies on attempting to explicate how any normative political theory can be justified in the conditions of late modernity and not enough on the actual substantive core of their theories. In fact, however, neither objective can be distinguished from the other. Thus, for example, Habermas's procedural rendering of his theory which argues for the co-originality of individual rights with participatory democracy obfuscates the extent to which any defence of negative liberty requires the adoption of substantive a priori presuppositions. Similarly, Rawls's distinction between political and comprehensive liberalism obscures the extent

to which he himself is wedded to a formative project which vitiates his own distinction between the public and private realms. In sum, this thesis has claimed that while Rawls and Habermas are right to reject the potentially coercive nature of the formative project implicit in the work of communitarian critics such as Sandel, their own theories are also defective. In claiming that they can be defended without reference to metaphysical foundations they obfuscate the substantive presuppositions which do in fact inform their projects. I have argued in contrast, that liberalism can only be defended by presupposing an a priori conception of the political which can be juxtaposed with both Sandel's and Rawls's substantive versions of republican liberalism and also with Habermas's purportedly procedural rendering of communicative ethics.

Conclusion Endnotes

- ¹ Michael Sandel, *Liberalism and the limits of Justice*, (2nd. Ed. Cambridge, UK and New York: Cambridge University Press, 1998), p62
- ² John Rawls, *Political Liberalism*, (New York: Columbia University Press, 1993), p10
- ³ Robert Talisse, "Rawls on Pluralism and Stability", *Critical Review*, vol.15, nos1-2, (Winter 2003), pp173-194 at p176
- ⁴ John Rawls, *Political Liberalism*, p135
- ⁵ Robert Talisse, "Rawls on Pluralism and Stability", p176
- ⁶ Amy Gutmann, "Communitarian Critics of Liberalism", *Philosophy and Public Affairs*, vol.14, no.3, (July 1985), pp308-322.
- ⁷ William Galston, *Liberal Pluralism*, (Cambridge: Cambridge University Press, 2002).
- ⁸ John Rawls, *Political Liberalism*, pp199-200
- ⁹ Amy McCreedy, "The Limits of Logic, A Critique of Sandel's Philosophical Anthropology", *Philosophy and Social Criticism*, vol.25, no.4, (July 1999), pp81-102
- ¹⁰ John Gray, "Pluralism and Toleration in Contemporary Political Philosophy", *Political Studies*, vol.48, no.2, (June 2000), pp323-333, p329
- ¹¹ Michael Sandel, *Liberalism and the Limits of Justice*, pxi
- ¹² Stanly Fish, "An Exchange on Impartiality: Are There Reasons for Self-Revision", Review of Shane O'Neill's *Impartiality in Context, Grounding Justice in a Pluralist World*, (Albany, N.Y. State University of New York Press, 1997), in *Jurist*, vol.1, no.7, (October, 1998), Evan Charney, "Political Liberalism, Deliberative Democracy and the Public Sphere", *American Political Science Review*, vol.92, no.1, (March 1998), pp97-110, Charles Larmore, "The Moral Basis of Political Liberalism", *Journal of Philosophy*, vol.96, no.12, (June 1999), pp599-625
- ¹³ Stella Gaon, "Pluralizing Universal "Man": The legacy of transcendentalism and teleology in Habermas's Discourse Ethics", *The Review of Politics*, vol.60, no.4, (Notre Dame Fal, 1998), pp688-718
- ¹⁴ Seyla Benhabib, *Situating the Self*, pp68-76
- ¹⁵ *ibid.*, pp69-76

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