

7 | What does cultural difference require of human rights?

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Introduction

The contemporary right to freedom of thought together with all its further declinations into freedom of speech, religion, conscience and expression, had one of its earliest historical recognitions at the end of the Wars of Religion with the Edict of Nantes (1598). In several respects one can say that the right to freedom of thought is virtually “co-original” with the end of the Wars of Religion. Following this thought further, one might think that human rights define the boundaries of our social coexistence and are inextricably connected to the “fact” of cultural pluralism.

By pursuing a critical-genealogical approach, I will first investigate the historical context within which the concept of human rights originated and then proceed to clarify the normative political significance of the notion of cultural diversity and pluralism. Pluralism is essential to the structure of the problem of justice within modern democracies. For example, it leads John Rawls in *Political Liberalism* (1993) to argue for a conception of political stability constructed on the basis of an overlapping consensus among “reasonable comprehensive doctrines.” Drawing on this Rawlsian line of thought, I will attempt to clarify the notion of overlapping consensus, asking whether it can be taken as an *empirical fact* or as a *fact of political reason* and whether it is sufficient to political stability and what all this means for human rights and cultural pluralism.

Before I start let me explain how I define the critical-genealogical approach I have just referred to. In recent work, Honneth (2009, 43–53) clarifies the proper role of genealogical investigation within Critical Theory. He distinguishes between three distinct ideal types of enquiry:

1. “constructive” (Rawls);
2. “reconstructive” (Walzer); and
3. “genealogical” (Nietzsche, Foucault).

The first establishes a connection between social rationality and the validity of moral principles. The second interprets social reality to show the normative ideals that in fact regulate it. Finally, genealogical analysis asks

whether such normative (moral) ideals have been distorted in the process of their empirical realization.

According to Honneth, Critical Theory requires the unification of all these three models into a single paradigm since none of them, individually, suffices to provide an exhaustive account of the significance of “social criticism.” For instance, to pursue only the second reconstructive method is to take for granted the normative validity of the reconstructed principles. And to pursue only the first constructivist method is to take inadequate attention of the facts of the existing social world. I understand the interconnection among these three approaches at the metacritical/constructivist level which Honneth leaves unspecified to originate from the conditions of action-coordination exhibited by speech-acts. Speech-acts “disclose” a possible world or value configuration and then “claim” for it truth or moral validity on the basis of the specific function played by the speech-acts’ propositional content.¹ The critical-genealogical approach I take here proceeds from this understanding.

I will first explain how, within a truly democratic context, human rights define “cultural pluralism,” distinguishing it from cultural difference. Then I will explain how human rights push certain commitments into a private sphere while at the same time marking the boundary between public and private spheres. Through this double movement, human rights, on the one hand, disable certain cultural views from their inherent tendency to conflict in the public sphere as comprehensive and exclusive explanations of the good life while, on the other hand, enabling a plurality of cultural perspectives to interact in the public sphere. From the recognition of such function-duplicity it follows that human rights are ill-conceived as establishing only a private sphere of liberty, a view some liberals seem to hold, or as an objectionable limit or constraint on the good of the community, a view some communitarians seem to hold.

Our Western constitutional history, the historical root of the legal specification and embodiment of our political and civic liberties, is deeply bound up with bloody historical struggles by religious movements to achieve public recognition. The process has not been smooth and linear. There have been forward-and-backward movements as both the public and private spheres have opened to a plurality of doctrines. From a genealogical

¹ Here I draw on the dimension of discourse exemplarity. Speech acts disclose exemplarily a possible world or value configuration. The idea of exemplarity used here bears important connections with the recently revived theory of the “signatura” (Agamben 2008, 35ff.) since it mediates between the semiotic and the semantic domain.

perspective the progressive affirmation of the right to freedom of thought and conscience has generated a normative recognition of cultural pluralism. The mere historical fact of pluralism has been given normative significance. The tendency, notwithstanding various limited concessions, has challenged the cardinal principle of state monism based on “one faith, one law, one king” (*un roi, une loi, une foi*) or the principle of “*cuius regio, eius religio*” of the Peace of Augsburg in 1555 then reaffirmed in 1648 with the Peace of Westphalia. Indeed, since Catherine de’ Medici’s promulgation of the so-called “Edict of Toleration” in 1562, Protestantism (Huguenot) was recognized as an allowed practice, even if restricted only to the private sphere or outside towns, and finally, with the Edict of Nantes of 1598, Huguenots were extended the liberty of worship. Also, with the Treaty of Osnabruck, one of the treaty-components of the Peace of Westphalia, a clear distinction was drawn between public and private religious worships (*exercitium publicum* and *exercitium privatum*, respectively), granting toleration for minority faiths only within a non-public space, either domestic or non-civic.

This halfway progression was followed by the English and American “billing phase” of the seventeenth and the eighteenth century and culminated in the American and French “declaratory phase” of the eighteenth century.² This latter period distinguished itself for having established a strict connection between religious liberties and constitutional principles, a combination lying at the root of our contemporary constitutional democratic models. This development frees public discourse over religious liberty from arguments that presuppose, even if they don’t make direct reference to, particular religious doctrines. This is the genealogy of the freestanding character of political liberalism emphasized by Rawls as part of the progress of our liberal/democratic constitutional history.

And yet, notwithstanding this historical development, one can now detect a clear functional shift in human rights away from the respect of cultural liberties pursued in the name of equal liberty of thought and conscience and toward the recognition of equal liberty to communication as a principle of political inclusion and self-determination. I argue that this is both an adaptive and progressive manifestation of the never fully satisfied human impulse to actualize social-coordination through linguistic action.

² For an alternative reading emphasizing the Reformist’s basis of the American and French declarations (as well as of the German *Staatsrechtslehre*) see Jellinek (1901 [1895]).

Pluralism

Let me now try to clarify the notion of pluralism from an analytical perspective. Given the historical and conceptual reconstructions reviewed above, what sense can we make of the distinction between cultural difference and relativism, on one side, and simple and reasonable pluralism, on the other? First of all, when one appeals to cultural difference and relativism as such it seems as if no commitment can be made to moral adjudication. To hold that there is cultural variety means simply to be committed to the idea that cultures, as normatively structured practices, *are* descriptively different. If, for example, I see that two cultures orient spatial objects in different ways, then I can appeal to the fact that there is a multiplicity of spatial categories organizing objects in different ways.

Of course, many cultural practices involve moral elements. Consider, for example, two cultures with different practices regarding child labor. The thought here is that there just are different social and normative categories for organizing practices involving work and children in different ways. But how would one identify the difference? From what perspective? On the one hand, to see an intelligible and articulable difference is to be able to see both cultural practices from a point of view that reaches each. On the other hand, to identify a practice at all, or two different forms of a practice, the point of view cannot be simply or purely neutral or descriptive. Practices are always empirically under-determined (Moody-Adams 2001, 93–106). So, descriptive cultural relativism faces a conceptual impasse. For any instance in which it's said to be true, we must, at least at the cognitive level, reject the thesis of empirical under-determination for the relevant practice. That's problematic. On the other hand, if we embrace the idea of empirical under-determination, then it seems that there is no possibility of identify and articulating intelligibly the alleged difference (without invoking a normative perspective that ranges over the difference). In order to find a way out from this deadlock, what should be considered is a form of partial (in-)commensurability at the cognitive level that would admit differences without preventing understandability (Davidson 1984). The relevance of a partial form of (in-)commensurability would be considerable also as a way out from an impasse at the practical level, namely, in those attempts aimed at reconstructing an observed system of beliefs.

Assuming we have, by hypothesis, excluded descriptive relativism, we must consider normative and metaethical relativisms. Normative relativism is the view that moral and epistemic truths are always relative to some

x (system of belief, etc.) which will determine also *how* (a relative) truth is to be conceived. So the very idea of truth is relative. Metaethical relativism would assume either that there is no truth at all (absolute metaethical relativism) or that only under ideal conditions is there the possibility of establishing parameters for the determination of truth – moral or cognitive. What is a possible response to these further relativist arguments? Here I can only limit myself to some cursory observations and notice how absolute forms of relativism at either the normative or metaethical level are self-contradictory. This certainly does not rule out a further variety of relativist approaches which have appealed, for instance, to internal expressivism (Harman 1982, 1996). Still, these approaches do not escape the problem of conflating what is *morally approvable* from an internal point of view with what is *morally required* according to a standard of morality.

Were normative or metaethical relativism true, in either their cognitive or moral version or both, there would be no possibility of intelligibly deliberating over and adjudicating social controversies through public procedures and within a system of mutual cooperation. Without some standards of truth or validity, moral argument arising out of cultural difference is reduced to dogmatic assertion or the assertion of power or privilege, leaving no toe-hold for human rights.

Once these different forms of relativism are proved to be inadequate candidates for explaining the relation between cultural difference and human rights, it is tempting to think attractive some sort of “monistic universalism” or even (mainly liberal) form of “pseudo-pluralism” according to which there is some abstract universal criterion by which truth or validity in moral argument might be assessed. But I do not think these paradigms advance a convincing thesis. A pure form of abstract universalism would be incapable of providing a convincing explanation for the legitimacy of different cultural claims. Or worse, it would ignore cultural difference as a relevant source of moral normativity. So abstract universalism is unattractive.

But rejecting abstract universalism does not mean rejecting the notion of “truth” or “validity” for the public domain. Indeed, as I have demonstrated on a different occasion, the defense of a cognitivist position for the practical domain does not require the endorsement of a rigid form of universalism, abstract or otherwise. It can accommodate, on the contrary, the defense of a certain pluralistic variation within a universalist picture (Corradetti 2009). A crucial role is played by the definition of the *extent* and the *degree of pluralism* that a specific form of universalism is capable of incorporating.

Let me recapitulate the stage achieved so far. What has been said is that the idea of absolute incommensurability among cognitive systems proves

to be untenable since, were one to face two totally incommensurable systems, it would be impossible even to recognize that a difference exists. Additionally, I have insisted on the idea according to which even practical systems of moral beliefs, were they proved to be totally incommensurable, would result in not being comparable at all. I concluded, thus, that within mutual terms of comparison, either a system of beliefs fulfills a standard of morality or it does not. If it does, it is not simply valid, but it shows also a specific instantiation of a validity criterion. The relation I have in mind here is similar to the one suggested by structuralist phonology in the *token-type* model. When transferred to social domains this means that disagreement among different views of the world does imply the fulfillment of some background principles and particularly of the “principle of equal communicative liberty.” Such a principle underwrites cooperative social systems by introducing the requirement of critical comparability within a *pluralist view*. Pluralist universalism is the unavoidable prerequisite for the construction of a system of mutual cooperation whose stability is entrusted by public standards of reason.

Let’s begin the formulation of the notion of pluralist universalism by briefly introducing Rawls’ concept of the fact of pluralism. A first question to be answered concerns whether the fact of pluralism is to be intended merely as a historical fact or as a normative statement.³ Rawls invoked the idea of the fact of pluralism to make the case for an overlapping consensus, showing how different comprehensive doctrines are “reasonable” on the basis of their *de facto* convergence on a set of normatively freestanding or independent principles. Because these principles require openness toward other doctrines or cultural forms the overlapping consensus is consensus over a pluralist stance toward cultural or doctrinal difference. But this fact of consensus does not yet provide support for pluralism itself except in a very circular way, to be a reasonable doctrine *is* to be pluralist and pluralism *entails* reasonableness. Is there a way to avoid this circularity?

We need to look at the fact of pluralism as more than a mere “fact” of “pluralism.” To do so, I suggest we use a “critical-genealogical” method of analysis and address both the normative and the historical-empirical side of the notion. What I mean is that the fact of pluralism is a fact of institutional and political reason, that is, a fact strictly embedded into a normative design. As I have already introduced, there are precise historical

³ Indeed, it is widely known how such alternatives have been at the center of one of the main objections made by Habermas to Rawls along the well-known “family quarrel.” See the exchange between Habermas (1995) and Rawls (1995).

steps which can be detected at the root of a pluralist institutional picture. The perspective provided by the critical-genealogical approach suggested here consists in overcoming the strict opposition between the factual and the normative through a specific consideration of the kind of rationality embedded in institutional configurations. To maintain this perspective is to recognize that institutional facts, even if subject to criticism according to different standards and degrees of rationality, are never *merely contingent*, nor are they deprived of any normative content. In order to clarify this point let's reconsider Rawls' notion of the fact of pluralism on the basis of the distinction between two types of facts such as: "it rains today" and "all men are mortal" (White 2002, 475ff.). If the notion of the fact of pluralism were on par with "it rains today," then the discussion would be restricted only to pure contingency; on the contrary, were one to consider the fact of pluralism on par with the sentence "all men are mortal," one would be emphasizing that *necessarily* pluralism is a fact.

But what kind of necessity is shown by this latter statement? One cannot claim that the sort of necessity characterizing pluralism is the same as the one connoting "all men are mortal." As a matter of fact, in the latter case one refers to the physical and maybe metaphysical components of being human, whereas in the former the reference is made to the normative political necessity of pluralism within modern societies. The difference with traditional approaches to the normative, therefore, is that the critical-genealogical account attempts to ground normativity within a counterfactual view of historical occurrences. What is necessary is the normative political fulfillment of counterfactually established principles, whereas the same empirical institutional occurrence remains open to mere contingency. Let's reconsider for a moment the case of the emergence of pluralism within the public sphere. While the arising of pluralism is normatively attached to the counterfactual understanding of a non-exclusivist truth-role that can be assigned to any single doctrine, the empirical regulation of the interaction among different (comprehensive) doctrines remains a matter of historical (fortunate) contingency. The critical-genealogical method proposed here recognizes precisely this same (contingent) sequence of historical and institutional facts that have led to the end of the Wars of Religion and progressively contributed to the introduction of pluralism within the public arena.

I believe this is also how Rawls' notion of the fact of pluralism in §6 of *Political Liberalism* (1993) should be interpreted. Rawls argues that reasonable pluralism is to be taken as a necessary property of a society that aims to be truly democratic. Now, if his claim is that the variety of reasonable comprehensive doctrines is not a pure historical contingency but

a necessity, then it's not clear how to distinguish pluralism *tout court* from reasonable pluralism. Let's recall the previously introduced logical requirement of moving from relativism to the idea of pluralist universalism in a context of mutual cooperation. The form of pluralism I sketched there is based – to a certain extent – upon an analogy between Davidson's view on partial (in-)commensurability within the epistemic domain and a similar notion extended into the practical domain (pluralism *tout court*). And within this context I applied the idea of the “token-type relation” to characterize the relation between contingent instances and universal principle(s). This means that not only it is always possible to understand what a system of beliefs signifies, but that it is also possible at least to try to understand such system as made up of different transcriptions of a shared principle (even if this, in fact, might turn out not to be the case). Now, within social systems of cooperation, a plurality of doctrines and cultural traditions can cooperate peacefully without being committed to a full system of justice as fairness, without being “reasonable” in Rawls' sense of being committed to fair terms of cooperation on the basis of a general condition of reciprocity. Rawlsian fair terms of cooperation might imply the overlapping of different doctrines on universal principles. But the reverse does not hold. That is, a plurality of doctrines and cultural traditions might cooperate subject to universal principles that do not come to Rawlsian fair terms of cooperation. Accordingly, in the next section, I will discuss the advantages of the kind of social cooperation derivable from the notion of pluralist universalism and explain why this approach leads to a much more inclusive theory than Rawls'. I will do so by showing how social cooperation is dependent upon the fulfillment of a condition of communicative coordination which paves the ground to the principle of equal liberty of communicative participation as a jus-generative principle for contemporary constitutional rights.

Pluralist universalism

Let's begin with the following question: can there be social coordination without communication? It might be answered that there are cases of animal species like bees which, strictly speaking, while not mastering a language but only a code, do show a high degree of social organization. But is this a form of intentional communication? That seems unlikely. Again, can one claim that the opposite is true? Namely that there is evidence of social organization without a language? Let's clarify this point by referring to Wittgenstein's example of a primitive form of language expressed under the command

“Slab!” What Wittgenstein wanted to show through such a language-game was that “Slab!” as an elliptical form for “Bring me a slab!” runs counter to the view of language as a mean for communicating thoughts (Wittgenstein 2009 [1953], §19). This point was also implicit in the well-known Fregean distinction between a sentence’s *sense* (what a sentence communicates) and its *way* of expression (how it communicates). Since no clear separation can be drawn between these two aspects, it follows that language is not an instrument for communicating already structured thoughts. Thought and language are two co-dependent aspects of the same domain and communication does not amount to transferring one’s thoughts into others’ minds. If thought and language cannot be separated, then *no intentional social coordination can be admitted outside a communicative paradigm*.

Now, there is yet another horn of the dilemma that is particularly instructive for our case and this is the relation of language to reality. In his *Philosophical Investigations* (2009 [1953]), Wittgenstein claims not only that thinking is ineradicably discursive but also that language is not a mirror of reality. This implies that it is not at all true that there are predefined objects shaping our mind/language faculty as the Augustinian ostensive definition pretends to show (Wittgenstein 2009 [1953], §1); nor, *mutatis mutandis*, that it is possible to consider “private language” as a real hypothesis (Wittgenstein 2009 [1953], §261ff.). Let’s develop this point further and show the possible interconnection between language and social praxis. The point I want to defend consists in demonstrating how Wittgenstein’s idea of language embeds an analogy between the self-articulation of thoughts and the self-articulation of social arrangements within discourse practice. Which social functions can be mentioned for this view? One might think, for instance, of the performative or the critical functions in cases where it was crucial to emphasize either the institutional/constructive capacity of language or its emancipatory function; but, one might also highlight language’s power-relation reiterative function, in cases where language is used support an existing status quo. So, whatever the stance taken toward social coordination, there can be no social coordination without linguistic communication. Social reality is organized on the same presupposition of a pragmatic use of language. It follows, from an evaluative perspective, that the social constructive function of language must be supplemented by the formulation of discourse moral/political validity. This point is what I introduce next by integrating Habermas’ account of speech-acts theory with an extra layer of (exemplar-)validity claims.

Drawing from Searle’s speech-acts theory (1969), Habermas makes the case of a professor asking one of his seminar students to bring a glass of

water. Such a request can be criticized according to three validity-claims such as its truth-validity (there is no water tap nearby), its truthfulness (the professor's request aims at perlocutory effects by ridiculing his student) or, finally, according to its normative correctness (the professor is not entitled to treat his students as servants). Here Habermas reduces normativity to a "given normative context" (Habermas 2003 [1981], 140ff.). But if normativity were reducible merely to contexts then one would be unable to distinguish between a normatively correct behavior and a socially convergent practice, making it necessary to provide, first, an argument for the universal unavoidability of the pragmatic language presuppositions and rejoin only at a later stage such standards with contextual variation.

The argument I propose in this regard makes reference to the unavoidable presuppositions of speech-act theory and it treats respect for human rights as an unavoidable formal precondition necessary to the achievement of a normatively valid form of action-coordination (Corradetti 2009, 109ff.). More specifically, I consider how illocutive speech-acts aimed at reaching understanding raise two interconnected forms of normative validity: a commitment to the formal conditions of human rights and a commitment to an *exemplar* form of normative validity. The latter is a mediation of both formal universal validity and the appropriateness of contextually embedded practices. This double standard of normative validity lies at the core of my idea of "pluralist universalism." Action coordination through linguistic practice, indeed, commits subjects to the fulfillment of pragmatic presuppositions including the formal categories of human rights and cooperation organized around the most extensive system of liberties. Illocutive speech-acts, while showing a commitment to the most extensive system of liberty-rights, advance a *propositional* content specifying *how* such fulfillment is to be indexically realized. The indexical anticipation of a form of mutual coordination is what I see as a form of "exemplar universality." The proposal of a specific form of coordination-strategy (a specific form of exemplar universality), once criticized, can give place to a *dialectic* among communicative agents. In view of such dialectical dynamics of "identity of identity and difference," a reformulated notion of speech-act theory is capable of providing a normative account of what it means for a political community to realize action-coordination through the fulfillment of human rights presuppositions.

What remains to be explained is how reformulating the model of communicative action in accordance to a genealogical perspective leads to generation of constitutional rights from the principle of communicative action. As a matter of fact, under a historical perspective, "the principle of equal

liberty of communication” represents the pragmatic presupposition for constitutional self-determination, so that the previously recognized right to profess one’s own beliefs in private gets reconsidered as the most extensive liberty to political inclusion.⁴ This “radial” interconnection justifies a *holistic* structure of human rights protection, that is to say, the enjoyment of a set of fundamental liberties within a constitutional process.

Our problem was to explain what pluralism requires from human rights once the weaker descriptive notion of cultural difference or relativism is proved to be conceptually inadequate. What I have argued is that pluralism is best understood in terms of the validity-claims of speech-act theory. This means that only when action-coordination depends on the fulfillment of the principle of communicative liberty it is possible to speak properly of “pluralist universalism.” I also clarified how the Habermasian paradigm of communicative reason not only leads to the principle of communicative liberty but also when translated into constitutional configurations it takes the form of the right to freedom of thought, conscience, speech. These constitutionalized communicative liberties, nevertheless, acquire political significance only when seen as preconditions for public participation in the political arena, that is, only as political rights to socio-political self-determination.

What consequences does this view bear for a theory of justice? I defend a form of public reasoning not only at the root of the constitutional founding process but orienting also the interpretation of the “public sensitivity” – the Kantian *sensus communis* as I take it – by Constitutional or Supreme Courts. Additionally, according to the critical-genealogical reconstruction proposed here, the principle of equal communicative liberty introduces from the beginning certain normative checks into public reasoning. When seen in relation to the public sphere, the principle of equal liberty of communication provides a normative standard for evaluating the validity of public discourses which can be formulated in the following way:

only those discourses, arguments, communicative interplays that do not contradict performatively the equal share of communicative liberty constitute valid reasoning.

⁴ The principle of equal liberty of communication has important overlapping aspects with the right to justification recently defended by Forst (2010). Nevertheless, my defended principle is more inclusive since its fulfillment relies on a higher variety of speech-acts than Forst’s critical justifications. Notwithstanding such differences, both models maintain a functional similarity differently from Rawls (1999) or Griffin (2008). What these models primarily contribute to is the construction of favorable conditions for people’s inclusion into public political life.

This formula suggests an alternative strategy to a supposedly neutral model of public reasoning by favoring a strategy of normative convergence. Normative convergence is normative because discourses are bound to the principle of communication and convergence is possible only if an argument that is exemplarily valid “for us” is provided. Normative convergence represents therefore the result of a common enterprise that constructs a self-interpretative narrative for our political community. One of the advantages of this model for the public sphere over Rawls’ is that it does not characterize principles of justice, as Rawls does, as “not affected in any way by the particular comprehensive doctrines that may exist in society” (Rawls 1993, 141). On the contrary, on my view, the principles of justice, constructed out of public confrontation in a context faithful to human rights, are affected by the particular doctrines that may exist in society. In the normative-convergence model I suggest, discourse inclusivity is accompanied by a process of *normative bootstrap* on the basis of deliberative-dialectical interplay. Agents are obliged to comply with a duty of public acceptability rooted in the principle of equal liberty of communication. In their public communications they must respect of equality of treatment, inclusivity, non-coercion, the reciprocal exchange of views, and so on. These constraints exclude performatively contradictory arguments; that is their normative significance.

Conclusion

In conclusion, let me recapitulate the main arguments I have defended and add some final remarks about what pluralism requires of human rights. First, I have claimed that on the basis of a genealogical reconstruction one can detect in the Wars of Religion the historical roots of the political principle of equal liberty in communication. Also I have claimed that differently from its initial formulation based on the recognition of equality of men’s faith and conscience, the contemporary constitutional right to freedom of thought and speech points to the recognition of political inclusivity and self-determination. Accordingly, I have reinterpreted the Habermasian model of communicative action along critical-genealogical lines and reconstructed the principle of equal liberty of communication as a constraint for normative convergence in the public realm. Such a model presents two advantages over Rawls’ idea of the overlapping consensus: it is both more inclusive and uncontroversial. It is more inclusive since it does not define and limit reasonable comprehensive doctrines as those doctrines that accept

an independently justified liberal theory of justice. So my model admits a wider range of diversity under the heading of pluralism. At the same time, my model is less controversial. It does not seek first a freestanding philosophical justification of principles of justice which are then merely shown to be legitimate or stable by reference to the idea of an overlapping consensus. Instead, by relying on the principle of communication my model generates (and fulfills) unavoidable constraints of performative (non-)contradiction which then underwrite normative convergence through rational deliberation within the socially rooted domain of the political public sphere. As a consequence, it considers public reason as grounded primarily within a maximally inclusive social sphere.

But even if maximally inclusive, the principle of equal liberty of communication excludes also a great deal of comprehensive arguments. While religious comprehensive doctrines could represent only one of the many epistemic sources for public discussion, they can neither exhaust the multiplicity of available sources at the public level nor avoid what Habermas has defined as the onus of “translation” of religious languages into a “generally accessible language” (in Mendieta and Vanantwerpen 2011, 25). An objection that could be moved to this latter point is that the onus of translation would frustrate the range of communication available at the public institutional level. To this it can be easily replied that the requirement of translatability does not necessarily exclude ritual and symbolic formulas making reference, for instance, to God as a way to enrich the elaboration of performative procedures. What cannot be admitted, instead, is that such formulas provide a normative justification for discourses aiming at being publicly defensible.

Let's consider the case of the veil for Muslim women. What would the suggested model have to say? While it cannot anticipate an outcome that depends on a public procedure of assessment, the view of public reasoning described here would nevertheless consider *only* those arguments that defend the veil as a publicly relevant expression of communicative freedom. The precise content of such arguments cannot be anticipated by the legislator since this would depend upon exemplarily contingent outcomes of a public deliberating body.

In conclusion, the answer to which human rights are necessitated by cultural difference is, first, that cultural difference is to be understood in terms of pluralism and, second, that pluralism is to be understood in the light of political inclusivity. This is precisely what I have referred to by reconstructing genealogically the normative significance of the principle of equal liberty of communication.

References

- Agamben, Giorgio. 2008. "Teoria delle segnature." In *De Signatura Rerum. Sul metodo*. Turin: Bollati Boringhieri, pp. 35–81.
- Corradetti, Claudio. 2009. *Relativism and Human Rights: A Theory of Pluralistic Universalism*. Dordrecht: Springer.
- Davidson, Donald. 1984. "On the Very Idea of a Conceptual Scheme." In *Inquiries into Truth and Interpretation*. Oxford: Clarendon Press, pp. 183–198.
- Forst, Rainer. 2010. "The Justification of Human Rights and the Basic Right to Justification: A Reflexive Approach." *Ethics* 120:4, 711–740.
- Griffin, James. 2008. *On Human Rights*. Oxford University Press.
- Habermas, Jürgen. 1995. "Reconciliation Through the Public Use of Reason: Remarks on John Rawls's Political Liberalism." *The Journal of Philosophy* 92:3, 109–131.
- 2003 [1981]. "Social Action, Purposive Activity, and Communication." In Maeve Cooke, ed., *On the Pragmatics of Communication*. Cambridge: Polity Press, pp. 105–182.
- Harman, Gilbert. 1982. "Moral Relativism Defended." In Jack W. Meiland and Michael Krausz, eds., *Relativism: Cognitive and Moral*. University of Notre Dame Press, pp. 189–204.
1996. "Moral Relativism." In Gilbert Harman and Judith J. Thomson, eds., *Moral Relativism and Moral Objectivity*. Oxford: Blackwell, pp. 1–64.
- Honneth, Axel. 2009. "Reconstructive Social Criticism with a Genealogical Proviso: On the Idea of 'Critique' in the Frankfurt School." In *Pathologies of Reason*. New York: Columbia University Press, pp. 43–53.
- Jellinek, Georg. 1901 [1895]. *The Declaration of the Rights of Man and the Citizen*. New York: Henry Holt.
- Mendieta, Eduardo and Vanantwerpen, Jonathan, eds. 2011. *The Power of Religion in the Public Sphere*. New York: Columbia University Press.
- Moody-Adams, Michele M. 2001. "The Empirical Underdetermination of Descriptive Cultural Relativism." In Paul K. Moser and Thomas L. Carson, eds., *Moral Relativism: A Reader*. New York: Oxford University Press, pp. 93–106.
- Rawls, John. 1993. *Political Liberalism*. New York: Columbia University Press.
1995. "Political Liberalism: Reply to Habermas." *Journal of Philosophy* 92:3, 132–180.
1999. *The Law of Peoples*. Cambridge, MA: Harvard University Press.
- Searle, John. 1969. *Speech Acts: An Essay in the Philosophy of Language*. Cambridge University Press.
- White, Steven, K. 2002. "Pluralism, Platitudes, and Paradoxes: Fifty Years of Western Political Thought." *Political Theory* 30, 472–481.
- Wittgenstein, Ludwig 2009 [1953]. *Philosophical Investigations*, edited and translated by Peter M.S. Hacker and Joachim Schulte. Oxford: Wiley-Blackwell.

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