

Toward a Deliberative and Democratic Response to Multicultural Politics: Post-Rawlsian Reflections on Benhabib's *The Claims of Culture*

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Seyla Benhabib's *The Claims of Culture* seeks the appropriate response in democratic theory to demands for differential legal or political treatment made in the name of cultural difference.¹ The reconciliation of culturally based claims to exceptional treatment and democratic norms of equality, reciprocity, and discursive justification constitutes the work's central dialectic. On the one hand, Benhabib develops a philosophically, anthropologically, and sociologically informed conception of culture and its relation to identity. This social constructivist conception of culture as the product of ongoing contestation, overlap, and narration is employed to diagnose the uses and abuses of the concept of culture in contemporary political philosophy, especially to criticize overly homogenous, static, and neatly bounded accounts of cultural identity. On the other, Benhabib continues to refine the account of deliberative democracy developed in earlier works, first by proposing a set of intermediary principles to govern the legitimate consideration and accommodation of cultural claims, and second by seeking to vindicate the universal validity of democratic deliberation as a medium for the legitimate resolution of conflicts in cultural politics. The result is a deepened understanding of culture and a developed defense of democratic deliberation.

Anyone familiar with Benhabib's extensive body of prior work will not be surprised to find that her sustained examination of the relation between the claims of culture and the norms of discursive democracy casts a new and powerful light on both of its main topics. Benhabib shows quite convincingly that we need not regard as the only viable positions the polar ends of the continuum of views in contemporary political philosophy on the question how to relate cultural particularity and democratic equality. This continuum stretches from strongly universal conceptions that interpret equality as requiring similar or identical treatment for all to strongly pluralistic conceptions that see equity and recognition as requiring a pluralization of law and policies. Instead of facing this stark choice, Benhabib argues for the possibility, at both the normative and the institutional level, of a politics that protects the equal standing of each person as an individual citizen in a democratic society while also attending to the claims that follow from membership in particular groups.

Yet Benhabib does not offer a simple syncretism or happy medium. Universal and egalitarian presuppositions and principles of the discourse theory of democracy

she has long been committed to are refined but not fundamentally revised, while the cultural basis for and policy implications of group-differentiated rights and policies are thoroughly scrutinized, though not rejected outright. She duly notes that struggles for recognition conducted on behalf of particular identities within civil society, when successful, often result not only in a renegotiation of inter-group relations and understandings of broadly based categories of social identity, but also in an expansion of the liberal-democratic political agenda and a more inclusive conception of the equal rights of all as free moral persons. But she also cautions, in effect, that there is a tradeoff between directing the political energy behind struggles for recognition into efforts to win particular protections or exceptions for specific groups, on the one hand, and efforts to transform generally applicable political ideas and categories, rights, and policies, on the other.

Benhabib councils against a premature abandonment of struggles for recognition as struggles to transform the general terms of political discourse, and warns that recent multicultural efforts may tend in this direction. Groups and individuals who find their essential political interests as equal citizens and concrete individuals poorly expressed and protected by present political institutions and practices face a choice between attempting to transform those institutions and practices in general or instead seeking to pluralize the forms of politics and law present in a society. We may all be the poorer if too many of those efforts are initially and exclusively directed at pluralization. But if the politics of cultural recognition is to be a vehicle for the pursuit of democratic equality, its partisans must be met partway by the institutions and practices of liberal democracy: the pursuit of democratic equality requires creating opportunities for and giving a fair and open hearing to claims of cultural bias and exclusion, and, when valid, finding appropriate remedies.

Put differently, Benhabib aims to construct a critical account of a democratic politics of culture. Writing from the perspective of democratic theory, Benhabib is critical of many claims to differential treatment, particularly when these rely on implausibly homogenous and static conceptions of cultural groups and the identities of their members, and especially when the measures in question potentially disadvantage women, children, or other vulnerable persons. Thus, in evaluating multicultural politics from a democratic perspective, it is necessary to differentiate those claims made on behalf of culture that pass a test of democratic legitimacy from those that do not. Legitimacy depends both on the claims taking the form of general reasons and on the compatibility of the proposed measures with substantive norms of democratic equality. This response to cultural politics in turn presupposes that discursive democracy can make the appropriate discriminations; that it can treat fairly and sensitively the claims of culture, including those demanding exemption from generally applicable and democratically adapted laws and policies, and open itself from within to an understanding of its own exclusions, while at the same time maintaining fidelity to the core democratic commitments of equality, reciprocity, and deliberative justification. That is to say, a discursive-democratic

response to cultural politics leads necessarily to the claim that democratic deliberation itself rises to the threshold of intercultural validity.

I find myself in basic agreement with Benhabib's main substantive conclusions, that deliberative democrats should take a critical but not dismissive stance toward cultural claims to differential treatment, and that in claiming for democracy the competency to adjudicate the legitimacy of cultural claims intercultural validity is also necessarily claimed on its behalf. But I disagree in important respects with the way she structures and defends these claims. In what follows I will take for granted the areas of substantive agreement and concentrate instead on what I take to be the shortcomings in Benhabib's grounding of her main conclusions. In particular I scrutinize two main ideas: that to critically assess the legitimacy of culturally based claims to differential treatment democracy requires a general, critical theory of culture; and that the best way to account for the intercultural validity of deliberative democracy is to ground it in a comprehensive philosophy of discourse and communicative action. I characterize the vantage from which I undertake my critique as post-Rawlsian in the following sense. I attempt to extract the core requirement of reasonable acceptability from Rawls's account of public reason, which is inextricably bound up with his account of political liberalism. I build from the conclusion that the project of political liberalism as a whole fails to demonstrate that a family of political values and liberal principles of justice can be reasonably accepted by all free and equal persons and so can constitute a shared basis for public justification in a deeply diverse democracy.² If, however, the idea that reasonable acceptability is the basis of democratic legitimacy has independent merit, then we must work to separate this idea from the framework in which it is originally articulated.³ I scrutinize both Benhabib's constructivist model of culture and her discourse theory of democracy to determine the degree to which they can withstand the test of mutual acceptability in diverse democracies.

I

The first three chapters of *The Claims of Culture* contain a sustained critical examination of the relationship between different conceptions of culture and the substantive conclusions in normative political theory they are used to support. Benhabib develops a social constructivist conception of culture and uses it to criticize multiculturalist theorists, especially Charles Taylor and Will Kymlicka, for relying on anthropologically naïve and normatively suspect conceptions of culture. At the same time, this critique seems to imply a central positive proposition, namely, that to evaluate the normative standing of culturally based claims to differential treatment, democratic theory requires both a critique of the abuses of cultural arguments and a general conception of culture with which to ground this critique and evaluation. In this section I explore the question of whether a certain distance doesn't open between the critique of culture, on the one hand, and the need for a democratic theory of culture, on the other. While Benhabib's critique

of homogenous, static, and cleanly-bounded conceptions of cultural difference is persuasive, the standing of this critique of culture within her overall theory of discursive democracy is less clear and compelling. I maintain that the standards that govern theory-construction in democratic and critical theory are not identical, and that the positive conception of culture Benhabib develops serves her well as an instrument of critique but not as a premise in her defense of democracy.

Put differently, I aim to clarify the weight that the constructivist conception of culture can carry within Benhabib's argument. I suggest that at points she seems inclined to overburden it, but that this is not necessary to accomplish her main aim, namely the undermining of culturally based arguments for mosaic multiculturalism. To accomplish this end, it is not necessary to decisively refute more holistic conceptions of culture, only to show them to be reasonably controversial and so not a sound basis for decisive arguments in democratic public reason. Benhabib's argument is best understood as succeeding in this second task, but in a double-edged fashion – it reveals not only that holistic but also that all conceptions of culture with sufficient normative content to play an important role in democratic deliberation or theory are reasonably controversial. This does not directly imperil Benhabib's main substantive conclusions, but it does show that democratic theory must treat the character of cultures themselves and the claims they can reasonably ground as a subjects to be debated and decided within broad-ranging democratic deliberation, and not as issues that can be determined once and for all within a work of political philosophy.

Benhabib's account of culture is rich in both the resources it integrates and the insights it generates. It draws on a historical genealogy of the term, a detailed engagement with contemporary social and cultural anthropology, and Benhabib's long-standing scholarship on both Habermas and Arendt, integrating original accounts of the former's concern with communication with the latter's concerns with narration and action. Anyone working in political theory on issues relating to culture will benefit from a detailed study of this penetrating account. To clarify its structure and central claims, I divide Benhabib's model of culture into the following six propositions:⁴

1. Culture is narratively constituted. Cultures are carried by the narrative accomplishments of those who use their resources to make sense and meaning out of their lives and worlds. As cultural beings, we inhabit and experience the traditions, stories, rituals, practices, and other aspects that make up cultures by taking up and re-telling shared but contested and contestable narrative accounts. In so doing, we sustain, reproduce, and renew cultures (5).⁵
2. Cultures are communities of conversation. 'Culture' refers to a historically and socially specific constellation of traditions, knowledge, ways of being in the world, rituals, and the like, carried in the beliefs and actions of specific persons. This account leads to a non-essentialist conception of the affiliative bases of cultural communities according to which a culture includes all

- of those who share enough of the beliefs that constitute the culture to be able to communicate about its contents in the process of employing its resources (33, 41).
3. Culture is also power-laden. Specific cultural ideas, practices, and the like always reflect not only the narrative accomplishments of its carriers but also power differentials and struggles that determine or condition who can speak authoritatively when and where, as well as which narratives achieve relative dominance. Thus, the actual contents of any particular culture reflect a mutual imbrication of power with narrative accomplishment: since inequalities in power structure the means of narration and communication through which culture is constructed, contested, and transformed, culture reflects the sedimentation of previous and current power differentials and struggles (60).
 4. Intra-cultural heterogeneity, dynamism, and contestation are inherent to culture as such. Benhabib describes cultures variously as multilayered, decentered, fractured, polyvocal, impure, historical, and contingent systems of action and signification: "The lived universe of cultures always appears in the plural" (41; see also 26). Cultures emerge from diverse narrative accomplishments of their members; the webs of interlocution that constitute culture are internally diverse and cultures as a whole tend to be "riven with internal contestation." Similarly, since "Cultural evaluations can be transmitted across generations only by creative and lively engagement and resignification," cultures tend to be constantly transforming in countless small and often in cumulatively large ways (103, 137).
 5. Movement of contents and persons across and between cultures is a constant, and so cultures tend to be porous and hybrid. Cultural boundaries and demarcations are imagined, contested, fragile, shifting, and easily crossed. Since cultures are conceived as conversational communities, the question of who does and does not belong is equivalent to the question of who can participate in the cultural conversation, and the answer to this question shifts according to the topic of discussion (4, 33).
 6. At least in modern cultures, there is an increasing differentiation of cultural contents into value spheres, each obeying its own communicative and narrative logic. This differentiation represents not a fragmentation of value but a rationalization of lifeworlds that separates, for instance, the particularistic ethical claims made on behalf of a particular way of life or conception of the good from the universal moral claims made on behalf of conceptions of justice and human rights (40).⁶

Employed as an instrument of critique, the constructivist account reveals the ways defenders of multicultural politics often obscure important features of culture as it is actually lived and experienced, at least by some. Mosaic multiculturalists, who defend legal pluralism and complex federalism as mechanisms to allow cultural groups to author their own laws in areas where cultural difference is held to make

similar treatment unfair, often treat cultures as homogenous, holistic, cleanly-bounded, encompassing, and incommensurable. This understanding of culture appears, from the perspective opened by Benhabib's constructivist conception, to be not only anthropologically naïve but also highly romanticized and normatively problematic. An emphasis on the socially situated character of human agency is a long-standing and central theme in Benhabib's work. She maintains that the resources that enable agency and allow persons to make lives, situations, action, and relations meaningful, empowering, accountable, and fulfilling are contained within specific social contexts and tapped by concretely situated persons. She has used this model of historically and socially situated agency in the past to criticize the gendering of accounts of agency, liberal atomism, and postmodern performativity.⁷ She now turns it against conceptions of culture that treat social situation as too powerfully determining of individual identity and agency. In her prior work, the emphasis had been on accounting for how a concretely situated self can nevertheless be an autonomous agent. Here the emphasis is on how culture must be conceived so that it contains the latitude or space required for meaningful choice and agency. In denying fluidity, heterogeneity, and mobility, holistic models not only neglect important aspects of culture viewed from the perspective of an observer or anthropologist. They also obscure the ways that, from a participant's perspective, agency, identity, and individuality can emerge from resources and spaces contained within the overlapping and cross-cutting narrative webs into which humans are thrown.

I want to pose two questions concerning this constructivist model of culture: How much work can it do? And how much work must it do to undermine mosaic multiculturalism? These questions are relevant because this model figures in two distinct arguments. It is used negatively to criticize Taylor, Kymlicka, and others, and, in so doing, to reveal the difficulties that beset theories that rely upon inherently contestable accounts of culture to ground central claims in democratic politics. And it is also used positively as a central resource with which a normative theory of democracy can proceed in addressing issues like whether there should be general cultural rights and, if so, what form they should take or how the general norms of democratic deliberation should be developed into more specific norms to govern cultural controversies.⁸ In the first role, a countervailing model of culture is employed to demonstrate the perils for normative political theory of relying on highly specific and inherently controversial conceptions of culture. On the second, the discursive theory of democracy's response to cultural politics, especially its principles for governing culturally grounded claims to differential treatment, build directly and exclusively on the alternative conception of culture. I believe that the content of the constructivist conception of culture and the support Benhabib offers for it show it to be well suited to play the first but not the second of these two roles, and that this is sufficient for Benhabib's purposes in undermining philosophical accounts of mosaic multiculturalism.

Taken as a countervailing model that exposes the onesidedness of what Benhabib terms at one point the “fiction of unitary consciousness,” the constructivist conception of culture is powerfully illuminating (137). It reveals more homogenous and static models of culture, often employed to support mosaic multiculturalism, as reductive and essentially controversial. This demonstration, in turn, has the implication that policies and legal measures that rely directly and exclusively upon such a basis fail a basic test of democratic legitimacy. For the idea of public reason requires that major institutions and policies be justified in terms that no free and equal citizen can reasonably reject,⁹ and the plausibility and reasonableness of the constructivist conception show that the accounts of culture employed by Taylor, Kymlicka, and others fail the test of reasonable acceptability. It is important to note, however, that this argument does not support the claim that all persons in a democratic society should accept the constructivist conception of culture itself as the only reasonable account. Nor does it entail that it is on its own unreasonable to maintain a more holistic conception of culture. In the context of democratic reason-giving, the conclusion that can be legitimately drawn is that the constructivist understanding of culture must be recognized as not unreasonable, and so it must also be recognized that it is unreasonable to justify important legal measures by appealing to the exclusive validity of alternative conceptions. The flaw in arguments like Taylor’s and Kymlicka’s is not in their conceptions of culture per se, but their reliance on them as decisive grounds in determining the shape and content of central democratic laws and institutions to the exclusion of other reasonable understandings of the claims of culture. This is particularly clear when the outcome of countenancing these claims is the unequal treatment of vulnerable members of cultural groups, and even more clear when the vulnerable members reject the understanding of the culture on which their disadvantageous treatment is based.

On the other hand, to rely exclusively on the constructivist conception of culture to justify central democratic norms or policies is to claim, at least implicitly, exclusive validity for a single conception of culture, and hence to reproduce Kymlicka’s and Taylor’s mistake – assuming, that is, that it cannot be shown to be the only reasonable conception of culture. That Benhabib’s constructivist account is not the only reasonable way to conceive of culture can be demonstrated by examining the kinds of grounds that support it and the way that conceptions of culture implicitly enter practices of reason-giving in deliberative politics. The propositions that together constitute the constructivist conception of culture stem from multiple sources, many of which I believe Benhabib would acknowledge are too controversial to serve as premises in a general defense of democracy that applies the test of public reason reflexively to itself. It incorporates not only general and widely held postulates in cultural anthropology and social theory, but a more comprehensive social ontology and also a philosophical anthropology centered on the narrative and interpretive dimensions of human action and relations as such.¹⁰ Further, it also relies on a variety of more specific historical and social

considerations concerning late-modern social and cultural conditions and the “normative content of modernity,” and important aspects of the discourse theory of ethics.¹¹ It seems that something like this complex of considerations drawn from diverse methodologies is required to generate a complete and normatively relevant conception of culture. (One can think here also of the way Taylor grounds his alternative conception in German post-Romantic thought, especially Hegel.)

If we were to try to isolate those aspects of the constructivist conception of culture that can be derived from general and widely accepted social theoretic propositions in cultural anthropology and allied fields from those that rely on Benhabib’s more involved theories of action and ethics, I believe we might be led to draw a line roughly after first three propositions listed above.¹² That is to say, the ideas that cultures are narratively constructed communication communities that also reflect historical and ongoing power struggles do not in themselves decide the question of how holistic or fractured, bounded or hybridic, encompassing or fractured, incommensurable or isomorphic cultures are. These issues turn not on general and reasonably non-controversial propositions in the theory of society, but on a richer social theory and practical philosophy with greater normative and empirical content. In those few passages where Benhabib attempts to move directly from a constructivist conception of culture, (mis)understood only as a general and reasonably non-controversial conception of social theory, she opens herself to the charge that she levels effectively against Taylor and Kymlicka, namely that no normative prescriptions for politics can be derived directly from general social theoretic claims concerning human identity and culture, so that the “slide from ontology to advocacy” is unwarranted (65; see also 56, 66–7, 61).

But if this is the case, then the general and relatively non-controversial aspects of the constructivist conception of culture do not on their own entail the normative conclusions – either negative or positive – it is offered to support. Moreover, a conception of culture restricted exclusively to general and non-controversial premises could not be of the right sort to decide the normative questions at issue. Culture may presently be radically hybridic, fractured, etc., but that does not mean that we should necessarily seek to accommodate as opposed to resisting or at least bemoaning this fact.¹³ It is only in light of further considerations about appropriate ideals of agency, identity, autonomy, community, belonging, and the like that we can undertake the necessary evaluations. And these considerations cannot be arrived at from an empirically oriented effort to understand culture on its own, but only by interpreting culture in light of more expansive practical considerations generated by more encompassing moral, political, and ethical conceptions. Whether such considerations are themselves appropriate bases for public justification to a democratic public constituted of free and equal but diverse persons is a further question.¹⁴

The plurality of claims that can reasonably be made on behalf of or about culture is especially relevant to democratic theory since participants in democratic politics understand culture in different ways. Benhabib suggests at several points that it is

only observers and political elites, and not ordinary participants, who tend reify culture (e.g., 5). I do not believe that this is correct. Gerd Baumann's fascinating ethnographic study of a deeply diverse London neighborhood, for instance, reveals that participants often shift between different ways of regarding their cultural identities and belongings, at points treating them as fluid and shifting, at other points treating them as fixed and neatly bounded. While Baumann emphasizes the political and instrumental reasons for giving salience to more holistic understandings of cultural identity and belonging, there are also often ethical and existential reasons at work here.¹⁵ A democratic theory that excludes from the outset certain claims made on behalf of culture as necessarily grounded in flawed conceptions of culture denies persons the ability to act from their own conceptions of their identities and interests, conceptions that I think we should be careful not to disqualify as self-validating sources of claims even if they are rooted in reified understandings of culture and identity. Simply conceiving of one's interests in a way that is rooted in a misunderstanding of culture seems a poor ground for disqualifying interests as publicly or politically relevant in a deliberative democracy. Many persons understanding of their identities and interests are surely rooted in mistaken ideas, and though in many circumstances we seek to encourage them to come to better understandings, this is usually not a prerequisite for their understandings of their interests to be taken seriously, especially in democratic politics.

I believe Benhabib would agree with most of this, and in fact is not as concerned with claims rooted in reified understandings of culture *per se* as she is with those claims that employ such understandings in an effort to exempt members of identity groups from generally applicable democratic norms or legal requirements in ways that may be disadvantageous to vulnerable members. If this is correct, Benhabib is best understood as mainly objecting, not to reliance on perhaps naïve conceptions of culture *per se*, but to a certain range of substantive political claims that can be supported in a variety of ways, including though not exclusively by appealing to holistic conceptions of culture. What is objectionable in Taylor and Kymlicka is not mainly the fact that they employ reductive conceptions of culture in general, but that they use them within democratic theory to justify, on this basis, political institutions and policies that privilege a single understanding of culture. This is evidenced by the fact that the three conditions for the democratic legitimacy of culturally pluralist legal structures that Benhabib proposes as a refinement of the general discourse theory of democracy do not exclude claims based in reified understandings of culture *tout court* but instead require that they be scrutinized to determine whether or not they respect democratic equality and autonomy (19–20, 131–32, 148–9). Similarly, when Benhabib turns to illustrative cases to test the democratic standing of culturally supported claims to differential treatment, for instance in discussing the controversy surrounding Muslim girls' efforts to wear of *hijab* in French state schools, she is sensitive to the nuances in these cases and sometimes argues in favor of differential treatment (94–100, 117–9).

Yet, at the same time, Benhabib endorses an overall model of democratic political engagement that aims to unsettle reified understandings of cultural identity by subjecting them to continuous critical reflection and scrutiny. For she marks an important difference between mosaic and critical multiculturalism, with the former aiming to preserve or protect existing minority cultures while the latter aims to expand the circle of democratic inclusion to allow all members of a diverse democracy to participate as equals in a form of politics in which all claims to identity undergo critical scrutiny and, potentially, transformation in the process of seeking to vindicate their claims to general recognition and respect (ix-x). In the first case, multiculturalism leads to a preservationist politics of cultural identity, in which the politically relevant group categorizations correspond to broad-based ascriptive identities (a politics attributed to Kymlicka and Taylor). In the second, it leads to a politics of complex cultural dialogue (which extends her earlier interactive universalism and is similar to Nancy Fraser's account of the politics of recognition).¹⁶ It is worth quoting her on this point at length:

The analytic distinction between the politics of recognition and identity politics of group affirmation . . . suggests that we can and should do justice to certain claims for recognition without accepting that the only way to do so is by affirming a group's right to define the content as well as the boundaries of its own identity. Indeed, this may be one form of the politics of recognition, but as I have suggested throughout this chapter, it is an extremely problematic form. . . . The politics of complex cultural dialogue indeed involves the reconstitution of the boundaries of the polity through the recognition of the claims of groups that have been wronged historically and whose very suffering and exclusion has, in some deep sense, been constitutive of the seemingly unitary identity of the "we" who constitutes the polity. Such processes may be named the *reflexive reconstitution of collective identities*, and, in my opinion, they offer a clear alternative to the politics of cultural enclavism, in that they allow democratic dissent, debate, contestation, and challenge to be at the center of practices through which cultures are appropriated. (70–1; italics in original; references suppressed)

In setting out this account of the politics of complex cultural dialogue and its potential for bringing about a reflexive reconstitution of group identity, Benhabib moves most directly from her critical constructivist model of culture to a more general model of democratic politics. If complex cultural dialogue is offered as an aspect of her general defense of deliberative democracy, I believe it is a mistake, since I do not believe that the question of the appropriate mode of political engagement should be decided directly in normative democratic theory, at least not at the level of specificity involved in the distinction between complex cultural dialogue and group affirmation. Instead, democratic theory should aim to clarify the conditions required if debate and deliberation between adherents of competing conceptions of politics is to issue in legitimate political decisions. In saying this I aim to mark more sharply the distinction between the projects and perspectives of critique and democratic theory than do Benhabib and many other critical

theorists who recently have turned from the critical theory of capitalist modernization to the normative theory of discursive democracy. I believe Benhabib's social-constructivist conception of culture is best understood as an instrument of critique, combining an account of the narrative resources cultures contain with a strong normative understanding of individual agency and autonomy. This is a conception of culture that is guided by a regulative ideal of the self, "the concept of persons as self-interpreting and self-defining beings whose actions and deeds are constituted through culturally informed narratives" (132).¹⁷ As she put it in an earlier work, "My goal is to situate reason and the moral self more decisively in the contexts of gender and community, while insisting upon the discursive power of individuals to challenge such situatedness in the name of universalistic principles, future identities, and as yet undiscovered communities."¹⁸ The constructivist conception of culture is critical precisely because it seeks to comprehend culture not as it currently exists, positivistically, or as it is understood by those who see it holistically, but to envision it in a way that enables agency, so that the fact that human beings are thrown into overlapping and cross-cutting narrative webs constitutes not a constraint on but an enabling condition for struggles for agency, autonomy, justice, and fulfillment.

Claims about the character of culture, like other claims about fundamental orders of social worlds, rely on the constitutive perspectives from which they are set out and so cannot be divorced from these perspectives.¹⁹ The perspective of critique is guided by an interest in detecting often subtle, taken-for-granted or reified forms of domination and laying them bare so that they can be subject to critical reflection and political action. But this is not the only relevant perspective on culture. Persons also look to their cultures to furnish meaning, a sense of belonging, an instrumental basis for political action, or a sense of self or identity in circumstances where these seem particularly a risk. It is not that Benhabib fails to take these other aspects of culture into account, any more than theorists like Taylor or Kymlicka entirely neglect the potentials for inequality, subordination, and domination cultures contain. But, as a matter of emphasis, her conception of culture highlights the contested, fluid, porous, and power-laden aspects of culture, while relegating to the background its stability-giving, meaning-generating, consensual and communitarian aspects.

Without in any way diminishing the importance of the project of critique and its guiding practical interest in non-domination, it should be noted that it does not provide the single legitimate project or all-encompassing interest to be pursued through democratic deliberation and politics. A regulative practical interest in overcoming domination guides the construction of the utopian perspective from which critical theorists undertake critique.²⁰ It operates by projecting utopian ideals of domination-free forms of human association in order to illuminate the often difficult-to-detect forms domination takes in the social worlds we actually inhabit.²¹ Democracy's regulative goal or guiding interest is given by a more encompassing conception. The democratic ideal, as I understand it, refers to a

political association in which all persons are free and equal citizens and as such are empowered to exercise effective joint control over the basic features and consequences of their political association. They exercise this control by engaging in forms of political deliberation that aim to generate shared reasons, interests, and intentions, so that democracy is not domination by a majority but the rule of laws that all can regard as their own. Democracy thus understood is bound up with a broader ideal of social cooperation, an aspiration to a shared social life free of domination, conducted on terms all can accept reciprocally as free and equal persons. As such, critique is an essential moment in democratic politics. But it does not constitute in itself the whole of democratic politics. Democratic politics is also concerned with the joint and deliberative construction in the here-and-now of interests, intentions, and reasons that diverse participants can regard as theirs in common as free and equal persons. This requires that we search for interests, intentions, and reasons we can share in part by determining which of our beliefs and aspirations are reasonably controversial.

The perspective of critique is thus one of several that democracy must seek to accommodate and adjudicate. If this is correct, then the standards governing the construction of an encompassing theory of democratic legitimacy cannot be identified with those governing critique. For if it is to meet the standards that it proposes for the regulation of public deliberation and reason-giving, democratic theory, taken as a discreet compartment of practical thought, cannot rely directly and exclusively on conceptions, like the constructivist model of culture that are set out exclusively from the perspective of critique, to ground its central normative claims. The ideas that the principle of public reason, with its requirement that reasons be mutually acceptable to all as free and equal persons, applies reflexively to democratic theory itself, and that as a result democratic theory must be treated as a discreet and self-limiting compartment of practical thought, represent, I believe, the central insights of Rawls's latter work. To the extent that democratic theory seeks to construct an account of the principles, values, and institutions that legitimately regulate reasonable practical and cultural conflicts, it cannot reasonably rely on premises that are party to these disputes. One of the profound contributions of Benhabib's work taken as a whole has been her effort to join insights drawn from a wide diversity of philosophical and methodological perspectives into a broadly Hegelian and feminist critical theory. The treatment of culture in this work is of a piece with her earlier contributions in this respect. My main concern is that we distinguish more carefully between the perspective from which, for instance, feminist critical theory is constructed and that from which we set out a democratic theory. Unless the perspective of feminist critical theory is the only reasonable or completely encompassing perspective from which to judge society, we have to ask democratic theory to orient the political processes in which the rivalry between conflicting understandings will play out. Feminist critical theory and normative democratic theory need to be differentiated because the former consistently can, while the latter cannot, rely on reasonably controversial social theoretic premises.

Once the projects of critique and normative democratic theory are carefully differentiated, the contribution a constructivist conception of culture makes to democratic theory can be more precisely discerned. It contributes indirectly to normative democratic theory first by illuminating the flaws in a major strand of contemporary multicultural political philosophy. It demonstrates that mosaic multiculturalists fail a crucial test of democratic legitimacy to the extent that they base their arguments for culturally based exemptions, group rights, legal pluralism, or complex federalism directly and exclusively in a holistic conception of culture, for in so doing they appeal only to an argument that others can reasonably reject. The constructivist model of culture demonstrates the reasonable rejectability of this structure of argument by vindicating the reasonableness of an alternative account. The important but limited conclusion to be drawn is that a range of legal measures that currently enjoy a great deal of popularity should not be argued for in the way that many argue for them.

To put the point more positively, Benhabib's constructivist model of culture demonstrates that any account of democratic legitimacy adequate to late-modern social conditions must take into account that there is a diversity of diversities, a variety of reasonable ways of understanding and characterizing the relevant bases of political difference, including cultural difference. The success of Benhabib's constructivist model of culture as a countervailing model and as an instrument for the critique of more holistic accounts reveals a reasonable diversity of ways of understanding culture. Assuming that the idea of reasonable acceptability applies reflexively to democratic theory itself, no democratic theory can reasonably preclude a politics of culture understood as a contest between competing modes of cultural-political engagement, for instance between a politics of the affirmation of group identities and one of their ongoing reflexive reconstitution. Building on Benhabib's model, we need to conceive approaches to democratic theory that allow it to better accommodate a diversity of ways of understanding cultural difference and of engaging in a politics of culture. This would involve relying on less specific conceptions of cultural difference by shifting the work of determining the political implications of reasonable cultural claims from theoretic derivations of models of democratic politics to actual political deliberations. The idea here is to lighten the load that empirical premises are asked to carry within normative theory and in so doing redistribute the weight of generating mutually acceptable democratic policy away from the essentially contestable ideas of diversity and onto normative premises and forms of democratic deliberation that are better able to carry the justificatory burden. On this approach, the understanding of diversity assumed within democratic theory would serve only to guide the specification and defense of the core normative values and institutional implications of democracy, while the work of determining the more specific understandings of diversity required to make particular political decisions would be left to a varied, flexible, and inclusive practice of democratic deliberation.

Appropriately developed, this approach has the advantage of taking into account the fact that cultures and cultural diversity are historically specific, fluid, and multidimensional. Rather than trying to determine once and for all their exact nature and extent, the defense of democracy – and democratic practice that accords with this defense – builds only on some general assumptions about diversity and then allows democratic deliberation itself to determine in an ongoing, variable, and nuanced fashion the more particular conditions that obtain in specific situations. Democracy's capacity to make these determinations as part of the very process of reaching decisions depends on the practicability of normative models of democratic deliberation. If deliberation succeeds in this task, then the theory of democracy is warranted in relying only on fairly general interpretations of diversity, leaving room for the democratic determination of their more specific contours.

II

A second set of issues centers on whether the discursive conception of democracy Benhabib develops is the best candidate from among the variety of strains of deliberative democracy to claim the intercultural validity that is implicitly invoked in arguing that the claims of culture can be fairly adjudicated from the perspective of democracy. The central aim of *The Claims of Culture* is to extend the discourse theory of democracy in a way that vindicates its ability to treat with fairness and sensitivity the claims made on behalf of members of minority cultures while maintaining the centrality of democratic values. At the level of democratic theory, Benhabib introduces three central innovations. Three intermediary principles of democratic discourse are developed to state the conditions that must be met by culturally based claims to differential treatment if their accommodation is to prove compatible with the universalistic presuppositions of discursive democracy. Further, a distinction between the syntax and semantics of public reasons is introduced to demonstrate that all share the same formal structure though they can vary widely in both their content and modes of expression. This distinction then clarifies the scope of appropriate accommodation to cultural difference: democratic discourse should be open to a wide diversity of novel and strange claims and modes for their presentation, but must demand that all consideration that carry weight in determining decisions take the form of public reasons demonstrably in the interest of all concerned. Finally, Benhabib emphasizes that a two-track model of democracy featuring a 'vital interaction' between civil society and the state, with civil society providing a locus for cultural pluralism and struggles for recognition that is not burdened by the pressures of immediate decision and the exercise of state-based and bureaucratically structured political power.

I believe these are extremely important innovations in outlining the appropriate democratic response to cultural claims. They are, however, what might be termed

mid-level innovations, in the sense that they take for granted that the foundations of the discourse theory of democratic legitimacy's claim to cross-cultural validity are secure and work to show that this theory need not be insensitive or unfair to culturally couched claims, despite its formalism and universalism.²² To assess the overall success of Benhabib's effort to outline a democratic response to cultural claims therefore requires a broader scrutiny of the discourse theory of democracy as a whole. Since I do not believe that the foundational strategy of discourse democracy succeeds, I maintain that Benhabib's continued adherence to it vitiates the overall plausibility of what are otherwise extremely important and innovative developments in her theory of democracy. The important innovations introduced in *The Claims of Culture* are best developed by decoupling them from the discourse theory of democracy and joining them instead with other approaches to defending deliberative democratic legitimacy as such.

To frame these issues, I begin by introducing a set of distinctions with regards to the way that the purpose and value of democratic deliberation is understood. A pragmatic-instrumental approach to democratic deliberation and cross-cultural dialogue involves only a provisional commitment to deliberation as mode of developing better policy, pooling information, encouraging openness and sensitivity to difference, furthering mutual understanding, exploring the possibilities for mutually acceptable compromises or resolutions in cases of conflict, exposing self-serving or poorly supported preferences, and the like. To the extent that deliberation delivers these benefits and the benefits of participating in it outweigh the costs, then it makes sense to continue deliberating. But when deliberation does not prove beneficial, or the risks and costs of participation are greater than the expected rewards, those with only a pragmatic-instrumental commitment tend to withdraw and seek non-deliberative means for pursuing their ends. An intrinsic commitment to democratic deliberation, on the other hand, is based on the normative claim that deliberative democracy represents the best understanding of political legitimacy and right, at least in late-modern social conditions. Normative deliberative democrats hold that the opinion of the public and the will it directs can serve as legitimate sources of coercive political power if, and only if, they are formed in processes in which public deliberation plays a constitutive role. Because the successful construction of common reasons, interests, and intentions is a basic condition of political legitimacy on this view, the deliberative democratic commitment to intercultural dialogue in conditions of cultural diversity is not contingent in the way that the instrumental-pragmatic account is. The failure of deliberation represents the collapse of a basic condition on democratic legitimacy, and so must be repaired internally by discovering new ways of using deliberation to produce common reasons, interests, and intentions.

Within the class of normative theories of deliberative democracy, an important subset, to which Benhabib's account belongs, can be referred to as discursive theories of democracy. These views link legitimacy to deliberation because they subscribe to a more general theory of normative justification, set out in the

various developments of Habermas's discourse ethics. All such approaches overlap on something like the following two propositions: first, acceptability in practical discourse is constitutive of normative justification as such; and second, the grounds for this first claim and the meta-norms, principles, and ideals that are regulative for practical discourse can be derived from a transcendental pragmatic analysis of the presupposition of communication, sometimes in combination with a reconstructive account of historical processes of practical learning. Many accounts, including Benhabib's, also defend a communicative conception of moral autonomy as an implication of the presuppositions of communication. Other accounts of deliberative democracy do not rely on discourse ethics but instead involve a more directly political effort to ground the connection between deliberation and legitimacy. There is a wide variety of such theories, some of them more procedural, some of them more substantive, and toward the end of this essay I'll indicate briefly the type I prefer. But the main difference between the discourse theory and other accounts of deliberative democracy is its reliance on discourse ethics to account for the importance of the norms governing democratic deliberation. It is this structure of support and its implications for Benhabib's mid-level innovations that is the main focus of my analysis in this section.

The main components of Benhabib's conception of discursive democracy can be presented in the following five propositions.

1. Legitimate democratic deliberation is governed by a basic discourse principle (D) that governs practical validity as such: "only those norms and normative institutional arrangements are valid which can be agreed to by all concerned under special argumentation situations named discourses."²³ This norm in turn entails two further fundamental moral principles.
 - a. Universal Respect: we are required to "recognize the rights of all beings capable of speech and action to be participants in the moral conversation;" and
 - b. General Egalitarian Reciprocity: "within discourses each [participant] should have the same right to various speech acts, to initiate new topics, and to ask for justification of the presuppositions of the conversation, and the like" (107).²⁴
2. These fundamental principles in turn support three conditions that must be met if culturally based claims to exemptions from general policy or to group rights or other forms of legal pluralism are to succeed:²⁵
 - a. Cultural Egalitarian Reciprocity: "Members of cultural, religious, linguistic and other minorities must not, in virtue of their membership status, be entitled to lesser degrees of civil, political, economic, and cultural rights than the majority."
 - b. Voluntary Self-ascription: Membership in a cultural, linguistic or religious group must not be automatically assigned by the state in virtue of birth but must instead reflect self-ascription or identification. While it may be

contested, the state should not simply grant the group the right to decide membership issues.

- c. Freedom of Exit and Association: Individual freedom to exit ascriptive groups must be unrestricted. Exit may be accompanied by the loss of formal and informal privileges and entitlements, but these may be regulated by the state in the interest of equality. Individuals retain the right to remain group members even while outmarrying (132–3; 148–9; 19).
3. These basic and intermediary principles of discursive democracy (1a-b & 2a-c) map onto a two-track model of democracy according to which the deliberation necessary to the formation of public opinion and will occurs simultaneously in the informal, decentered, and interlocking network of informal public spheres in civil society (mainly regulated by 1a-b) and the formally organized political public spheres of the state (mainly regulated by 2a-c in addition to more specific principles and norms of constitutional democracy). The role of civil society is especially emphasized as a main locus of complex multicultural dialogue, deliberation, and processes of practical learning, since here discourse is unfettered by formal organization and the pressure of decision linked to the exercise of power (114–5, 121–2).²⁶
4. Beyond the general two-track model of democracy, the basic and intermediary principles of discursive democracy are not viewed as having direct institutional implications. Instead, determining these implications is a matter to be mediated by more specific considerations of context and social situation, and always remains open for reflexive reconsideration in deliberation itself.
5. Conditions of democratic accountability result from the institutionalization of democratic mechanisms for decision-making along with the constitutional protection of civil society. In these conditions, persons can only influence the character of public opinion and will and the outcomes of democratic decisions by articulating their views in public. This very process leads to reflexive insight into the standing of one's views as potential public reasons, since in the process of articulating and deliberating about them in public one is led to evaluate them from the impartial perspective of the interests of all concerned (116–7).²⁷

Deliberative democrats of all stripes can learn much from Benhabib's accounts of propositions 2–5. There is still work to be done in fleshing out the details of many of these propositions, for instance in determining the meaning of 'a lesser degree of rights' in the principle of cultural egalitarian reciprocity, or in indicating the appropriate relations between the two tracks of democracy given the fact that struggles for recognition in civil society and the moral learning they produce tend to evolve relatively slowly, while the controversies generated by conflicting cultural claims tend to come to fore within the formal public spheres of the state and under the pressure of immediate decision. Nevertheless, these propositions clearly represent original and promising directions for further work

on the ways democratic deliberation can and should treat culturally based claims to differential treatment. Yet, as articulated in *The Claims of Culture*, each of these propositions depends crucially on the first, so that shortcomings in the first cannot be compensated for by the virtues of the rest. They must, in this sense, be taken as a package, with the major premise of the whole residing in the first proposition. Thus, in the first instance, the evaluation of the claim for intercultural validity made on behalf of discursive democracy depend on the intercultural acceptability of principle (D) and its immediate implications for practical discourse.

Benhabib is less concerned in the present work with the general justificatory strategy of discourse ethics and its ability to ground a general theory of democratic legitimacy per se, since she has discussed these issues at length in prior works. But she clearly maintains that her theory of democracy derives from her commitment to the more comprehensive philosophical theory of discourse ethics.²⁸ She writes in an earlier essay: "Precisely because I share with the Kantian liberal tradition the assumption that moral respect for the autonomous moral personality is a fundamental norm of morality and democracy, the deliberative model of democracy presupposes a discourse theory of ethics to supply it with the most general moral principles upon which rights claims would be based."²⁹ This idea is echoed in *The Claims of Culture*: "In discourse ethics, autonomy is seen as a moral as well as a political principle. . . . It is fundamental to autonomy that the collective practices in which we participate may be seen as the outcome of our legitimate processes of deliberation" (114). Something like this commitment to moral autonomy underlies the intermediary principles Benhabib proposes for the regulation of cultural claims to differential treatment (2a-c). Viewed in this light, these principles represent autonomy protecting constraints: they "expand on the concept of a persons as self-interpreting and self-defining beings whose activities and deeds are constituted through culturally informed narratives. The right of voluntary self-ascription as well as the right of exit and association derive from this vision of the individual as a self-interpreting being" (132).³⁰ These principles represent discourse ethic's constitutive commitment to a conception of moral autonomy that is 'comprehensive' in Rawls's sense in at least two respects: first, the norms governing intercultural dialogue are derived directly from a specific conception of moral autonomy; and, second, these norms apply not only to exercises of shared political power or the constituent orders of society as a whole but also to all collective practices and practical discourse.³¹ The issue then arises whether this account of democracy does not fall prey to Rawls's general objections to the unreasonableness of relying on comprehensive doctrines in conditions of cultural diversity.³²

In scrutinizing the move from discourse ethics to deliberative democracy, the issue I want to focus on concerns the justification for participation in deliberation as such, specifically the question of how best to account for the reliable presence of what John Dryzek terms a deliberative disposition in a multicultural society.³³

Put simply, this disposition is present when participants attach regulative importance to the aim of reaching mutually acceptable decisions within procedures of democratic deliberation. That such a disposition be generally present in a deliberative democracy seems a basic prerequisite for its political legitimacy. But the willingness to engage in discourse and deliberation and the openness to transformations in one's most basic self-understandings this entails are not culturally invariant, which raises difficulties for deliberative democracy's claim to intercultural validity in general. My suggestion is that, because the discourse theory of democracy ties the deliberative disposition to the acceptance of a general account of practical justification and a comprehensive ideal of moral autonomy, it does not provide the kind of support required for the deliberative disposition in a diverse democracy.

The presumption that all potential parties to a cultural conflict share a commitment to discursive justification is grounded in discourse ethics by the general claim that such a commitment is an implicit presupposition of communication as such. The justification discourse ethics generates for the discourse principle is best characterized as meta-ethical and comprehensive. This is the case because for discourse ethics mutual acceptability in ideally structured practical discourse constitutes practical justification as such. The rational reconstruction of the pragmatic presuppositions of practical discourse on which (D) rests supports this kind of a strongly universal cognitive account of rightness. This reconstruction aims to demonstrate that all ethical statements, to the extent they claim validity, implicitly claim to be capable of being defended in an ideal process of argumentation governed by the discourse principle. The discourse principle, then, is offered as a general account of the conditions for practical validity. Action norms must meet the standard of mutual acceptability in practical discourse regulated by (D) because their ability to do so constitutes their justification and hence their status as moral norms. To say that an action is wrong, on this analysis, simply means that it would be disallowed by a norm to which all possibly affected persons could agree as participants in ideally structured practical discourse. Thus, the family of principles and ideals generated by the discourse theory of ethics and democracy are treated as correlates of a basic principle of practical justification. The reason to accept the principles that should govern public deliberation and justification is that they follow from the correct understanding of practical justification in general. To express this point in Rawls's and Habermas's terms at once, this justification requires that one accept, if not a particular comprehensive conception of morality, at least one from among the delimited range of conceptions that together form a 'post-conventional *Sittlichkeit*' because of their common acceptance of the idea that practical discourse constitutes moral justification.

Yet the effort to transform implicit presuppositions of communication into explicitly held principles of political organization is notably lacking in discourse ethics. In cases where the implicit meta-norms of discursive justification conflict

with explicitly held substantive norms, especially norms of practical justification, why should the implicit presuppositions trump the explicitly endorsed values and norms? Unless there is some generally available grounds for prioritizing implicit over explicit norms, then the discourse democratic justification of cross-cultural deliberation seems vulnerable to the charge of cultural particularity: it is available precisely to those who subscribe to a post-conventional *Sittlichkeit* according to which discursive acceptance constitutes normative justification. This is objection is not premised on the claim that discourse excludes certain modes of reasoning or that cultural worldviews are deeply incommensurable. This is a delimited dispute about the character of practical justification, an issue on which it seems there is reasonable disagreement. The issue is, simply put, that the discourse theory of democracy requires a defense of the cross-cultural validity of a particular account of practical justification as well as of the comprehensive value of moral autonomy.

The important distinction Benhabib develops between the syntax and semantics of reason-giving does not operate at the right level to address this concern. According to this distinction, public reasons all have the same formal structure (they are claims that a certain course of political action is in the best interest of all concerned as free and equal persons), but both the content of reasons and the modes in which they are expressed can vary widely (140–2). Despite the importance of this distinction, it is limited in its ability to reply to the basic objection to discourse democracy as such. Here the demand for exemptions from deliberatively reached decisions or for parallel legal institutions is grounded in the claim that cross-cultural deliberation as such is not and cannot be equally acceptable to the members of all cultural groups as the basic principle of political organization. What is objected to is not the inclusiveness of discourse to multiple modes of reasoning, but the very idea that acceptability in practical discourse is an appropriate standard of normative justification and/or the companion idea of communicative autonomy. It is in fact quite common to reject the idea that mutual acceptability constitutes a basic principle of political justification in the name of alternative standards such as transcendent truth claims, divine revelation, or the greatest good for the greatest number. The objection focuses on the status claimed on behalf of discourse as a mode for testing the validity of proposed norms, not on its relative fairness to different kinds of reason or the ways in which they are presented.

Discourse ethics attempts to square a circle in moral and democratic theory, defending substantive normative conceptions from within a formal or proceduralist theory.³⁴ But in so doing, its formal argumentative strategy opens a gap between the principles it reconstructs and the substantive normative beliefs from which they are reconstructed. Though its reconstructive strategy is formal in its methods, it supports not only rules of argumentation but also conceptions of autonomy, recognition, and solidarity with substantive normative implications. Despite these implications, it maintains its proceduralism at least to the extent that it claims that

these ideas do not require a substantive moral defense because they are necessary presuppositions or natural byproducts of practical discourse and moral argumentation as such. In order for the discourse principle and its supporting conceptions to become not only generally presupposed but also widely endorsed, however, it would be necessary for the implicit presuppositions of speech to be converted into guiding regulative principles (for 'know how' to become 'know that').

To reconstruct formal rules and even substantive ideals as implicit in practice is not the same as justifying their regulative status even for those engaged in these practices. Were discourse theorists to take up the latter task, they would face the issue that animates Rawls's late work, namely, how to find a mutually acceptable justification for the mutual acceptability standard in political justification and the ideals that attend its defense. I think Benhabib would agree that the strategy represented by discourse ethics is too technical, difficult, and controversial to serve in this role, for which it is clearly not designed. Further, it seems clear that the general acceptance of discourse ethics as a practical normative conception would represent a major transformation in morality, identity, and culture, and that there seems little prospect that this will occur any time soon. And, should such an improbable transformation occur, we would no longer face anything like the diversity of cultural views that motivate *The Claims of Culture* in the first place.

I would suggest, by way of conclusion, that a more promising approach to the justification of the idea that a mutual acceptability standard is constitutive of democratic political legitimacy is that indicated by substantive deliberative democracy. Substantive deliberative democrats aim to show that there is a way of conceiving and defending a body of values and ideals that shows them to be both widely acceptable in complex and diverse societies and also capable, if widely accepted, of supporting a practice of democratic deliberation likely to prove robust and legitimate in these circumstances. This view responds to the objection that the basic justificatory norm and political values of deliberative democracy are culturally specific by seeking to demonstrate that there are ways of grounding the deliberative disposition as a specifically political and not comprehensively moral norm that are in fact compatible with a wide variety of cultural outlooks. While I cannot develop this idea here, I believe that the values and ideals that support democratic deliberation should be viewed primarily as the contents of a political culture of deliberative democracy. The question of whether or not deliberative democracy is culturally particular turns then on whether or not it is possible to view its political culture as what Bhikhu Parekh terms an interculturally constituted common culture.³⁵ This account makes the problem of finding an interculturally valid justification for the deliberative democratic principle of political legitimacy more tractable. The range of ideals and values that support the deliberative disposition in a multicultural democracy emerge from an ongoing politics of political culture in which the inhabitants of this society seek to assimilate in diverse ways the requirements of democratic legitimacy to their more particular cultural, ethical, religious, or philosophical worldviews.

The suggestion, then, is that what matters for the legitimacy of deliberative democracy is that the deliberative disposition be generally grounded, not that it be grounded in the same way for all concerned, at least not all the way down. The common reasons for participating in democratic deliberation contained in a political culture of deliberative democracy do not refer to a general account of practical justification. This is a subject on which it is highly unlikely that participants in a diverse democracy will agree – and many may maintain that democratic deliberation is not relevant to this question. Instead, the reason to participate in democratic deliberation and to construct those reasons we find we can share into common bases of justification and evaluation is that only in this way can we accomplish important practical ends, including those of finding mutually acceptable principles of social cooperation, realizing our potential for collective influence over at least the constituent orders of our social worlds, and coming to share a society of reasonable persons. This approach generates many of the advantages of the discourse theory of democracy without violating the idea of mutual acceptability that is constitutive of democratic legitimacy as such. I believe that Benhabib's defense of intermediary principles for determining the democratic legitimacy of culturally based claims to differential treatment, her distinction between the syntax and semantic of reasons, and her two-track model of democracy all can be successfully integrated into a substantive theory of deliberative democracy, and that the substantive theory would be much the better for building on these procedural insights.

NOTES

This is a revised version of remarks originally presented as part of a roundtable on Seyla Benhabib's recent work at the American Political Science Association Annual Meeting, September 2003, Philadelphia. I would like to thank my fellow panelists, James Bohmann, Max Pensky, Jorge Valadez, Melissa Williams, and Seyla Benhabib for stimulating comments during the roundtable, and Nancy Fraser, María Pía Lara, and Angelia Means for incisive discussion of Benhabib's work as a whole and my reflections on it at the dinner following the roundtable.

1. *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton: Princeton University Press, 2002); paranthetical references are to this work.

2. I argue for this conclusion in "Separating a House Divided: Justice and Legitimacy in Rawls's Political Philosophy" (work in progress, on file with the author).

3. I owe the term 'post-Rawlsian' to Charles Sabel, who used it to refer to my work and Joshua Cohen's. (In conversation at the American Political Science Association, San Francisco, September 2000.) I would also add Anthony Laden to the list of post-Rawlsians in the sense just explained. See Joshua Cohen, "For a Democratic Society," in Samuel Freeman, ed., *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003); Anthony Laden, *Reasonably Radical: Deliberative Liberalism and the Politics of Identity* (Ithaca: Cornell University Press, 2002).

4. The constructivist conception of culture is not given a single encompassing description in *The Claims of Culture*, but instead different aspects of it are invoked in different arguments. The above description is in part synthetic, in part reconstructive. In setting it out at points I have tried to infer Benhabib's position from her critique of other approaches and from her earlier works.

5. See also Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (New York: Routledge, 1992), 126–30 and 214–8; idem., *The Reluctant Modernism of Hannah Arendt* (London: Sage Publications: 1996), 107–113 and 124–30.

6. See also Benhabib, *Critique, Norm, and Utopia: A Study of the Foundations of Critical Theory* (New York: Columbia University Press, 1986), 246–7 and 254–60.

7. See chapters 3 and 5–8 of *Situating the Self* and “Feminism and Postmodernism,” in Linda Nicholson, ed., *Feminist Contentions: A Philosophical Exchange* (New York: Routledge, 1995).

8. To be fair, I should note at the outset that there are only a few passages where Benhabib seems to move directly from her constructivist account of culture to substantive conclusions in normative democratic theory, and even in these it is not entirely clear how much of the weight of supporting these conclusions is being carried directly by the social theoretic premises. Benhabib does not distinguish carefully between the two sources of support, and in this she is like Taylor, Kymlicka, and many other parties to this debate. The reason I concentrate critical attention on this move in this section is not because I think it represents anything like a fatal flaw in Benhabib’s argument. Rather, I think that most of her central conclusion receive independent support within discourse ethics more generally. Instead, the reason is to attempt to illuminate a more general issue, namely the degree to which the argument about more pluralist and more universalist understanding of democracy is about the character of culture or about more directly normative issues.

9. See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), lecture VI; and “The Idea of Public Reason Revised,” in John Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press 1999), 573–615.

10. The underlying social ontology and philosophical anthropology I detect at work here is often referred to without being developed in depth in *The Claims of Culture*. I understand Benhabib at these points to be invoking ideas developed at length in earlier works. Put differently, Benhabib does not merely draw on ideas from current work in social and cultural anthropology but adds philosophical depth to these accounts by drawing on her earlier work. For instance, an underlying commitment to the theory of communicative action generates an understanding of human cultures as continuously engaged in processes of practical learning so that, as Habermas once put it, what need to be explained in human history is not learning but not learning, i.e., the failure to learn. The implicit norms governing communication always furnish critical resources and stand as ‘a spur in the flesh of social reality,’ always threatening to destabilize from within forms and products of communication that stand in tension with their procedural presuppositions. If this is assumed, then it is appropriate to expect that cultures, as communicatively produced and carried, will tend over time, at least in the absence of the distortion of communication through the suppression of its telos in freely achieved understanding and agreement, to render cultures fluid, multivalent, porous, etc.

11. See *Critique, Norm and Utopia*, ch. 8, 279–353; and “In the Shadow of Aristotle and Hegel: Communicative Ethics and Current Controversies in Practical Philosophy,” in *Situating the Self*, 23–67. The phrase “the normative content of modernity” is taken from lecture XII of Habermas’ *The Philosophical Discourse of Modernity: Twelve Lectures*, tr. Frederick Lawrence (Cambridge: Polity, 1987).

12. I do not in fact believe that there are general and non-controversial propositions in social theory of the sort that are able to decide the central issues of the degree of cultural diversity and socially complexity that can be legitimately accommodated by late-modern deliberative democracies while also meeting the standard of public reason that applies reflexively to democratic theory. I argue this point from the perspective of the philosophy of social science and through examples drawn from contemporary political and social theory in two essays, “A Diversity of Diversities: Liberalism’s Implicit Social Theories” (paper presented at the Political Studies Association Conference on Democracy and Diversity, University of Leicester, April, 2003) and “The Complexities of Complexity” (manuscript on file with the author).

13. In very different ways this seems to be the position developed by Taylor in *Sources of the Self: The Making of Modern Identity* (Cambridge, MA: Harvard University Press, 1992), and still more clearly in “Two Concepts of Modernity,” in Dilip Gaonkarand, ed., *Alternative Modernities* (Durham, NC: Duke University Press, 2001) and “A Catholic Modernity?,” in James L. Heft, ed., *A Catholic Modernity?* (Oxford: Oxford University Press, 1999); as well as by Alasdair MacIntyre in

After Virtue: A Study in Moral Theory, 2e (South Bend: University of Notre Dame Press, 1997). For a nuanced statement of this position, see also Pratap Mehta, "Cosmopolitanism and the Circle of Reason," *Political Theory* 28, no. 5 (October, 2000): 619–39.

14. In the following section I suggest that discourse ethics is not the right kind of practical conception to play this role. If this is correct, this would lend further support to the claim that Benhabib's constructivist conception of culture should be restricted to its role as an instrument of critique and not also treated as a basic premise in her democratic theory to the extent that I am correct in maintaining that this conception of culture is shaped by her commitment to discourse ethics. The analytic separation between the treatment of culture in this section and of democracy in the following lends, I hope, some clarity to the discussion, but is in fact somewhat artificial given the mutual imbrications of social and normative theory in the constructivist conception of culture.

15. Gerd Baumann, *Contesting Culture: Discourses of Identity in Multi-Ethnic London* (Cambridge: Cambridge University Press, 1996). For an emphasis on the political-instrumental reasons for emphasizing cultural identity and belonging, see Daniel Bell, "Ethnicity and Social Change," in Nathan Glazer and Daniel Patrick Moynihan, eds., *Ethnicity: Theory and Experience* (Cambridge, MA: Harvard University Press, 1976). For an emphasis on the ethical-existential dimensions, see Dorothy Holland, William Lachicotte Jr., Debra Skinner, and Carole Cain, *Identity and Agency in Cultural Worlds* (Cambridge, MA: Harvard University Press, 1998).

16. On Benhabib's interactive universalism, see *Situating the Self*, 11, 164–5, and 227–8. For Fraser's account of the politics of recognition, see "From Redistribution to Recognition? Dilemmas for a 'Postsocialist' Age," in *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition* (New York: Routledge, 1996) and "Social Justice in the Age of Identity Politics: Redistribution, Recognition and Participation," in Nancy Fraser and Axel Honneth, *Redistribution or Recognition: A Political-Philosophical Exchange* (London: Verso, 2003).

17. See also Benhabib, "Subjectivity, Historiography, and Politics: Reflections on the 'Feminism/Postmodernism Exchange'," in Nicholson, ed., *Feminist Contentions*, 108–10; *Situating the Self*, 111–2.

18. *Situating the Self*, 8.

19. I develop this claim, using the resources of post-empiricist philosophy of social science, in "A Diversity of Diversities" and "The Complexity of Complexity." The locus classicus for this line of analysis is Weber's treatment of objectivity; see "'Objectivity' in Social Science and Social Policy," in Max Weber, *The Methodology of the Social Sciences*, ed. and tr. Edward A. Shils & Henry A. Finch (New York: The Free Press, 1949).

20. See Jürgen Habermas, *Knowledge and Human Interests*, tr. Jeremy J. Shapiro (Boston: Beacon, 1971).

21. See *Critique, Norm and Utopia*.

22. See the discussion of 'middle-democracy' in Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, MA: Harvard University Press, 1996), 12–3.

23. Jürgen Habermas, "Discourse Ethics: Notes on a Program of Philosophical Justification," in *Moral Consciousness and Communicative Action*, tr. Christian Lenhardt and Shierry Weber Nicholson (Cambridge, MA: MIT Press, 1990), as quoted by Benhabib, *Claims of Culture*, 107. In a later work (D) is given the following, somewhat simpler formulation: "Just those action norms are valid to which all possibly affected persons could agree as participants in a rational discourse." Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, tr. William Rehg (Cambridge, MA: MIT Press, 1996), 107.

24. See also, *Situating the Self*, 29; and "Toward a Deliberative Model of Democratic Legitimacy," in Benhabib, ed., *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton: Princeton University Press, 1996), 70 (where the formulation is slightly modified).

25. For a useful overview of the variety of types of group-based accommodations, see Jacob T. Levy, *The Multiculturalism of Fear* (Oxford: Oxford University Press, 2000), 125–60.

26. See also "Toward a Deliberative Model of Democratic Legitimacy," 73–4.

27. See also *ibid.*, 71–2.

28. See *Critique, Norm and Utopia*, ch. 8; "In the Shadow of Aristotle and Hegel"; and "Toward a Deliberative Model of Democratic Legitimacy," 67–94.

29. "Toward a Deliberative Model of Democratic Legitimacy," 78. See also *ibid.*, 70: "The discourse model of ethics formulates the most general principles and moral intuitions behind the validity claims of a deliberative model of democracy."

30. It is here that the mutual imbrication of the constructivist conception of culture and the discourse theory of democracy becomes most clear (see note 14 above). The discourse theoretic conception of communicative autonomy is, as it were, the center of gravity for both conceptions.

31. Rawls, *Political Liberalism*, 12–3.

32. See *ibid.*, 60–1.

33. See John S. Dryzek, *Deliberative Democracy and Beyond* (Oxford: Oxford University Press, 2002).

34. See Frank I. Michelman, "How Can the People Ever Make the Laws? A Critique of Deliberative Democracy," in James Bohman and William Rehg, eds., *Deliberative Democracy: Essays on Reason and Politics* (Cambridge, MA: MIT Press, 1997), 145–72.

35. See Bhikhu Parekh, *Rethinking Multiculturalism* (Cambridge, MA: Harvard University Press, 2000), 220–1.

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