ADDRESS
Multiculturalism and the Liberal State

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The following is an edited version of remarks Professor Habermas delivered to a seminar at Stanford University on January 25, 1995. The editors include the address in the Symposium because it illuminates philosophical aspects of interminority group conflict and the relationship of minority cultures and political identities to the majority culture within a constitutional democracy. Specifically, Professor Habermas sketches an argument that various aspects of liberal and communitarian theory can be combined to support a universally shared civic culture, one which recognizes and accommodates cultural differences while at the same time providing a "neutral" public sphere in which various groups can communicate, compete, and carry on the democratic project.

My article,¹ which provides the basis for our discussion, is a response to my friend Charles Taylor’s The Politics of Recognition.² The controversial issue is briefly this: Should citizens’ identities as members of ethnic, cultural, or religious groups publicly matter, and if so, how can collective identities make a difference within the frame of a constitutional democracy? Are collective identities and cultural memberships politically relevant, and if so, how can they legitimately affect the distribution of rights and the recognition of legal claims? There are many aspects to multiculturalism, but the present debate focuses narrowly on normative questions of political and legal theory. Without any attempt to summarize the arguments of the book, I would like to remind you of the two opposed answers to the question at hand—the liberal and the communitarian positions—and of my own response, which is critical of both.³

The liberal and communitarian side interpret differently the principles of equal respect for and equal protection of everybody. Liberalism is supposed to advocate a state which is blind to skin color and other differences. It grants

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3. I will deal with “liberalism” only in the version as it is understood by Taylor. It may well be that some real-life liberals would rather identify with the position which I offer here as one in between liberalism and communitarianism.
everybody equal rights for the free pursuit of her own life project. It grants equal chances to everybody for the development of personal identities, independently of the kind of persons they are and their relation to collective identities.

Communitarianism, of course, defends human rights too, but it concedes to the state, even requires of it, the commitment to intervene in processes of identity formation and maintenance, if necessary. And such intervention is supposed to be necessary if the "survival" (or even only the flourishing) of national, ethnic, cultural, or religious minorities is threatened.

Given this somewhat oversimplified contrast, the position I would like to defend is different from both positions. I think that liberalism does allow for an interpretation of equal rights that requires the state to grant the equal coexistence of majority and minority cultures; and that it should do so in terms of individual rights to cultural memberships of various sorts. This conception is liberal insofar as it follows Dworkin in assuming the priority of individual rights over collective goals or goods, including "goods" which depend on the maintenance of collective identities. Collective rights, hedging collective identities, may become dangerous or even illegitimate as they violate basic individual rights (e.g., the rights of daughters of Turkish immigrants in Germany, if the daughters are, due to the Islamic tradition of their families, prevented from participating in certain fields of public education).

But even if collective rights were compatible with the individualistic design of modern legal orders based on subjective rights, it would not make any sense to employ them for cultural survival projects enforced by state power. There cannot be a "preservation" of cultures in the same sense as most of us advocate the preservation of animals or other species. The reproduction of traditions and cultural forms is an achievement which can be legally enabled, but by no means granted. Reproduction here requires the conscious appropriation and application of traditions by those native members who have become convinced of these traditions' intrinsic value. The members must first come to see that the inherited traditions are worth the existential effort of continuation. But new generations can acquire such a belief only on the condition that they are capable—and have the right—of saying yes or no. Legal guarantees of survival would deprive members exactly of this freedom to break off from their own tradition—and would thereby destroy the very space for hermeneutical appropriation which provides the only way to maintain cultural forms.

On the other hand, my conception is not liberal in the abstract sense insofar as I am sympathetic with the intersubjectivist approach of the communitarian project. One should conceive of individual rights, as well as their carriers—that is, legal persons—in intersubjective terms. The legal person is individuated through socialization processes no less than are natural persons.

This has interesting consequences for the interpretation of the Equal Protection Clause: For included in the set of human rights are rights to cultural membership. Everybody has the same right to develop and maintain her identity in...
just those intersubjectively shared forms of life and traditions from which she first emerged and has been formed during the course of childhood and adolescence. From such membership rights would follow almost all of the immunities, protections, subsidies, and policies which Taylor in his essay demands for the French minority in Canada. These rights need not be conceptualized in terms of collective rights; moreover, they should not be so designated for the (self-defeating) purpose of granting "survival."

Another, related difference in my position from liberalism is marked by the assumption that there should not (and even cannot) be an a priori and clear-cut distinction between the public and private identities of citizens. The constitutional state is committed to grant equally the private and civic autonomy of every citizen. The opportunities for both the pursuit of one's own conception of the good, and for the public use of reason (to put it in Rawlsian terms), are complementary. Citizens can make adequate use of their public autonomy only if, on the basis of their equally protected private autonomy, they are sufficiently independent. They can, on the other hand, arrive at an agreement about the regulation of their private autonomy only if they make adequate use of their political autonomy.

But this complementary relationship is not fixed once and for all. As a consequence, the boundaries between public and private spheres are historically in flux. It must be up to the citizens themselves to debate and deliberate in public, and to have parliaments democratically decide, on the kinds of rights they regard as necessary for the protection of both private liberties and public participation. There are no legitimate "gag rules" for keeping issues off the agenda that could be taken as "ontologically private." Rather, which kinds of regulation will keep the right balance between private discretion and public inspection depends on the specific historical circumstances.

One way to delineate the position I defend from both the liberal and communitarian sides is to describe the relationship between the universalist core of constitutional principles and the particularistic context of each political community. Against liberalism in the abstract sense, I would maintain that the legal order of any community is "ethically impregnated." Citizens share a political culture shaped by a particular history. The constitutional principles are, without any harm to their universalist meaning, interpreted from the perspective of this political culture, which provides at the same time the base for a constitutional patriotism.

Against communitarianism, I would insist on the requirement that the constitutional state carefully keep both the shared political culture and common civic identity separated from the subcultures and collective identities which are, as a consequence of equal rights to cultural membership, entitled to equal coexistence within the polity. The national legal order, although ethically impreg-
nated in terms of the political culture shared equally by all citizens, must remain neutral with respect to these prepolitical forms of life and traditions. Remaining "neutral" means—and this is the critical edge of neutrality—decoupling the majority culture from the political culture with which it was originally fused, and in most instances still is.

I cannot go into the details of the argumentation here, but it might help just to mention both the philosophical and the political contexts in which my response to Taylor was embedded.

As to philosophical themes, those familiar with discussions in political theory will have discovered two controversial issues at stake. First, I am defending liberals against the communitarian critique with regard to the concept of the "self." The individualistic approach to a theory of rights does not necessarily imply an atomistic, disembodied, and desocialized concept of the person. The legal person is, of course, an artificial construct. Modern legal orders presuppose abstract subjects as carriers of those rights of which they are composed. These artificial persons are not identical with natural persons, who are individuated by their unique life histories. But legal persons, too, should and can be constructed as socialized individuals. They are members of a community of legal consociates who are supposed to recognize each other as free and equal. The equal respect required from legal persons pertains, however, also to the context of those intersubjective relationships which are constitutive for their identities as natural persons.

Together with the communitarians I am, on the other hand, critical of the liberal assumption that human rights are prior to popular sovereignty. The addressees of law must be in a position to see themselves at the same time as authors of those laws to which they are subject. Human rights may not just be imposed on popular sovereignty as an external constraint. Of course, popular sovereignty must not be able to arbitrarily dispose of human rights either. The two mutually presuppose each other. The solution to this seeming paradox is that human rights must be conceived in such a way that they are enabling rather than constraining conditions for democratic self-legislation.

Turning to political themes: The idea of a "struggle for recognition" stems from Hegel's *Phenomenology.* From this perspective, we can discover similarities among different but related phenomena: feminism, nationalism, conflict of cultures, besides the particular issue of multiculturalism. All these phenomena have in common the political struggle for the recognition of suppressed collective identities. This good is different from other collective goods. It cannot be substituted for by generalized social rewards (income, leisure time, working conditions, etc.) which are the objects of the usual distribution conflicts in the welfare state. But those struggles for recognition, fought in various forms of identity politics, are also different in many other respects. One such aspect is law: Since of these groups only women and ethnic minorities have been recognized as objects of constitutional protection, only feminist and mul-

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ticultural claims can be, at least in principle, settled within the frame of the constitutional state.

Finally, an example. The immediate political context in Germany at the time of my article was the debate on "asylum," which in fact was about immigration. Applying the principles above, one can arrive at the following conclusions: First, there are good legal reasons for defending a right to political asylum. On the other hand, there are only moral reasons, albeit rather strong ones, for establishing a liberal immigration policy. The claim to immigration and citizenship in the receiving country is a moral claim but, unlike political asylum, not a legal right.

Second, immigrants should be obliged to assent to the principles of the constitution as interpreted within the scope of the political culture: that is, the ethical-political self-understanding of the citizenry of the receiving country. Once they become citizens themselves, they in turn get a voice in public debates, which may then shift the established interpretation of the constitutional principles. The obligation to accept the political culture may not, however, extend to assimilation to the way of life of the majority culture. A legally required political socialization may not have an impact on other aspects of the collective identity of the immigrants' culture of origin.

9. This right was originally granted in the German Constitution, but has been hollowed out in the meantime as a consequence of the debate in late 1992 and early 1993.